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Presidential Documents

Title 3—

The President

Proclamation 10055 of June 30, 2020

Pledge to America's Workers Month, 2020

By the President of the United States of America

A Proclamation

The ongoing effects of the coronavirus pandemic on our Nation's economy and workforce have been unprecedented. Businesses of all sizes have been forced to close, downsize, or restructure; countless employees have transitioned to working remotely; and tens of millions of Americans have found themselves newly unemployed. Despite the hardship caused by the pandemic, it has not encumbered the American spirit or the unyielding resolve of our Nation's workers. The United States economy added 2.5 million jobs in May, rebounding with historic strength and beginning the transition back to strong economic growth. During Pledge to America's Workers Month, we celebrate the resilience and unlimited potential of America's workers and industries; honor the State and private-sector organizations that have pledged to train, educate, and reskill American workers; and reaffirm our unparalleled support for our workforce as we emerge from the grip of this crisis.

In July 2018, I established the President's National Council for the American Worker in order to develop and implement a national strategy to reshape the education and job training landscape to better meet the needs of American students, workers, and businesses. In coordination with the Council, my Administration has called on States, businesses, and trade groups to sign the Pledge to America's Workers, by which they commit to expanding programs that educate, train, and reskill workers of all ages. A strong, bipartisan majority of our Nation's Governors and over 430 companies, trade associations, and unions have signed the Pledge, promising to provide education and training opportunities for 16 million American students and workers over the next 5 years.

I also established the American Workforce Policy Advisory Board to glean expertise and input from a broad spectrum of leaders in the public, private, education, and not-for-profit sectors. At the time of its creation, our country was experiencing a historic economic boom, record-low unemployment rates, and soaring consumer confidence. The rapid changes brought on by the coronavirus pandemic have further revealed the critical need to invest in our workers to get our Nation back to work. The Board is focused on numerous challenges, and recently issued a National Workforce Recovery Call-to-Action to spur economic recovery by expediting American workers' return to employment and upward mobility through investment in career pathways and implementation of skill-based hiring practices. The Call-to-Action also emphasizes removing obstacles to modernizing workforce education and building the technology infrastructure needed for the future of work.

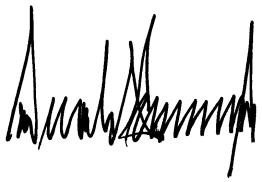
My Administration is committed to helping every citizen find the path to economic success and professional fulfillment that works for them. It is critical that we explore and promote non-traditional pathways to family-sustaining careers, including through enhancing data transparency that can help match workers with available jobs; modernizing candidate recruitment, hiring, and training practices; and advancing lifelong learning opportunities.

By broadening our vision for America's workforce and igniting ingenuity and innovation, we can bring opportunity and prosperity to all Americans.

Although the coronavirus pandemic has tested the mettle of our Nation's workers, our country has steeled its resolve to overcome and persevere. The same resourcefulness and determination with which we have confronted this crisis will be the catalyst for our economic resurgence. American workers are the engine of our country's future prosperity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 2020 as Pledge to America's Workers Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth 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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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0236; Airspace Docket No. 18–AEA–16]

RIN 2120–AA66

Establishment and Amendment of Area Navigation Routes, Northeast Corridor Atlantic Coast Routes; Eastern United States.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes seven new high altitude area navigation (RNAV) routes (Q-routes), and modifies one existing Q-route, in support of the Northeast Corridor Atlantic Coast Route (NEC ACR) Project. This action improves the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and reducing the dependency on ground-based navigational systems.

DATES: Effective date 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 Rules and Regulations 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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 supports the air traffic service route structure in the eastern United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0236 in the **Federal Register** (85 FR 16572; March 24, 2020) to establish 19 new Q-routes, and amend 13 existing Q-routes, in the northeastern United States to support the Northeast Corridor Atlantic Coast Route project. The NPRM proposed to designate the following new routes: Q–101, Q–107, Q–111, Q–115, Q–117, Q–119, Q–127, Q–129, Q–131, Q–133, Q–167, Q–220, Q–419, Q–430, Q–437, Q–439, Q–445, Q–450, and Q–481. In addition, the NPRM proposed amendments to the following existing routes: Q–22, Q–54, Q–60, Q–64, Q–85, Q–87, Q–97, Q–99, Q–109, Q–113, Q–135, Q–409, and Q–480. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

As the NPRM was published, the United States was undergoing the effects of the world-wide COVID–19 pandemic. The restrictions imposed to confront the pandemic impacted the ability of air traffic control facilities to conduct the required air traffic controller training to implement these routes, including required classroom and simulator training. The FAA determined that training to implement all 32 routes addressed in the NPRM could not be accomplished in the near-term.

As a result, the FAA is limiting the scope of this rule to establishing the following seven Q-routes: Q–119, Q–127, Q–129, Q–220, Q–430, Q–439, and Q–450; and amending the existing route: Q–480. The descriptions of these routes are the same as proposed in the NPRM. The remaining routes contained in the NPRM are removed from this rule and will be addressed by separate rulemaking action at a later date.

Area navigation routes are published in paragraph 2006, 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 area navigation routes listed in this document will be subsequently published 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

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by establishing seven new Q-routes, and amending one existing Q-route, in the eastern United States to support the Northeast Corridor Atlantic Coast Route project. The new routes are designated: Q–119, Q–127, Q–129, Q–220, Q–430, Q–439, and Q–450. In addition, amendments are made to the description of Q–480.

The new Q-routes are described as follows:

Q–119: Q–119 extends between the SCOOB, VA, WP, and the Westminster, MD (EMI), VORTAC.

Q–127: Q–127 extends between the Gordonsville, VA (GVE), VORTAC, and the Smyrna, DE (ENO), VORTAC.

Q–129: Q–129 extends between the GARIC, NC, WP, and the PYTON, MD, WP.

Q–220: Q–220 extends between the RIFLE, NY, Fix, and the LARIE, MA, WP.

Q–430: Q–430 extends between the ZANDER, OH, Fix, and the Nantucket, MA (ACK), VOR/DME.

Q–439: Q–439 extends between the BRIGS, NJ, Fix, and the Presque Isle, ME (PQI), VOR/DME.

Q–450: Q–450 extends between the HNNAH, NJ, Fix, and the Deer Park, NY (DPK), VOR/DME.

The amended Q route is described as follows:

Q–480: Q–480 extends between the ZANDR, OH, Fix, and the Kennebunk, ME, VORTAC. The route is amended by inserting the KYLOH, NH, WP and the BEEKN, ME, WPs between the Barnes, MA (BAF), VORTAC, and the Kennebunk, ME (ENE), VOR/DME. Otherwise, Q–480 remains as currently charted.

Full route descriptions of the proposed new and amended routes are listed in ''The Amendment'' section of this rule.

The new and amended routes expand the availability of high altitude RNAV routing along the eastern seaboard of the U.S. The project is designed to increase airspace capacity and reduce complexity in high volume areas through the use of optimized routes through congested airspace.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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, does 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 of establishing seven high altitude RNAV routes (Q routes), and amending one Q route qualifies for a categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F—Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that 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).

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 2006 United States Area Navigation Routes

* * * * * * *

Q–119 SCOOB, VA to Westminster, MD (EMI) [New]

SCOOB, VA	WP	(Lat. 37°35′32.00″ N, long. 076°37′49.00″ W)
GROKK, VA	WP	(Lat. 37°52′22.88″ N, long. 076°40′49.87″ W)
RYVRR, VA	WP	(Lat. 38°02′17.54″ N, long. 076°42′36.92″ W)
SHTGN, MD	WP	(Lat. 38°14′45.29″ N, long. 076°44′52.23″ W)
DUALY, MD	WP	(Lat. 38°45′53.59″ N, long. 076°50′33.76″ W)
HALEX, MD	WP	(Lat. 38°53′49.13″ N, long. 076°52′01.49″ W)
Westminster, MD (EMI)	VORTAC	(Lat. 39°29′42.03″ N, long. 076°58′42.86″ W)

* * * * * * *

Q–127 Gordonsville, VA (GVE) to Smyrna, DE (ENO) [New]

Gordonsville, VA (GVE)	VORTAC	(Lat. 38°00′48.96″ N, long. 078°09′10.89″ W)
BUKYY, MD	WP	(Lat. 38°42′20.00″ N, long. 076°44′42.63″ W)
BAILZ, MD	WP	(Lat. 38°44′54.47″ N, long. 076°38′48.17″ W)
GRACO, MD	FIX	(Lat. 38°56′29.81″ N, long. 076°11′59.22″ W)
Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)

* * * * * * *

Q–129 GARIC, NC to PYTON, MD [New]

GARIC, NC	WP	(Lat. 33°52′34.84″ N, long. 077°58′53.66″ W)
YERBA, NC	WP	(Lat. 35°19′00.83″ N, long. 077°55′44.62″ W)

AARNN, NC	WP	(Lat. 36°22′43.59″ N, long. 078°01′04.05″ W)
THEOO, VA	WP	(Lat. 37°35′34.68″ N, long. 078°07′20.23″ W)
PYTON, MD	WP	(Lat. 39°42′38.01″ N, long. 078°18′10.19″ W)

* * * * * * *

Q–220 RIFLE, NY to LARIE, MA [New]

RIFLE, NY	FIX	(Lat. 40°41′24.18″ N, long. 072°34′54.89″ W)
HOFFI, NY	FIX	(Lat. 40°48′03.46″ N, long. 072°27′41.97″ W)
ORCHA, NY	WP	(Lat. 40°54′55.46″ N, long. 072°18′43.64″ W)
ALBOW, NY	WP	(Lat. 41°02′04.04″ N, long. 071°58′30.69″ W)
Sandy Point, RI (SEY)	VOR/DME	(Lat. 41°10′02.77″ N, long. 071°34′33.91″ W)
SKOWL, RI	WP	(Lat. 41°15′47.18″ N, long. 071°16′44.35″ W)
JAWZZ, MA	WP	(Lat. 41°24′08.08″ N, long. 070°50′33.25″ W)
LARIE, MA	WP	(Lat. 41°49′23.46″ N, long. 069°58′41.96″ W)

* * * * * * *

Q–430 ZANDER, OH to Nantucket, MA (ACK) [New]

ZANDER, OH	FIX	(Lat. 40°00′18.75″ N, long. 081°31′58.35″ W)
Bellaire, OH (AIR)	VOR/DME	(Lat. 40°01′01.29″ N, long. 080°49′02.02″ W)
LEJOY, PA	FIX	(Lat. 40°00′12.22″ N, long. 079°24′53.61″ W)
VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
BEETS, PA	FIX	(Lat. 39°57′20.57″ N, long. 077°26′59.55″ W)
LARRI, PA	FIX	(Lat. 39°57′02.33″ N, long. 077°17′54.14″ W)
SAAME, PA	FIX	(Lat. 40°01′51.82″ N, long. 076°29′02.39″ W)
BYRDD, PA	FIX	(Lat. 40°05′31.93″ N, long. 075°49′07.29″ W)
COPES, PA	FIX	(Lat. 40°07′50.57″ N, long. 075°22′36.37″ W)
Robbinsville, NJ (RBV)	VORTAC	(Lat. 40°12′08.65″ N, long. 074°29′42.09″ W)
MYRCA, NJ	WP	(Lat. 40°20′42.97″ N, long. 073°56′58.07″ W)
CREEL, NY	FIX	(Lat. 40°26′50.51″ N, long. 073°33′10.68″ W)
RIFLE, NY	FIX	(Lat. 40°41′24.18″ N, long. 072°34′54.89″ W)
KYSKY, NY	FIX	(Lat. 40°46′52.75″ N, long. 072°12′21.45″ W)
LIBBE, NY	FIX	(Lat. 41°00′15.86″ N, long. 071°21′20.34″ W)
FLAPE, MA	FIX	(Lat. 41°03′56.30″ N, long. 071°04′10.55″ W)
DEEPO, MA	FIX	(Lat. 41°06′53.96″ N, long. 070°50′09.85″ W)
Nantucket, MA (ACK)	VOR/DME	(Lat. 41°16′54.79″ N, long. 070°01′36.16″ W)

* * * * * * *

Q–439 BRIGS, NJ to Presque Isle, ME (PQI) [New]

BRIGS, NJ	FIX	(Lat. 39°31′24.72″ N, long. 074°08′19.67″ W)
DRIFT, NJ	FIX	(Lat. 39°48′53.56″ N, long. 073°40′49.53″ W)
MANTA, NJ	FIX	(Lat. 39°54′07.01″ N, long. 073°32′31.63″ W)
PLUME, NJ	FIX	(Lat. 40°07′06.67″ N, long. 073°17′08.03″ W)
SHERL, NY	FIX	(Lat. 40°15′20.55″ N, long. 073°07′18.26″ W)
DUNEE, NY	FIX	(Lat. 40°19′24.38″ N, long. 073°02′26.06″ W)
SARDI, NY	FIX	(Lat. 40°31′26.61″ N, long. 072°47′55.87″ W)
RIFLE, NY	FIX	(Lat. 40°41′24.18″ N, long. 072°34′54.89″ W)
FOXWD, CT	WP	(Lat. 41°48′21.66″ N, long. 071°48′07.03″ W)
BOGRT, MA	WP	(Lat. 42°13′56.08″ N, long. 071°31′07.37″ W)
BLENO, NH	WP	(Lat. 42°54′55.00″ N, long. 071°04′43.37″ W)
BEEKN, ME	WP	(Lat. 43°20′51.95″ N, long. 070°44′50.28″ W)
FRIAR, ME	FIX	(Lat. 44°26′28.93″ N, long. 069°53′04.38″ W)
Presque Isle, ME (PQI)	VOR/DME	(Lat. 46°46′27.07″ N, long. 068°05′40.37″ W)

* * * * * * *

Q–450 HNNAH, NJ to Deer Park, NY (DPK) [New]

HNNAH, NJ	FIX	(Lat. 40°28′12.73″ N, long. 074°02′36.62″ W)
Kennedy, NY (JFK)	VOR/ME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
Deer Park, NY (DPK)	VOR/DME	(Lat. 40°47′30.30″ N, long. 073°18′13.17″ W)

* * * * * * *

Q–480 ZANDR, OH to Kennebunk, ME (ENE) [Amended]

ZANDR, OH	FIX	(Lat. 40°00′18.75″ N, long. 081°31′58.35″ W)
Bellaire, OH (AIR)	VOR/DME	(Lat. 40°01′01.29″ N, long. 080°49′02.02″ W)
LEJOY, PA	FIX	(Lat. 40°00′12.22″ N, long. 079°24′53.61″ W)
VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
BEETS, PA	FIX	(Lat. 39°57′20.57″ N, long. 077°26′59.55″ W)

HOTEE, PA	WP	(Lat. 40°20′36.00″ N, long. 076°29′37.00″ W)
MIKYG, PA	WP	(Lat. 40°36′06.00″ N, long. 075°49′11.00″ W)
SPOTZ, PA	WP	(Lat. 40°45′55.00″ N, long. 075°22′59.00″ W)
CANDR, NJ	FIX	(Lat. 40°58′15.55″ N, long. 074°57′35.38″ W)
JEFFF, NJ	FIX	(Lat. 41°14′46.38″ N, long. 074°27′43.29″ W)
Kingston, NY (IGN)	VOR/DME	(Lat. 41°39′55.62″ N, long. 073°49′20.01″ W)
LESWL, CT	WP	(Lat. 41°53′31.00″ N, long. 073°19′20.00″ W)
Barnes, MA (BAF)	VORTAC	(Lat. 42°09′43.05″ N, long. 072°42′58.32″ W)
KYLOH, NH	WP	(Lat. 43°03′53.11″ N, long. 071°13′45.49″ W)
BEEKN, ME	WP	(Lat. 43°20′51.95″ N, long. 070°44′50.28″ W)
Kennebunk, ME (ENE)	VOR/DME	(Lat. 43°25′32.42″ N, long. 070°36′48.69″ W)

* * * * * * *

Issued in Washington, DC, on June 26, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–14313 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31318; Amdt. No. 553]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, July 16, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on June 12, 2020.

Robert C. Carty,

Executive Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, July 16, 2020.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 553 effective date July 16, 2020]

FROM	TO	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3333 RNAV Route T333 is Amended by Adding			
FELLOWS, CA VOR/DME	REDDE, CA WP	7300	17500
REDDE, CA WP	LKHRN, CA WP	5800	17500
LKHRN, CA WP	RANCK, CA FIX	6700	17500
*6200—MCA	RANCK, CA FIX, SE BND.		
RANCK, CA FIX	PANOS, CA FIX	6200	17500
*5500—MCA	PANOS, CA FIX, SE BND.		
PANOS, CA FIX	ULENY, CA WP	5200	17500
*4500—MCA ULENY, CA WP, SE BND			
ULENY, CA WP	HENCE, CA FIX	4300	17500
HENCE, CA FIX	GILRO, CA FIX	4700	17500
GILRO, CA FIX	BORED, CA FIX	6100	17500
Is Amended to Delete			
KLIDE, CA FIX	BORED, CA FIX	6200	17500
§ K502 RNAV Route TK502 is Amended to Read in Part			
SPATE, NY WP	DECKR, NY WP	2900	17500

FROM	TO	MEA
§ 95.6001 Victor Routes–U.S.		
§ 95.6007 VOR Federal Airway V7 is Amended to Delete		
CENTRAL CITY, KY VORTAC	POCKET CITY, IN VORTAC	2300
§ 95.6010 VOR Federal Airway V10 is Amended to Read in Part		
DODGE CITY, KS VORTAC	STAFF, KS FIX	4300
STAFF, KS FIX	HUTCHINSON, KS VOR/DME.	
	E BND	3800
	W BND	4300
§ 95.6015 VOR Federal Airway V15 is Amended to Delete		
BONHAM, TX VORTAC	PRIZZ, OK FIX	*3600
*2100—MOCA		
PRIZZ, OK FIX	MC ALESTER, OK VORTAC	*3000
*2500—MOCA		
MC ALESTER, OK VORTAC	HOFFE, OK WP	2700
HOFFE, OK WP	OKMULGEE, OK VOR/DME	2600
§ 95.6017 VOR Federal Airway V17 is Amended to Delete		
WACO, TX VORTAC	GAINS, TX WP	*3000
*2500—MOCA		
GAINS, TX WP	BRIAN, TX FIX	3000
BRIAN, TX FIX	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000
§ 95.6018 VOR Federal Airway V18 is Amended to Delete		
MILLSAP, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAC	CEDAR CREEK, TX VORTAC	*3000
*2200—MOCA		
§ 95.6025 VOR Federal Airway V25 is Amended to Read in Part		
LAPED, CA FIX	*GRENY, CA FIX	9000
*9000—MCA GRENY, CA FIX, S BND		
GRENY, CA FIX	RED BLUFF, CA VORTAC.	
	N BND	3200
	S BND	9000
§ 95.6039 VOR Federal Airway V39 is Amended to Read in Part		
CARMEL, NY VOR/DME	SOARS, CT FIX	#3000
#CARMEL R–057 UNUSABLE.		

FROM	TO	MEA
SOARS, CT FIX	*MOONI, CT FIX.	
	N BND	**12000
	S BND	**6000
*12000—MCA MOONI, CT FIX, N BND.		
*6000—MCA MOONI, CT FIX, S BND.		
**6000—GNSS MEA.		
MOONI, CT FIX	*STUBY, CT FIX	**12000
*12000—MRA		
*12000—MCA STUBY, CT FIX, S BND		
**4900—MOCA		
**6000—GNSS MEA		

§ 95.6052 VOR Federal Airway V52 is Amended to Delete

POCKET CITY, IN VORTAC	*CENTRAL CITY, KY VORTAC	2300
*6900—MCA CENTRAL CITY, KY VORTAC, SE BND		
CENTRAL CITY, KY VORTAC	*BOWLING GREEN, KY VORTAC	**3000
*11000—MCA BOWLING GREEN, KY VORTAC, SE BND		
**2400—MOCA		

§ 95.6053 VOR Federal Airway V53 is Amended to Read in Part

CHARLESTON, SC VORTAC	COLUMBIA, SC VORTAC	2100

§ 95.6054 VOR Federal Airway V54 is Amended to Read in Part

RAEFO, NC FIX	FAYETTEVILLE, NC VOR/DME	*5000
*1900—MOCA		

§ 95.6062 VOR Federal Airway V62 is Amended to Delete

ABILENE, TX VORTAC	FLECK, TX FIX	3300
FLECK, TX FIX	GEENI, TX FIX	*4000
*3500—MOCA		
GEENI, TX FIX	GLEN ROSE, TX VORTAC	*3500
*3000—MOCA		

§ 95.6063 VOR Federal Airway V63 is Amended to Delete

TEXOMA, OK VOR/DME	MC ALESTER, OK VORTAC	2800
MC ALESTER, OK VORTAC	RAZORBACK, AR VORTAC	*4000
*3000—MOCA		

§ 95.6091 VOR Federal Airway V91 is Amended to Read in Part

NESSI, CT FIX	*BRIDGEPORT, CT VOR/DME	2000
*8800—MCA BRIDGEPORT, CT VOR/DME, N BND		
BRIDGEPORT, CT VOR/DME	*MOONI, CT FIX.	
	N BND	**12000
	S BND	**6000
*12000—MCA MOONI, CT FIX, N BND		
*6000—MCA MOONI, CT FIX, S BND		
**5500—MOCA		
**6000—GNSS MEA		
MOONI, CT FIX	*BOWAN, NY FIX	**12000
*12000—MCA BOWAN, NY FIX, S BND		
*12000—MCA BOWAN, NY FIX, N BND		
**4900—MOCA		
**6000—GNSS MEA		
BOWAN, NY FIX	CIRRU, NY FIX	*12000
*4900—MOCA		
*6000—GNSS MEA		
CIRRU, NY FIX	*ALBANY, NY VORTAC.	
	N BND	**6000
	S BND	12000
*9700—MCA ALBANY, NY VORTAC, S BND		
**6000—GNSS MEA		

§ 95.6094 VOR Federal Airway V94 is Amended to Delete

TUSCOLA, TX VOR/DME	GEENI, TX FIX	4000
GEENI, TX FIX	GLEN ROSE, TX VORTAC	*3500
*3000—MOCA		
GLEN ROSE, TX VORTAC	CEDAR CREEK, TX VORTAC	*3000

FROM	TO	MEA
*2200—MOCA		
§ 95.6113 VOR Federal Airway V113 is Amended to Delete		
PASO ROBLES, CA VORTAC	PRIEST, CA VOR	6000
PRIEST, CA VOR	*PANOCHE, CA VORTAC	7500
*5500—MCA PANOCHE, CA VORTAC, S BND		
§ 95.6125 VOR Federal Airway V125 is Amended to Delete		
CAPE GIRARDEAU, MO VOR/DME	NIKEL, IL FIX	3500
§ 95.6126 VOR Federal Airway V126 is Amended to Read in Part		
GOSHEN, IN VORTAC	ILTON, IN FIX	*5000
*2400—MOCA		
§ 95.6136 VOR Federal Airway V136 is Amended to Read in Part		
RALEIGH/DURHAM, NC VORTAC	LANHO, NC FIX	3100
LANHO, NC FIX	FAYETTEVILLE, NC VOR/DME	2100
FAYETTEVILLE, NC VOR/DME	GRAND STRAND, SC VORTAC	#*3000
*2200—MOCA		
#V136 WITHIN GAMECOCK A MOA 7000 AND ABOVE FROM 17–38 NM S OF FAY VOR DOES NOT EXIST WHEN MOA IS ACTIVATED		
§ 95.6137 VOR Federal Airway V137 is Amended to Delete		
AVENAL, CA VOR/DME	PRIEST, CA VOR	6500
PRIEST, CA VOR	SALINAS, CA VORTAC	6000
§ 95.6139 VOR Federal Airway V139 is Amended to Read in Part		
HAMPTON, NY VORTAC	TRAIT, RI FIX	#
#UNUSABLE		
TRAIT, RI FIX	PROVIDENCE, RI VOR/DME	*3000
*2100—MOCA		
§ 95.6161 VOR Federal Airway V161 is Amended to Read in Part		
ARDMORE, OK VORTAC	OKMULGEE, OK VOR/DME	3000
§ 95.6163 VOR Federal Airway V163 is Amended to Delete		
GOOCH SPRINGS, TX VORTAC	TENAT, TX FIX	*3500
*2700—MOCA		
TENAT, TX FIX	GLEN ROSE, TX VORTAC	*3500
*2700—MOCA		
§ 95.6178 VOR Federal Airway V178 is Amended to Delete		
FARMINGTON, MO VORTAC	CAPE GIRARDEAU, MO VOR/DME	3000
CAPE GIRARDEAU, MO VOR/DME	CUNNINGHAM, KY VOR/DME	2400
CUNNINGHAM, KY VOR/DME	CENTRAL CITY, KY VORTAC	2600
CENTRAL CITY, KY VORTAC	NEW HOPE, KY VOR/DME	2700
is Amended to Read in Part		
SLINK, WV FIX	BLUEFIELD, WV VOR/DME.	
	E BND	6300
	W BND	8000
§ 95.6181 VOR Federal Airway V181 is Amended to Read in Part		
SIOUX FALLS, SD VORTAC	WATERTOWN, SD VORTAC	4000
§ 95.6199 VOR Federal Airway V199 is Amended to Read in Part		
MENDOCINO, CA VORTAC	*HENLE, CA FIX	9000
*9000—MCA HENLE, CA FIX, S BND		
HENLE, CA FIX	RED BLUFF, CA VORTAC.	
	N BND	3200
	S BND	9000

FROM	TO	MEA
§ 95.6230 VOR Federal Airway V230 is Amended to Read in Part		
PANOS, CA FIX	FIDDO, CA FIX	9000
FIDDO, CA FIX	*PANOCHE, CA VORTAC	**7000
*8500—MCA PANOCHE, CA VORTAC, W BND		
**5800—MOCA		
§ 95.6234 VOR Federal Airway V234 is Amended to Read in Part		
BYWAY, KS FIX	GABIE, KS FIX.	
	E BND	*4500
	W BND	*7100
*3800—MOCA		
GABIE, KS FIX	HUTCHINSON, KS VOR/DME.	
	E BND	3800
	W BND	4500
§ 95.6272 VOR Federal Airway V272 is Amended to Delete		
WILL ROGERS, OK VORTAC	MINGG, OK FIX	*4000
*3100—MOCA		
MINGG, OK FIX	HOLLE, OK FIX	*4000
*2600—MOCA		
HOLLE, OK FIX MC	ALESTER, OK VORTAC	3000
MC ALESTER, OK VORTAC	FORT SMITH, AR VORTAC	*3500
*2900—MOCA		
§ 95.6280 VOR Federal Airway V280 is Amended to Read in Part		
WIPET, KS FIX	HUTCHINSON, KS VOR/DME.	
	E BND	3400
	W BND	8000
§ 95.6283 VOR Federal Airway V283 is Amended to Read in Part		
SEAL BEACH, CA VORTAC	*JOGIT, CA FIX	4000
*6800—MCA JOGIT, CA FIX, E BND		
JOGIT, CA FIX	KAYOH, CA FIX.	
	W BND	6200
	E BND	8000
§ 95.6296 VOR Federal Airway V296 is Amended to Read in Part		
RAEFO, NC FIX	FAYETTEVILLE, NC VOR/DME	*5000
*1900—MOCA		
§ 95.6313 VOR Federal Airway V313 is Amended to Delete		
MALDEN, MO VORTAC	CAPE GIRARDEAU, MO VOR/DME	2300
CAPE GIRARDEAU, MO VOR/DME	GENTS, IL FIX	3500
GENTS, IL FIX	CENTRALIA, IL VORTAC	*3000
*2400—MOCA		
§ 95.6372 VOR Federal Airway V372 is Amended to Read in Part		
SEAL BEACH, CA VORTAC	*JOGIT, CA FIX	4000
*6800—MCA JOGIT, CA FIX, E BND		
JOGIT, CA FIX	KAYOH, CA FIX.	
	W BND	6200
	E BND	8000
§ 95.6419 VOR Federal Airway V419 is Amended to Read in Part		
CARMEL, NY VOR/DME	BRISS, CT FIX	#3000
#CARMEL R–057 UNUSABLE		
§ 95.6429 VOR Federal Airway V429 is Amended to Delete		
CAPE GIRARDEAU, MO VOR/DME	MARION, IL VOR/DME	3000
§ 95.6442 VOR Federal Airway V442 is Amended to Read in Part		
PARADISE, CA VORTAC	APLES, CA FIX	*10000
*8100—MOCA		
*9000—GNSS MEA		

FROM	TO	MEA
APLES, CA FIX	HECTOR, CA VORTAC	*10000
*8500—MOCA		
§ 95.6485 VOR Federal Airway V485 is Amended to Delete		
FELLOWS, CA VOR/DME	*REDDE, CA WP	**7000
*7000—MCA REDDE, CA WP, SE BND		
**6100—MOCA		
REDDE, CA WP	PRIEST, CA VOR	6000
PRIEST, CA VOR	PANOS, CA FIX	6500
PANOS, CA FIX	HENCE, CA FIX	*6500
*5600—MOCA		
HENCE, CA FIX	SAN JOSE, CA VOR/DME	4600
§ 95.6487 VOR Federal Airway V487 is Amended to Read in Part		
DUNBO, NY FIX	*BRIDGEPORT, CT VOR/DME	**2000
*8800—MCA BRIDGEPORT, CT VOR/DME, N BND		
**1500—MOCA		
BRIDGEPORT, CT VOR/DME	*MOONI, CT FIX.	
	N BND	**12000
	S BND	**6000
*12000—MCA MOONI, CT FIX, N BND		
*6000—MCA MOONI, CT FIX, S BND		
**5500—MOCA		
**6000—GNSS MEA		
MOONI, CT FIX	*BOWAN, NY FIX	**12000
*12000—MCA BOWAN, NY FIX, S BND		
**4900—MOCA		
**6000—GNSS MEA		
BOWAN, NY FIX	CAMBRIDGE, NY VOR/DME.	
	N BND	5000
	S BND	6000
§ 95.6500 VOR Federal Airway V500 is Amended to Read in Part		
GASHE, OR FIX	*KIMBERLY, OR VOR/DME	**9200
*8500—MCA KIMBERLY, OR VOR/DME, E BND		
**8200—MOCA		
KIMBERLY, OR VOR/DME	*POTSY, OR FIX.	
	E BND	15000
	W BND	11100
*15000—MRA		
POTSY, OR FIX	FONNA, OR FIX	*15000
*10000—MOCA		
FONNA, OR FIX	*HOSTS, OR FIX.	
	E BND	**11000
	W BND	**15000
*11700—MRA		
**7800—MOCA		
HOSTS, OR FIX	PARMO, ID FIX.	
	E BND	7200
	W BND	15000
PARMO, ID FIX	*BOISE, ID VORTAC.	
	E BND	5400
	W BND	15000
*7400—MCA BOISE, ID VORTAC, E BND		
§ 95.6510 VOR Federal Airway V510 is Amended to Read in Part		
FARGO, ND VOR/DME	ALEXANDRIA, MN VOR/DME.	
	E BND	*3600
	NW BND	*6000
*3100—MOCA		
§ 95.6568 VOR Federal Airway V568 is Amended to Delete		
LLANO, TX VORTAC	BUILT, TX FIX	*6000
*3200—MOCA		
BUILT, TX FIX	GLEN ROSE, TX VORTAC	*3500
*3000—MOCA		
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000

FROM	TO	MEA
§ 95.6583 VOR Federal Airway V583 is Amended to Delete		
PARIS, TX VOR/DME *2500—MOCA	MC ALESTER, OK VORTAC	*3000

FROM	TO	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7014 Jet Route J14 is Amended to Delete			
VULCAN, AL VORTAC	ATLANTA, GA VORTAC	18000	45000
ATLANTA, GA VORTAC	SPARTANBURG, SC VORTAC	18000	45000
SPARTANBURG, SC VORTAC	GREENSBORO, NC VORTAC	18000	45000
§ 95.7020 Jet Route J20 is Amended to Delete			
MONTGOMERY, AL VORTAC	SEMINOLE, FL VORTAC	18000	45000
§ 95.7040 Jet Route J40 is Amended to Delete			
MONTGOMERY, AL VORTAC	MACON, GA VORTAC	18000	45000
MACON, GA VORTAC	CHARLESTON, SC VORTAC	18000	45000
CHARLESTON, SC VORTAC	WILMINGTON, NC VORTAC	18000	45000
WILMINGTON, NC VORTAC	TAR RIVER, NC VORTAC	18000	45000
TAR RIVER, NC VORTAC	RICHMOND, VA VORTAC	18000	45000
§ 95.7041 Jet Route J41 is Amended to Delete			
SEMINOLE, FL VORTAC	MONTGOMERY, AL VORTAC	18000	45000
§ 95.7043 Jet Route J43 is Amended to Delete			
NEDDY, GA FIX	ATLANTA, GA VORTAC	18000	45000
ATLANTA, GA VORTAC	VOLUNTEER, TN VORTAC	18000	45000
§ 95.7045 Jet Route J45 is Amended to Delete			
ALMA, GA VORTAC	MACON, GA VORTAC	18000	45000
#ALMA R–320 UNUSABLE USE MACON R–139			
MACON, GA VORTAC	ATLANTA, GA VORTAC	18000	45000
§ 95.7051 Jet Route J51 is Amended to Delete			
TUBAS, NC FIX	FLAT ROCK, VA VORTAC	18000	45000
*18000—GNSS MEA			
#FLAT ROCK R–218 UNUSABLE			
FLAT ROCK, VA VORTAC	NOTTINGHAM, MD VORTAC	18000	45000
NOTTINGHAM, MD VORTAC	PALEO, MD FIX	#	.....
#UNUSABLE			
PALEO, MD FIX	DUPONT, DE VORTAC	#	.....
#UNUSABLE			
DUPONT, DE VORTAC	YARDLEY, PA VOR/DME	18000	29000
§ 95.7052 Jet Route J52 is Amended to Delete			
VULCAN, AL VORTAC	ATLANTA, GA VORTAC	18000	45000
ATLANTA, GA VORTAC	COLLIERS, SC VORTAC	18000	45000
COLLIERS, SC VORTAC	COLUMBIA, SC VORTAC	18000	45000
§ 95.7053 Jet Route J53 is Amended to Delete			
DUNKN, GA FIX	COLLIERS, SC VORTAC	18000	45000
COLLIERS, SC VORTAC	SPARTANBURG, SC VORTAC	18000	45000
SPARTANBURG, SC VORTAC	PULASKI, VA VORTAC	18000	45000
§ 95.7073 Jet Route J73 is Amended to Delete			
WYATT, GA FIX	LAGRANGE, GA VORTAC	18000	45000
§ 95.7075 Jet Route J75 is Amended to Delete			
GREENSBORO, NC VORTAC	GORDONSVILLE, VA VORTAC	18000	45000
GORDONSVILLE, VA VORTAC	MODENA, PA VORTAC	18000	45000
MODENA, PA VORTAC	SOLBERG, NJ VOR/DME	18000	23000
SOLBERG, NJ VOR/DME	CARMEL, NY VOR/DME	18000	32000
CARMEL, NY VOR/DME	NELIE, CT FIX	18000	45000

FROM	TO	MEA	MAA
#RADAR REQUIRED BETWEEN CARMEL AND NELIE			
NELIE, CT FIX	BOSTON, MA VOR/DME	18000	45000
§ 95.7081 Jet Route J81 is Amended to Delete			
DUNKN, GA FIX	COLLIERS, SC VORTAC	18000	45000
§ 95.7085 Jet Route J85 is Amended to Delete			
ALMA, GA VORTAC	COLLIERS, SC VORTAC	18000	45000
COLLIERS, SC VORTAC	SPARTANBURG, SC VORTAC	18000	45000
§ 95.7089 Jet Route J89 is Amended to Delete			
ICBOD, GA FIX	ATLANTA, GA VORTAC	18000	45000
§ 95.7091 Jet Route J91 is Amended to Delete			
JOHNN, GA WP	ATLANTA, GA VORTAC	24000	45000
ATLANTA, GA VORTAC	VOLUNTEER, TN VORTAC	18000	45000
§ 95.7097 Jet Route J97 is Amended to Delete			
SLATN, OA FIX	NANTUCKET, MA VOR/DME	25000	45000
NANTUCKET, MA VOR/DME	BOSTON, MA VOR/DME	18000	45000
§ 95.7105 Jet Route J105 is Amended to Delete			
RANGER, TX VORTAC	MC ALESTER, OK VORTAC	18000	45000
MC ALESTER, OK VORTAC	RAZORBACK, AR VORTAC	18000	45000
RAZORBACK, AR VORTAC	SPRINGFIELD, MO VORTAC	18000	45000
SPRINGFIELD, MO VORTAC	BRADFORD, IL VORTAC	18000	45000
BRADFORD, IL VORTAC	BADGER, WI VOR/DME	18000	45000
§ 95.7210 Jet Route J210 is Amended to Delete			
VANCE, SC VORTAC	WILMINGTON, NC VORTAC	18000	45000
§ 95.7575 Jet Route J575 is Amended to Delete			
BOSTON, MA VOR/DME	U.S. CANADIAN BORDER	18000	45000

Airway Segment		Changeover Points	
FROM	TO	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point V139 is Amended to Add Changeover Point			
HAMPTON, NY VORTAC	PROVIDENCE, RI VOR/DME	28	HAMPTON.
V39 is Amended to Add Changeover Point			
SOARS, CT FIX	ALBANY, NY VORTAC	8	SOARS.
V91 is Amended to Modify Changeover Point			
BRIDGEPORT, CT VOR/DME	ALBANY, NY VORTAC	30	BRIDGEPORT.
J40 is Amended to Delete Changeover Point			
MONTGOMERY, AL VORTAC	MACON, GA VORTAC	139	MONTGOMERY.
J75 is Amended to Delete Changeover Point			
MODENA, PA VORTAC	SOLBERG, NJ	10	MODENA.
J89 is Amended to Delete Changeover Point			
ATLANTA, GA VORTAC	VALDOSTA, GA VOR/DME	90	ATLANTA.

[FR Doc. 2020–13260 Filed 7–2–20; 8:45 am]
BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1239

[Docket No. CPSC–2019–0014]

Safety Standard for Gates and Enclosures

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Consumer Product Safety Improvement Act of 2008 (CPSIA), the U.S. Consumer Product Safety Commission (CPSC) is issuing this final rule establishing a safety standard for gates and enclosures that are intended to confine a child. The CPSC is also amending its regulations regarding third party conformity assessment bodies to include the safety standard for gates and enclosures in the list of notices of requirements (NORs).

DATES: This rule will become effective July 6, 2021. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 6, 2021.

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SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. Standards issued under section 104 of the CPSIA are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product.

The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years,'' and the statute specifies 12 categories of products that are included in the definition. Section 104(f)(2)(E) of the CPSIA specifically identifies ''gates and other enclosures for confining a child'' as a durable infant or toddler product. Additionally, the Commission's regulation requiring product registration cards defines ''gates and other enclosures for confining a child'' as a durable infant or toddler product subject to the registration card rule. 74 FR 68668 (Dec. 29, 2009); 16 CFR 1130.2(a)(5).

As required by section 104(b)(1)(A) of the CPSIA, the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and the public to develop this rule, largely through ASTM's standard development process. On July 8, 2019, the Commission issued a notice of proposed rulemaking (NPR) for gates and enclosures.[1] 84 FR 32346. The NPR proposed to incorporate by reference the voluntary standard developed by ASTM International, ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures* (ASTM F1004–19). Additionally, the NPR stated that the Commission agreed that a new requirement in ASTM F1004–19 that all gates, including pressure-mounted gates, meet a 30-pound push-out force test at five test locations, will improve children's safety if the gate is installed correctly. 84 FR at 32351. The NPR discussed concerns with consumer awareness of correct pressure-mounted gate installation, and discussed improvements to ASTM F1004–19 to increase consumer awareness, including the use of visual side-pressure indicators and a separate warning label along the top rail of the gate. *Id.* at 32351–52. The NPR stated that staff would continue to work with ASTM to improve consumer awareness of the importance of proper installation of pressure-mounted gates, and requested comment on improved warnings and visual side-pressure indicators. *Id.* The Commission did not receive any comments.

Since publication of the NPR, CPSC staff has continued to work with the ASTM subcommittee on gates and enclosures on visual side-pressure indicators and a separate warning label, as outlined in the NPR. Although the ASTM standard has not yet been updated, the ASTM subcommittee is moving forward to include a separate warning label (for pressure-mounted gates that rely on the use of wall cups to meet the 30-pound push-out force test), and has started moving forward to include visual side-pressure indicators (for pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test) to improve correct installation of pressure-mounted gates. Accordingly, for the final rule setting a safety standard for gates and enclosures, the Commission incorporates by reference ASTM F1004–19, with the following additional requirements, depending on the design of a pressure-mounted gate, to further reduce the risk of injury associated with incorrectly installed pressure-mounted gates:

(1) For pressure-mounted gates that include wall cups with the product to meet the 30-pound push-out force test,[2] the gates must include a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups, or

(2) For pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test, the gates must use visual side-pressure indicators to provide consumers feedback as to whether the gate is correctly installed.

Under section 14 of the CPSA, the Commission promulgated 16 CFR part 1112 to establish requirements for accreditation of third party conformity assessment bodies (or testing laboratories) to test for conformity with a children's product safety rule. The final rule amends the list of notices of requirements (NORs) issued by the Commission in 16 CFR part 1112 to include the safety standard for gates and enclosures.

CPSC staff's briefing package supporting this rule (Staff's Final Rule Briefing Package), is available at: *https://www.cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20Gates%20and%20Enclosures.pdf?lHExt6trsEuD56jiQTi7Ab0TjzdVQ_HH.*

II. Product Description

A. Definition of ''Gates and Other Enclosures''

ASTM F1004–19 defines an ''expansion gate'' as a ''barrier intended

[1] Staff's June 19, 2019 Briefing Package for the NPR (Staff's NPR Briefing Package) is available at: *https://www.cpsc.gov/s3fs-public/Proposed%20Rule%20-%20Safety%20Standard%20for%20Gates%20and%20Enclosures%20-%20June%2019%202019.pdf.*

[2] Note that section 6.7 of ASTM F1004–19 already requires that pressure-mounted gates that rely on the use of wall cups to meet the 30-pound push-out force test in section 6.3 of the standard to include the wall cups and necessary hardware to install them in the product packaging.

to be erected in an opening, such as a doorway, to prevent the passage of young children, but which can be removed by older persons who are able to operate the locking mechanism'' (section 3.1.7). ASTM F1004–19 defines an ''expandable enclosure'' as a ''self-supporting barrier intended to completely surround an area or play-space within which a young child may be confined'' (section 3.1.6). These products are intended for young children age 6 months through 24 months (section 1.2).

Although the title of the ASTM F1004–19 standard and its definitions include the word ''expansion'' and ''expandable'' before the words ''gate'' and ''enclosure,'' respectively, the scope of the ASTM F1004–19 standard includes all children's gates and enclosures, whether they expand or not. ASTM F1004–19 covers: ''[p]roducts known as expansion gates and expandable enclosures, *or by any other name,*'' (section 1.2, emphasis added).[3] Both expandable gates and non-expandable gates may serve as barriers that are intended to be erected in an opening, such as a doorway, to prevent the passage of young children. Both expandable enclosures and non-expandable enclosures may serve as barriers intended to surround an area or play-space completely to confine young children. Similarly, all children's gates and enclosures, whether they expand or not, can be removed by older persons who are able to operate the locking mechanism.

CPSC staff's review of enclosures shows that all enclosures are expandable. Staff's review of gates showed that there are some non-expandable, fixed-sized gates available for sale.[4] However, most of the gates and enclosures sold in the United States that are intended for children expand because they vary in width (for gates) or shape (enclosures). CPSC staff's review of hazard patterns indicates that all children's gates and enclosures present the same hazards, whether they expand or not. These hazards include injuries caused by hardware-related issues, slat problems, poor quality materials and finish, design issues, and installation problems.

This final rule addresses all children's gates and enclosures intended for confining a child, including non-expandable, fixed-sized gates and enclosures. The scope of the rule includes all products within ASTM F1004–19.

Gates and enclosures may be made of a wide range of materials: Plastic, metal, wood, cloth, mesh, or combinations of several materials. Gates typically have a means of egress that allows adults to pass through them, but some enclosures also have a means of egress (*i.e.,* some self-supporting barriers have egress panels that resemble gates). Gates may be hardware-mounted, pressure-mounted, or both. Hardware-mounted gates generally require screws and cannot be removed without tools. Pressure-mounted gates attach like a pressure-fit curtain rod, using pressure on each end to hold the gate stable. They are intended for consumers who prefer to be able to move their gate, or who do not want to mark their walls permanently. Mounting cups can be attached to one or more locations, and the gate can be removed, as needed, or moved to other locations.

B. Market Description

Approximately 127 firms supply gates and enclosures to the U.S. market. The majority of suppliers to the U.S. market are domestic, including domestic importers of gates manufactured elsewhere. About 80 very small, home-based domestic gate manufacturers exist, as well as 37 domestic entities that are considered small based on the U.S. Small Business Administration (SBA) guidelines. The remaining 10 suppliers that are not small domestic businesses include four large domestic firms and six foreign firms. In 2013, approximately 11.1 million gates/enclosures were in use in U.S. households with children under the age of 6, according to the CPSC's 2013 Durable Nursery Product Exposure Survey (DNPES).

Gates and enclosures vary widely in price. Consumers can purchase simple plastic or wooden pressure-mounted gates for as little as $10, while hardware-mounted gates with multiple extensions, and gates intended for daycare use, can cost as much as $700. Most gates retail for $25 to $200. Retail prices for enclosures and modular products that can operate as an enclosure or a gate range from $60 to $550. Fabric gates made by home-based manufacturers typically cost under $50, while custom-made wooden gates by home-based manufacturers can run more than $500 for gates with solid hardwood panels and decorative metal elements. Pressure-mounted gates, particularly hard plastic-molded gates, tend to be the least expensive gates and are sometimes marketed as travel gates. Hardware-mounted gates tend to be slightly more expensive than pressure-mounted gates, although there are many hardware-mounted gates available for less than $40.

The least expensive pressure-mounted gates are a popular choice with consumers, but price may not be the predominant criterion for many customers. Out of several hundred models of gates available on the site of one prominent internet retailer in January 2020, the 10 best-selling baby safety gates ranged in price from $12 to $85. On another major big box store website, the top 10 best-selling gates ranged in price from $17 to $100. In both cases, the best-selling gates included hardware-mounted gates and pressure-mounted gates. All of the best-selling gates were from suppliers that currently claim both ASTM compliance and JPMA certification.

III. Incident Data

A. CPSRMS Data

CPSC staff reviewed incident data associated with children's gates and enclosures as reported through the Consumer Product Safety Risk Management System (CPSRMS).[5] Although gates and enclosures are intended for use with young children between the ages of 6 months and 24 months, interaction with the gates and enclosures with older siblings and adult caregivers is a foreseeable use pattern, and adults are required to install such products securely to prevent injuries. CPSC staff reviewed the incident data involving older children and adults to determine hazard patterns. However, staff reported incident data in the NPR and this final rule only for *injuries* sustained by children younger than 5 years of age. Gates and enclosures are not intended for children older than 23 months, and the statutory definition of ''durable infant or toddler products'' states that the products are ''intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' Section 104(f)(1) of the CPSIA.

The NPR stated that the Commission was aware of 436 incidents in the CPSRMS data, including 108 reported injuries and 19 reported fatalities

[3] Gates or enclosures for non-domestic use (such as commercial or industrial), and those intended for pets only, are not covered under the scope of ASTM F1004–19.

[4] The majority of non-expandable, fixed-size gates are sold by home-based manufacturers with very low sales volumes.

[5] CPSC staff searched the CPSC database CPSRMS. Reported deaths and incidents are neither a complete count of all that occurred during this time period, nor a sample of known probability of selection. However, the reported incidents provide a minimum number of deaths and incidents occurring during this period and illustrate the circumstances involved in the incidents related to children's gates and enclosures.

Staff also reviewed national injury estimates, discussed below in III.B of this preamble.

involving child gates and enclosures, occurring from January 1, 2008 to October 31, 2018. Since that data extraction, CPSC staff identified an additional 42 incidents in the CPSRMS data, occurring from November 1, 2018 to January 7, 2020, including four reported injuries and three reported fatalities. Accordingly, for the final rule, the Commission is aware of 478 incidents in the CPSRMS data, including 112 reported injuries and 22 fatalities involving gates and enclosures, which occurred from January 1, 2008 to January 7, 2020. Because reporting is ongoing, the number of reported incidents during this period may change in the future.

1. Fatalities

The Commission is aware of 22 deaths that occurred between January 1, 2008 and January 7, 2020. The NPR discussed 19 deaths, stating that 17 of the deaths were associated with the use of a gate, while two were associated with an enclosure. Fifteen of the 19 decedents discussed in the NPR drowned, 13 in a backyard pool, one in a backyard hot tub, and one in a 5-gallon bucket of water inside the house. In these incidents, the decedents managed to get past the gate/enclosure when it was left open or somehow was opened without the caregiver's knowledge (10 incidents); the gate/enclosure was knocked down or pushed out by the decedent because of incorrect or unsecured installation (4 incidents); or the decedent climbed over the gate/enclosure (1 incident). The decedents ranged in age from 9 months to 3 years. 84 FR at 32347.

CPSC staff identified three additional fatal incidents since the NPR, reported to have occurred during the period November 1, 2018 to January 7, 2020. All three incidents involved a gate. The new fatalities include: A 2-year-old who drowned after climbing out of a crib, knocking over a baby gate, pushing open a living room door, and gaining access to an in-ground pool; a 23-month-old who suffocated in a gate opening while attempting to climb out of a crib after a baby gate was placed over the crib; and a 2-year-old who suffered asphyxiation after her neck was caught between a baby gate, fabric sheet, and door frame.

2. Nonfatalities

The NPR described 417 nonfatal incidents, and CPSC is aware of an additional 39 nonfatal incidents since the NPR, for a total of 456 nonfatal incidents that reportedly occurred between January 1, 2008 and January 7, 2020. Of the total 456 nonfatal incidents reported, 134 incidents described an injury to a child younger than 5 years of age.

The NPR stated that three of the nonfatal injuries reportedly required hospitalization and two additional injuries needed overnight observation at a hospital. Among the hospitalized were a 2-year-old and an 18-month-old, who each suffered a near-drowning episode, and another 2-year-old ended up in a coma following a fall when she pushed through a safety gate at the top of stairs. Of the two children who were held at a hospital for overnight observation, one fell down stairs when a safety gate collapsed, and the other swallowed a bolt or screw that liberated from a gate. 84 FR at 32347–48. Since the NPR, CPSC is not aware of any additional hospitalizations associated with the use of gates or enclosures.

The NPR stated that 15 additional children were reported to have been treated and released from a hospital emergency department (ED). Their injuries included: (a) Finger fractures, amputations, and/or lacerations usually from a finger getting caught at the hinge; and (b) near-drowning, poison ingestion, arm fracture, thermal burn, head injury, or contusions. *Id.* Since the NPR, CPSC is not aware of any additional children who were treated and released from a hospital ED associated with the use of gates or enclosures.

Among the remaining injury reports described in the NPR, some specifically mentioned the type of injury, while others only mentioned an injury, but no specifics about the injury. Head injuries, concussions, teeth avulsions, sprains, abrasions, contusions, and lacerations were some of the common injuries reported at the time of the NPR. *Id.* Since the NPR, four of the additional 39 nonfatal incidents reported an injury to a child younger than 5 years of age. Two reported injuries involved falls related to the failure or collapse of gates and enclosures, resulting in one child bumping her face on the floor after mounting an enclosure that collapsed under her weight, and one child sustaining minor bruises after falling down 14 steps when a gate failed. In two additional reported injuries, children caught their fingers in the gaps of a gate, resulting in a swollen finger, and another child who almost broke his finger in the clasp used to latch a gate.

The remaining 344 nonfatal incidents associated with gates and enclosures that occurred from January 1, 2008 through January 7, 2020, reported that no injury had occurred to a child younger than 5 years of age, or provided no information about any injury. However, staff found that many of the incident descriptions indicated potential injury or death resulting from sharp edges, pinching, falls, entrapments, and choking.

B. National Injury Estimates

CPSC staff also reviewed injury estimates from the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system.[6] NEISS injury data are gathered from EDs of hospitals selected as a probability sample of all the U.S. hospitals with EDs. As described in the NPR briefing package, staff estimated that a total of 22,840 injuries (sample size=820, coefficient of variation=0.10) related to safety gates and enclosures were treated in U.S. hospital emergency departments from 2008 to 2017. Using NEISS data finalized in spring 2019, staff's update includes injury estimates for 2018, resulting in an estimated total of 25,430 injuries (sample size=928, coefficient of variation=0.11) related to safety gates and enclosures treated in U.S. hospital emergency departments from 2008 to 2018. Staff did not observe a statistically significant trend for this period.

Staff found no recorded fatalities in NEISS. Ninety-five percent of children who went to a hospital ED were treated and released. The breakdown by age in the NEISS data indicates: 18 percent of all children were under 1 year old; 40 percent were at least 1 year old, but less than 2 years old; and 42 percent were more than 2 years old, but less than 5 years old. Due to the limited information from NEISS injury descriptions, which are brief and injury-focused, staff could not feasibly characterize hazard patterns similar to the characterization provided in section IV of this preamble for CPSRMS incident data. Based on the limited information provided, staff found the most frequent NEISS injury characteristics:

- *Hazard*—falls (58 percent) and impact on gate/enclosure (30 percent) were the most common. Approximately 11 percent of the impact injuries occurred when a child on a flight of steps fell and hit a safety gate at the bottom of the stairs. Most of the falls occurred:
  - When a child attempted to climb over or get through a barrier;
  - when a child managed to unlatch a gate/enclosure;
  - when a gate failed to stay upright and locked;

[6] According to the NEISS publication criteria, to derive a reportable national estimate, an estimate must be 1,200 or greater, the sample size must be 20 or greater, and the coefficient of variation must be 33 percent or smaller.

○ when a child-carrying-adult tripped over a gate/enclosure; or

○ when a child pulled on a gate/enclosure.

• *Injured body part*—head (39 percent), face (21 percent), and mouth (10 percent).

• *Injury type*—lacerations (28 percent), internal organ injury (24 percent), and contusions/abrasions (18 percent).

IV. Hazard Pattern Identification

In the NPR briefing package, staff reviewed the CPSRMS data and identified hazard patterns for the 436 reported incidents (19 fatal and 417 nonfatal) associated with the use of safety gates and enclosures. For the final rule, staff reviewed and incorporated the additional 42 incidents found in the CPSRMS data since the NPR, for a total of 478 reported incidents (22 fatal and 456 nonfatal, including 112 reported injuries) associated with the use of gates and enclosures that occurred from January 1, 2008 to January 7, 2020. Staff found that the hazard patterns largely followed those described in the NPR, except no new incidents were identified in the following categories: *Miscellaneous other issues and consumer comments, climb-over, caregiver mis-step, repaired/modified,* or *undetermined* issues. Staff grouped the hazard patterns into three categories: Product-related, non-product-related, and undetermined. Most of the identified hazard patterns (95%) are product-related hazards. A description of the staff-identified hazard patterns, in order of descending frequency, follows.

A. Product-Related

• *Hardware issues:* Of the 478 incidents, 183 (38%) reported hardware-related problems. These problems were due to:

○ Lock/latch hardware (*e.g.,* lock or latch breaking, not latching correctly, opening too easily, or getting stuck);

○ hinge hardware (mostly breaking and causing the gate to fall off);

○ mounting hardware (mostly breaking and causing gate to fall off); or

○ other hardware, such as a slide guide, or a swing-control clip, breaking or coming loose, or a suction cup coming loose.

These hardware failures were associated with 39 injuries, including bruises, contusions, lacerations, head injuries, and two fractures; five of the injuries were treated in a hospital ED, and one needed overnight observation at a hospital.

• *Slat problems:* Of the 478 incidents, 109 (23%) reported slats breaking or detaching from the safety gate or enclosure, or splitting. Sixteen injuries were reported in this category, resulting in contusions/abrasions or lacerations. Once the slat(s) broke, the child got injured on it, fell forward through the gap created, or lost balance and fell backwards. One injury incident resulted in treatment at a hospital ED.

• *Poor quality material and finish:* Of the 478 incidents, 58 (12%) reported problems with small parts liberating, splintered welding, sharp edges and protrusions, rails bending out of shape, fabric/mesh panels sagging, and poor quality of stitching on fabric panels. Eighteen injuries, mostly lacerations and abrasions, were reported in this category.

• *Design issues:* Of the 478 incident reports, 49 (10%) indicated some problems with the design of the gate or enclosure. The reported problems involved:

○ Opening sizes between slats or enclosure panels that allowed, or could allow, entrapment of a child's limb or head;

○ pinch-points created near an L-shaped clasp on a gate, and during the sliding action of a door on a gate or enclosure;

○ a specific design, which created a foot-hold that a child could use to climb over the safety gate;

○ a specific design that posed a trip hazard when the gate was in the open position;

○ a gate's retraction system, where the gate fails to retract correctly after installation;

○ drilled holes used for connecting gates, which allowed plastic shavings to accumulate; or

○ a specific design involving rails at the bottom of a gate at several different heights, posing a trip hazard.

Staff identified 21 injuries and one death in this category. The injuries included swollen or pinched fingers from inserting them into openings of a gate; three fractures of the finger and one severed fingertip, all treated at a hospital ED. The death resulted from entrapment in a gate, fabric sheet, and door frame.

• *Installation problems:* Of the 478 incident reports, 21 (4%) indicated problems with installation due to:

○ Unclear installation instructions;

○ mismatched dimensions between the safety gate and the doorway/hallway opening; or

○ unknown reasons; in these cases, the gate/enclosure was reported to have been installed, but was ''pushed out,'' ''pulled down,'' or ''knocked down.''

Five drowning fatalities were reported in this category. In addition, staff identified four nonfatal injuries: One a hospitalization of a comatose child; another child treated and released from a hospital ED following a near-drowning episode; and the remaining two, relatively minor laceration/contusion injuries.

• *Miscellaneous other issues and consumer comments:* Seven of the 478 incident reports (1%) fall within the miscellaneous category, including three complaints about an ineffective recall remedy, one complaint about poor product packaging, and three consumer concerns about the safety of a specific design. One unspecified injury falls within this category.

• *Instability issues in enclosures:* Four of the 478 incidents (<1%) reported problems with flimsy and/or unstable enclosures that failed to hold together. Two laceration/contusion injuries and one facial injury were reported in this category.

• *Multiple problems from among the above:* Twenty-two of the 478 incident reports (5%) described two or more problems from the preceding product-related issues. Two minor injuries were reported in this category.[7]

B. Non-Product-Related

Twelve of the 478 incident reports (3%) described non-product-related issues, such as incorrect use of the product, or the child managing to bypass the barrier altogether. Specifically:

• Four incidents reported the child climbing over the gate/enclosure;

• Three incidents reported caregiver missteps allowing the gate/enclosure not to be secured in place;

• Four incidents reported misuse of gates in a hazardous manner; and

• One report involving a gate previously repaired/modified and structurally compromised.

Nine deaths are included in this category: Four due to drowning, four due to entrapments, and one due to a TV tip over. Among the three injuries, one required hospitalization following a near-drowning episode, and one fractured arm was treated at a hospital ED; the third injury was a forehead concussion.

C. Undetermined

For 13 of the 478 incident reports (3%), staff had insufficient information on the scenario-specific details to

[7] Redistributing these 22 complaints among the other pertinent subcategories within the product-related issues does not alter the ranking of the listed subcategories. However, the redistribution would result in the within-subcategory incident numbers adding up to *more* than the total number of incident reports. To prevent this occurrence, the 20 incidents were grouped in a separate subcategory.

determine definitively whether the product failed or user error resulted in the incident. Accordingly, 13 incidents fall within the undetermined category. Staff found seven drowning deaths reported in this category. Among the five nonfatal injuries, one was a hospitalization due to near-drowning, two were treated at a hospital ED for poisonous ingestion and burn, respectively, and two were minor injuries.

D. Product Recalls

For the NPR, CPSC staff reviewed recalls involving children's gates and enclosures from January 2008 to December 2018. 84 FR at 32349. During that period, CPSC announced five recalls involving baby gates and one recall involving an enclosure. More than 1 million units (1,318,180), associated with 215 incidents and 13 injuries were recalled for the following hazards to children: Fall, entrapments, tripping, and lacerations. No additional recalls involving gates or enclosures have occurred since December 2018.

V. Overview of ASTM F1004

A. History of ASTM F1004

The voluntary standard for gates and enclosures was first approved and published in 1986 (ASTM F1004–86, *Standard Consumer Safety Specification for First-Generation Standard Expansion Gates and Expandable Enclosures*). Between 1986 and 2013, ASTM F1004 underwent a series of revisions to improve the safety of gates and enclosures and to clarify the standard. Revisions included provisions to address foot-pedal actuated opening systems, warnings, evaluation of all manufacturer's recommended use positions, test fixture improvements, entrapment in openings along the side of the gate, lead-containing substances in surfaces, along with other minor clarifications and editorial corrections.

Beginning in 2014, CPSC staff worked closely with ASTM to address identified hazards and to strengthen the voluntary standard and improve the safety of children's gates and enclosures in the U.S. market. ASTM made revisions through several versions of the standard (ASTM F1004–15, ASTM F004–15a, ASTM F1004–16, ASTM F1004–16a, ASTM F1004–16b, and ASTM F1004–18) to address hazards associated with bounded openings, slat breakage/slat connection failures, mounting/hinge hardware issues, latch/lock failures, pressure gate push-out forces, and warning labels and instructions.[8] The current voluntary standard is ASTM F1004–19, which was approved on June 1, 2019.

B. Description of the Current Voluntary Standard—ASTM F1004–19

ASTM F1004–19 includes the following key provisions: Scope (section 1), Terminology (section 3), General Requirements (section 5), Perfomance Requirements (section 6), Test Methods (section 7), Marking and Labeling (section 8), and Instructional Literature (section 9).

Scope. The scope of the standard states that it includes products known as expansion gates and expandable enclosures, or known by any other name, and that are intended for young children age 6 months through 24 months. ASTM has stated that the standard applies to all children's gates, including non-expandable, fixed-sized gates and enclosures.

Terminology. This section provides definitions of terms specific to the standard. For example, section 3.1.7 of the ASTM F1004–19 defines an ''*expansion gate*'' as a ''barrier intended to be erected in an opening, such as a doorway, to prevent the passage of young children (see 1.2), but which can be removed by older persons who are able to operate the locking mechanism.''

General Requirements. This section addresses numerous hazards with general requirements, most of which are also found in the other ASTM juvenile product standards. ASTM F1004–19 contains the following requirements to address safety hazards common to many juvenile products:

- Wood parts
- Screws
- Sharp edges or points
- Small parts
- Openings
- Exposed coil springs
- Scissoring, shearing, and pinching
- Labeling
- Lead in paint, and
- Protective components

Performance Requirements and Test Methods. These sections contain performance requirements specific to children's gates and enclosures and the test methods that must be used to assess conformity with such requirements. These requirements include:

- *Completely bounded openings:* Openings within the gate or enclosure, and completely bounded openings between the gate and the test fixture, shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25-pound force. This requirement is intended to address incidents in which children were found with their heads entrapped after having pushed their way into gaps created between soft or flexible gate and enclosure components, and between the gate and the sides of passageways to be blocked off, for example, a door frame or wall.
- *Height of sides:* The vertical distance from the floor to the lowest point of the uppermost surface shall not be less than 22 inches when measured from the floor. This requirement is intended to prevent child occupants from being able to lean over, and then tumble over the top of the gate.
- *Vertical strength:* After a 45 pound force is exerted downward along the uppermost top rail, edge, or framing component, gates and enclosures must not fracture, disengage, fold nor have a deflection that leaves the lowest point of the top rail below 22 inches from the ground. For gates, the 45 pound vertical test force is applied five times to the mid-point of the horizontal top rail, surface, or edge of each gate (or each of the top points of a gate that doesn't have a horizontal top edge). This test is carried out with the gate installed at both the maximum and minimum opening widths recommended by the manufacturer. For enclosures, the 45-pound force is applied to every other uppermost rail, surface, or edge, and every other top joint of the enclosure. This requirement is intended to check that gates and enclosures retain child occupants, even when children hang from or attempt to climb up the gates.
- *Bottom spacing:* The space between the floor and the bottom edge of an enclosure or gate shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25 pound force. This requirement is intended to address incidents in which children were found with their heads entrapped under a gate, after having pushed their way, feet first, into gaps created between the gate and the floor.
- *Configuration of uppermost edge:* Partially bounded openings at any point in the uppermost edge of a gate or enclosure that is greater than 1.5 inches in width and more than 0.64 inches in depth must not allow simultaneous contact between more than one surface on opposite sides of a specified test template. The template was dimensioned to screen out non-hazardous openings with angles that are either too narrow to admit the smallest user's neck, or too wide to entrap the largest user's head. This requirement is

[8] A more detailed summary of the changes to ASTM F1004 can be found on page 8 of Staff's Final Rule Briefing Package.

intended to address head/neck entrapment incidents reported in the ''V'' shaped openings common in older, ''accordion style'' gates.

• *Latching/locking and hinge mechanisms:* This hardware durability test requires egress panels on gates and enclosures to be cycled through their fully open and closed positions 2,000 times. Pressure gates without egress panels are cycled through installation and removal 550 times. Cycling egress panels for 2,000 times tests the durability of gates or enclosures having egress panels that are expected to be operated twice a day through the lifetime of the product. Pressure gates without egress panels are intended to be installed in locations not accessed as frequently, and thus, are tested through a reduced 550-cycle test. This pre-conditioning test is intended to address incidents involving failures of latches, hinges, and hardware.

• *Automatic closing system:* Immediately following the cyclic preconditioning test, an egress panel marketed to have an automatic closing feature must continue to close automatically when opened to a width of 8 inches, as well as when it is opened to its maximum opening width. This requirement is intended to check that a gate closes completely and locks as it is expected and advertised to do, thereby reducing the likelihood of a child accessing potentially hazardous conditions on the other side of an unintentionally unsecured gate.

• *Push-out force strength:* This test must be conducted in five specified locations: The four corners of the gate, as well as the center. The test requires that a horizontal push-out force be applied five times to each of the test locations, and that the maximum force be applied before the gate pushes out of the test fixture. The test requires that data be recorded and averaged for each test location (up to a maximum of 45 pounds). The maximum force of 45 pounds was selected because it simulates the effects of the largest intended occupant's weight. The average push-out force shall exceed 30 pounds in all five test locations (and each individual force shall exceed 20 pounds). This requirement is intended to prevent a child from being able to dislodge the gate and gain access to a hazardous area the gate was meant to keep them from accessing.

• *Locking devices:* Locking devices shall meet one of two conditions: (1) If the lock is a single-action latching device, the release mechanism must require a minimum force of 10 pounds to activate and open the gate; or (2) the lock must have a double-action release mechanism. This requirement is intended to prevent a child being contained by the gate from being able to operate the locking mechanism.

• *Toys:* Toy accessories shall not be attached to, or sold with, a gate. Toy accessories attached to, removable from, or sold with an enclosure, shall meet applicable requirements of specification ASTM F963 ''*Consumer Safety Specification for Toy Safety*.'' This requirement is intended to ensure that any toys that come with an enclosure meet the same safety requirements as toys sold separately from an enclosure.

• *Slat Strength:* This test verifies that no wood or metal vertical members (slats) completely break, or that either end of the slats completely separate from the gate or enclosure when a force of 45 pounds is applied horizontally. The test is conducted on 25 percent of all gate slats, excluding adjacent slats. This requirement is intended to check that gates and enclosures retain their structural integrity when children push or pull on the gate or enclosure slats.

• *Label testing:* Paper and non-paper labels (excluding labels attached by a seam) shall not liberate without the aid of tools or solvents. Paper or non-paper labels attached by a seam shall not liberate when subjected to a 15-pound pull force. This requirement is intended to ensure that product labels are permanently affixed.

Warning, Labeling and Instructions. These provisions specify the marking, labeling, and instructional literature requirements that must appear on, or with, each gate or enclosure. Warnings are also required on the retail packaging, unless they are visible in their entirety on the gate or enclosure at point of purchase for consumers to see.

• All gates and enclosures must include warnings on the product about the risk of serious injury or death when a product is not installed securely, must warn the consumer to never use the gate with a child who is able to climb over or dislodge the gate, and to never use the gate to prevent access to a pool.

• Pressure-mounted gates with a single-action locking mechanism on one side of the gate must include the following warning: ''Install with this side AWAY from child.''

• Enclosures with locking or latching mechanisms must include the following warnings: ''Use only with the [locking/latching] mechanism securely engaged.''

• Gates that do not pass the push-out test requirements without the use of wall cups must include the following warning on the product: ''You MUST install wall cups to keep gate in place. Without wall cups child can push out and escape.''

C. International Standards for Gates and Enclosures

The NPR discussed CPSC staff's review of two international standards that address gates and enclosures (1) the European Standard, EN 1930:2011/A1 Child use and care articles—Safety barriers—Safety requirements and test methods; and (2) Canadian regulation, SOR/2016–179 Expansion Gates and Expandable Enclosures Regulations (the Canadian regulation refers to an outdated 1986 version of ASTM F1004 which has been superseded by recent versions). 84 FR at 32352. In comparing these two international standards to ASTM F1004–19, staff determined that ASTM F1004–19 is adequate, or more stringent than, the international standards in addressing the hazard patterns identified in the incident data associated with gates and enclosures. *Id.*

VI. Adequacy of ASTM F1004–19 Requirements To Address Identified Hazards

For the NPR, the Commission stated that the current voluntary standard, ASTM F1004–19, adequately addresses many of the general hazards associated with the use of children's gates and enclosures, such as wood parts, sharp points, small parts, lead in paint, scissoring, shearing, pinching, openings, exposed coil springs, locking and latching, and protective components. 84 FR at 32350. Additionally, in the NPR, the Commission stated that the performance requirements and test methods in ASTM F1004–19 adequately address most of the primary hazard patterns identified in the incident data, except for consumer awareness of whether a pressure-mounted gate is installed correctly. *Id.* at 32350–52. Based on staff's assessment of all 478 reported incidents (22 fatal and 456 nonfatal; 428 associated with the use of a gate and 50 associated with the use of an enclosure) to identify hazard patterns associated with children's gates and enclosures, as well as staff's evaluation of ASTM F1004–19, for this final rule, the Commission concludes that ASTM F1004–19 adequately addresses the identified hazards associated with the use of gates and enclosures except for one—installation issues associated with pressure-mounted gates.[9]

Installation problems are associated with 21 incidents (4%), including five drowning fatalities. The CPSC incident data show that incidents occurred when: A product included unclear instructions; mismatched dimensions between a gate and the opening it was

[9] *See* Staff Final Rule Briefing Package at Tabs B and C.

meant to fit into; and failure of the gate to remain upright in an opening, described as ''pushed out,'' ''pulled down,'' or ''knocked down.'' The most recent revision, ASTM F1004–19, represents a large step forward in addressing installation issues, especially related to pressure-mounted gate push-out hazards. The revision requires all gates to meet the same push-out force (*e.g.,* 30 pounds) with provisions that allow the use of wall cups to meet this requirement. CPSC staff's testing found that most pressure-mounted gates tested can meet the 30-pound push-out force requirements of ASTM F1004–19 with the use of wall cups. Correct installation of pressure-mounted gates depends on consumer awareness and behavior to install the gate correctly. Based on the incident reports and staff's testing, the Commission concludes that additional requirements are necessary to further strengthen the standard to reduce the risk of injury associated with the use of pressure-mounted gates, by increasing the likelihood that caregivers install such gates securely to confine their child.

The Commission will finalize the rule with two alternative requirements, depending on whether wall cups are necessary to meet the 30-pound push-out force test, to address the hazards associated with incorrect installation of pressure-mounted gates. The two alternative requirements specify that: (1) For gates that use wall cups, a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups; or (2) for gates that do not use wall cups, visual side-pressure indicators to provide consumers feedback about whether the gate is installed correctly.

A. Separate Warning Label

ASTM F1004–19 currently requires a warning statement about the hazard of installing gates without wall cups: ''You MUST install wall cups to keep the gate in place. Without wall cups, child can push out and escape.'' This warning statement is included within the general warning label, which can have as many as six different required messages in one location. However, the use of wall cups to meet the 30-pound push-out force test, and thus, to improve safety, relies on consumers actually installing the wall cups. To improve the likelihood that consumers will follow directions and heed the associated warning label, the location of the label is important. Installation-related incidents with pressure-mounted gates include deaths and serious injuries, and wall cups are critical features that are necessary for correct installation of some pressure-mounted gates. Accordingly, throughout the consultation process, CPSC staff consistently recommended that ASTM consider locating the pressure-gate/push-out warning as a separate and distinct warning positioned in a highly conspicuous location, such as along the top rail of the gate. A top-rail location would be within the caregiver's line of sight and oriented in a readable direction during normal use of the gate.

In the NPR, staff indicated that further collaboration with stakeholders at ASTM could result in moving the wall cup warning language from its current location. Currently, the wall cup warning language is mixed in with the other warning statements. Staff suggested moving the warning language to a place where the warning is highly conspicuous, separate, and distinct, such as a place along the top rail of the gate that is visible to a caregiver operating the gate. However, no task group or subcommittee meetings occurred between June 2019 and December 2019, nor did ASTM issue a ballot regarding the wall cap warning language. In December 2019, CPSC staff sent a letter [10] to the ASTM subcommittee chair, requesting a subcommittee meeting to discuss specific ballot language about the warning label recommendation. The subcommittee met on January 21, 2020, and agreed to send the proposal to ballot. ASTM issued the ballot on March 5, 2020 (ASTM Ballot F15 (20–02), Item 4), and the ballot closed on April 6, 2020. The ballot received two substantive negative votes. Both negative votes noted that the balloted language stated that all ''products'' must contain the wall cup warning, rather than state that just pressure-mounted gates must contain the warning. On May 6, 2020, ASTM released a ballot containing a revision to the warning label location, containing a clarification to address these negatives by replacing the word ''products'' with ''pressure-mounted gates.'' This ballot closes on June 5, 2020.

To further reduce the risk of injury associated with incorrectly installed pressure-mounted gates, the final rule requires that pressure-mounted gates that rely on wall cups to meet the 30-pound push-out force requirement, must also place a warning regarding installation of wall cups along the top rail of the gate, separate and distinct from other warnings. The wording of this requirement in the final rule harmonizes with the ASTM ballot F15 (20–04), Item 6.

B. Visual Side-Pressure Indicators

Before the NPR, CPSC staff presented a series of recommendations to the F15.16 subcommittee to improve the installation of pressure-mounted gates, including improvements to the push-out test, and potentially using visual indicators to inform caregivers when a pressure-mounted gate is installed securely. Leading up to the NPR, the subcommittee made the recommended improvements in the standard to the push-out test, in addition to requiring that all gates (including pressure-mounted gates) meet 30 pounds of push-out resistance. Although some pressure-mounted gates are capable of meeting 30 pounds of push-out resistance without wall cups when they are installed correctly, most pressure-mounted gates likely will use wall cups. CPSC staff testing found that ASTM F1004–19 requires gates that use wall cups to come with the wall cups and other mounting hardware. As stated above in IV.A, the final rule will also require these gates to place a warning label along the top rail regarding the importance of installing wall cups.

However, for pressure-mounted gates that do not rely on wall cups to meet the 30-pound push-out force test, ASTM F1004–19 contains no requirement to provide feedback to the end consumer to indicate whether the gate is installed correctly. Instructions for pressure-mounted gates without wall cups provide little or no clear direction to help consumers know when the gate is installed correctly, or that it stays in place after several uses. For example, gates currently on the market may instruct the consumer to adjust until secure, or to push the gate to *feel* if it is secure. CPSC staff observed that even when following the manufacturer's instructions, the push-out force for some gates that use tension bolts varies each time the gate is re-installed and tested. Staff also observed that with one metal gate tested, where tension bolts and nuts are used to secure it in place, only a half rotation of the tension nuts would change the distance between the gate and the test fixture by 0.032 inches and result in a gate meeting or not meeting the 30 pound push-out force requirement. These adjustments are barely noticeable to the average consumer, who relies only on *feel,* and not precise measurements or any other feedback.

Staff testing and analysis, discussed in detail in Staff's NPR Briefing Package, Tab C, and Staff's Final Rule Briefing Package, Tab B, suggest that visual

[10] *https://www.regulations.gov/contentStreamer?documentId=CPSC-2019-0014-0006&contentType=pdf.*

indicators can improve the safety of pressure-mounted gates that do not use wall cups. At the time of the NPR, staff recommended continuing to work with the ASTM subcommittee to resolve the issue of visual side-pressure indicators. However, no task group or subcommittee meetings occurred from June 2019 to December 2019; nor did ASTM issue a ballot on this matter. The NPR invited comments on this specific issue, but the Commission received no comments.

In a letter dated December 11, 2019,[11] CPSC staff urged discussion at an ASTM subcommittee meeting regarding ballot language to include a visual side-pressure indicator provision for pressure-mounted gates that do not use wall cups to meet the 30 pound push-out force test in the ASTM standard. On January 21, 2020, the ASTM subcommittee discussed draft language for a visual side-pressure indicator provision. ASTM subcommittee members raised concerns regarding potential issues, such as proposed language using the term ''minimum pressure.'' Some subcommittee members stated that this language implied that a test lab would need to measure the pressure at each corner of the gate. CPSC staff clarified that staff's intention was that the current push-out force performance test would identify gates that indicate incorrectly that the required side pressure is maintained. However, after this discussion, the ASTM subcommittee chair reactivated the visual side-pressure indicator task group to potentially revise the draft proposed language to address subcommittee member concerns.

On March 10, 2020, the task group met to discuss the draft ballot proposal. Task group discussion centered on the testability of the visual side-pressure indicator performance requirement for pressure-mounted gates. The task group meeting concluded with the task group chair agreeing to revise the proposed ballot language to address member concerns and to resend the proposed ballot language to the task group for review. On April 2, 2020, CPSC staff received a draft proposal from the task group chair. On April 22, 2020, the task group chair recirculated the same draft. On April 23, 2020, the task group chair indicated his intention to ballot the proposal, unless there were significant comments from the task group necessitating another meeting. CPSC staff is unaware of any further comment.

After reviewing the revised ballot language for visual side-pressure indicators, CPSC staff concluded that the proposed language adequately addresses staff's concerns and provides a visual indicator of whether a pressure-mounted gate that does not use wall cups to meet the 30-pound push-out force test is installed securely. The Commission agrees, and anticipates that ASTM will ballot this requirement within the next few months to incorporate into ASTM F1004. Accordingly, to further reduce the risk of injury associated with incorrect installation of pressure-mounted gates, the draft final rule requires that pressure-mounted gates that do not use wall cups, to meet the 30-pound push-out force test, must include visual side-pressure indicators to inform caregivers that the gate is installed securely. The language for this requirement in the final rule harmonizes with the ASTM task group draft language circulated April 22, 2020.

VII. Response to Comments

CPSC received three comments on the NPR.[12] A trade association forwarded two comments, one comment did not address the NPR. The two comments generally supported the NPR and the ASTM process. However, the commenter disagreed with the proposed 6-month effective date, anticipating the effect that the standard may have on small businesses. This commenter recommended a 12-month effective date. The Commission agrees, and the final rule contains a 12-month effective date, as discussed below in section X of this preamble.

VIII. Description of the Mandatory Standard for Gates and Enclosures

The Commission concludes that ASTM F1004–19 adequately addresses the hazards associated with gates and enclosures, except for consumer awareness about whether pressure-mounted gates are installed correctly. Thus, for the final rule on safety standards for gates and enclosures, the Commission incorporates by reference ASTM F1004–19, with the addition of the following two alternative requirements to provide consumers with additional information about correct installation of pressure-mounted gates, to further reduce the risk of injury associated with the use of pressure-mounted gates:

(1) For pressure-mounted gates that include wall cups with the product to meet the 30-pound push-out force test, the gates must include a separate warning label in a conspicuous location on the top rail of the gate regarding correct installation using wall cups; or

(2) For pressure-mounted gates that do not use wall cups to meet the 30-pound push-out force test, the gates must use visual side-pressure indicators to provide consumers with feedback on whether the gate is installed correctly.

IX. Incorporation by Reference

Section 1239.2(a) of the final rule provides that each gate and enclosure must comply with applicable sections of ASTM F1004–19. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section V.B of this preamble summarizes the provisions of ASTM F1004–19 that the Commission is incorporating by reference. ASTM F1004–19 is copyrighted. Before the effective date of this rule, you may view a copy of ASTM F1004–19 at: *https://www.astm.org/cpsc.htm.* Once the rule becomes effective, ASTM F1004–19 can be viewed free of charge as a read-only document at: *https://www.astm.org/READINGLIBRARY/.* To download or print the standard, interested persons may purchase a copy of ASTM F1004–19 from ASTM, through its website (*http://www.astm.org*), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428. Alternatively, interested parties may inspect a copy of the standard by contacting Alberta E. Mills, Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

X. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). CPSC generally considers 6 months to be sufficient time for suppliers of durable infant and toddler products to come into compliance with a new standard under section 104 of the CPSIA. Six months is also the period that the Juvenile Products Manufacturers Association (JPMA) typically allows for products in

[11] *https://www.regulations.gov/contentStreamer?documentId=CPSC-2019-0014-0006&contentType=pdf.*

[12] Available at *https://www.regulations.gov/docket?D=CPSC-2019-0014.*

the JPMA certification program to transition to a new standard once that standard is published. Accordingly, the NPR proposed a 6-month effective date for gates and enclosures.

We received one comment from a trade association asking for a 12-month effective date, stating that many of its members would require ''significant design changes'' and need time to make these changes. The 30-pound push-out force test was added to the ASTM standard in June 2019, and CPSC's NPR published in July 2019. Therefore, manufacturers of gates and enclosures have already had almost 12 months to address the push-out force requirements in ASTM F1004–19. However, the final rule also includes two alternative requirements to provide consumers with information or feedback on the correct installation of pressure-mounted gates. Additionally, staff advises that most of the companies selling gates and enclosures are small businesses that may need more time to redesign and test their gates to address the push-out force requirement, or work with their suppliers to purchase compliant products. For these reasons, the Commission will set a 12-month effective date for the final rule.

XI. Assessment of Small Business Impact

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Staff prepared a FRFA that is available at Tab D of Staff's Final Rule Briefing Package.

Based on staff's analysis, the Commission concludes that there would not be a significant economic impact on the 23 small suppliers of compliant gates and enclosures. The Commission also expects that the impact on noncompliant suppliers will not be significant for the nine firms that have a diversified product line, or whose gates and enclosures already meet most of the requirements of the standard. However, the Commission concludes that there could be a significant economic impact on five suppliers of noncompliant gates and enclosures. Additionally, staff concludes that it is likely that all 80 of the very small, home-based suppliers will be significantly impacted, and compliance with the mandatory standard will require them to stop selling gates altogether. We provide a summary of the FRFA below.

B. The Market for Gates and Enclosures

Section II.B of this preamble describes the market, including a summary of retail prices, for gates and enclosures. The Durable Nursery Products Exposure Survey (DNPES) found that a slight majority (52%) of U.S. households with children under age 6 have a gate or enclosure in their home, with many households owning more than one gate, and about 11.1 million baby gates and enclosures in use in 2013.[13]

C. Suppliers of Gates and Enclosures and the Impact on Small Businesses

Staff identified 127 firms supplying gates and enclosures to the U.S. market. The majority of suppliers to the U.S. market are domestic, including domestic importers of gates manufactured elsewhere. About 80 very small, home-based domestic manufacturers sell gates.[14] Staff identified another 47 firms that supply gates and/or enclosures that are not home-based and are generally larger than the home-based suppliers, nearly all of which are domestic. These firms include both manufacturers and importers. Because of firm size and/or location of manufacture, 10 companies are out of scope for this analysis on the impact on small domestic businesses. The 37 remaining firms are small domestic entities, based on U.S. Small Business Administration (SBA) guidelines for the number of employees in their North American Industry Classification System (NAICS) codes. These firms typically have at least eight to nine gate models in their product lines, and have much larger sales volumes than the home-based suppliers. Most of the small companies making or importing gates and enclosures do not have gates as their main product line; rather, they sell other nursery items and unrelated consumer products, including toys, furniture, clothing, plastic molded items, infant sleep products, strollers, baby monitors, floor mats, bird feeders, and car seats.

1. Very Small, Home-Based Manufacturers

Approximately 80 very small, home-based manufacturers supply gates to the U.S. market. Most, if not all, of these gates would probably require substantial modifications to comply with the final rule; and staff expects that these firms will stop selling gates. These firms typically sell fewer than 100 items per year, including products other than gates. About 10 home-based manufacturers sell more than 500 items per year, including, but not limited to, gates. About six manufacturers sell fabric gates; the rest sell wooden or wooden and metal gates. Because of the cost of redesigning gates, and/or testing for compliance with the final rule, staff assumes that most of these sellers will stop selling gates when the rule becomes effective.

Staff states that small, home-based manufacturers could re-label their gates as pet gates, thus, reducing the economic impact of this rule. Online reviews of pet gates and child gates show that some parents are already purchasing pet gates for child use, while pet owners are buying child gates for pet use. However, because customers seeking to purchase baby gates will not necessarily consider buying a pet gate instead of a child gate, staff concludes that the impact would likely still be economically significant.

2. Small Manufacturers

a. Small Manufacturers With Compliant Gates and Enclosures

Currently, 14 of the small domestic manufacturers produce gates or enclosures that comply with the previous version of the standard, ASTM F1004–18.[15] Staff assumes that compliant firms will remain compliant with the voluntary standard as it evolves, because compliance is part of an established business practice. Because these firms are already testing to the previous version of the ASTM standard, staff expects that any additional third party testing costs would be minimal. Similarly, all of these firms already have warning stickers and instruction manuals that are compliant with the previous standard. Accordingly, staff expects the costs of any modifications to comply

[13] Karen Melia and Jill Jenkins ''Durable Nursery Products Exposure Survey (DNPES)—Final Summary Report'', prepared for the CPSC by Westat, November 2014.

[14] These suppliers were identified online and staff believes that there may be additional home-based suppliers operating in the gates market on a very small scale (possibly including some without an on-line presence). These suppliers enter and exit on the market relatively frequently; the number found through staff research is an estimation of the actual number at any given time.

[15] A 6-month delay typically occurs between the publication of a new ASTM voluntary standard and its adoption for compliance testing. ASTM F1004–19 was published in June 2019, and therefore, it became effective for testing purposes in January 2020.

with the new standard to be insignificant.

Moreover, the final rule's change in warning label location, for gates that use wall cups to meet the 30-pound push-out force test, and the requirement for visual side-pressure indicators for gates that do not use wall cups to comply with the 30-pound push-out force test, only apply to pressure-mounted gates. Some manufacturers only supply hardware-mounted gates, or have hardware gates as most of their product line. Other manufacturers sell pressure-mounted gates with wall cups supplied, so these manufacturers would only need to change the label. Some manufacturers already sell gates with visual side-pressure indicators.

b. Small Manufacturers With Noncompliant Gates and Enclosures

Four small domestic manufacturers produce gates and enclosures that do not comply with the ASTM standard. Staff does not expect the costs of any product changes to comply with requirements for instruction manuals and labeling to be significant for any of these firms, because they already have instruction manuals and warning labels. All four of these manufacturers appear to be familiar with at least some aspects of safety requirements for durable nursery goods, including testing for compliance. Two manufacturers were compliant with earlier versions of the ASTM standard for gates and enclosures; one manufacturer claims compliance to CPSIA section 101 and 108; and one firm manufactures other products that comply with relevant ASTM standards for durable nursery products.

For the two manufacturers of noncompliant enclosures, staff does not expect that third party testing costs will exceed 1 percent of revenue, because these two manufacturers have millions of dollars in revenue; they already certify compliance with other ASTM standards; and they have few gate or enclosure models in their product lines. For the other two small domestic manufacturers of noncompliant gates and enclosures, the impact may be significant. One of the small manufacturers makes only pressure-mounted gates, although the option for wall cups could make it relatively inexpensive for that firm to achieve compliance without significant redesign. The other manufacturer sells noncompliant gates and enclosures as most of their product line, sells both hardware-mounted and pressure-mounted gates, and some of the gates and enclosures appear to require redesign to meet the standard. If this manufacturer redesigns their product, the cost could be significant.[16]

3. Small Importers

a. Small Importers With Compliant Gates and Enclosures

Staff identified nine gate/enclosure importers currently in compliance with ASTM F1004–18. Staff expects these firms, like small manufacturers of compliant gates and enclosures, to be in compliance with ASTM F1004–19 before the draft final rule becomes effective. Therefore, staff does not expect the economic impact to be significant for any of the importers with compliant gates or enclosures. Any third party testing costs for importers of compliant gates and enclosures would be limited to the incremental costs associated with third party testing over their current testing regime.

b. Small Importers With Noncompliant Gates and Enclosures

Staff identified 10 small importers of noncompliant gates and enclosures. Seven of these firms sell many other products. Thus, dropping gates and enclosures from their product line or finding a new supplier could have a relatively minor impact on their total revenue. Most of the noncompliant gates and enclosures already have some warning labels and instruction manuals; and some claim to be tested for lead, phthalates, and BPA. Therefore, staff concludes that the costs of third party testing to demonstrate compliance could be minimal as a percentage of sales. Staff also finds that it may be possible for these importers to find new suppliers of compliant gates and enclosures.

Several importers of noncompliant gates sell gates with multiple extensions. The ASTM standard requires that gates with extension panels must be compliant in any of the manufacturer's recommended use positions. Staff acknowledges that this could increase testing costs. Accordingly, staff believes it likely that these firms will stop selling gates with more than two extensions. Gates for these importers appear to be very similar to other compliant hardware-mounted gates; therefore, these importers may be able to achieve compliance cost-effectively by importing gates with fewer extensions.

For three of the noncompliant importers, staff believes that a significant economic impact could occur. One small importer of noncompliant enclosures appears to sell enclosures only. Finding an alternative supplier might pose significant costs for this firm. Perhaps this firm could find another compliant supplier relatively easily, given that many different brands of imported enclosures appear very similar; some, in fact, comply with a previous version of the ASTM standard.

The other two small importers of noncompliant gates that could be impacted significantly have gates as a large part of their product line. One of the two small importers sells hardware-mounted gates only; while the other importer already includes wall cups with their pressure-mounted gates. Therefore, staff believes their products could be compliant without significant redesign. However, third party testing to demonstrate compliance may well represent more than 1 percent of revenue for these importers. This could represent a significant impact, unless their supplier absorbs the costs.

D. Other Potential Impacts

The final rule requires suppliers of gates and enclosures to comply with the requirements of the safety standard for gates and enclosures, or stop selling noncompliant gates and enclosures. Accordingly, compliance with the final rule could impact the price and selection of gates and enclosures available to consumers. Compliance with the mandatory standard could also impact suppliers of wall cups, by increasing demand for their products.

Compliance with the standard could raise the retail price of pressure-mounted gates by $5 to $10. We do not believe, however, that this will significantly decrease sales of gates. The price of hardware-mounted gates is unlikely to increase; most of the bestselling gates already cost more than $25. Additionally, many suppliers contract with foreign manufacturers, and some of the companies sell in multiple markets, including Europe, Asia, and Canada. Having a U.S. standard that is more stringent than, or different from, standards in those regions could force companies to develop different gates for different markets, or cause them to develop a more costly gate that meets all the standards.

Some manufacturers may market their noncompliant gates as pet gates. We can see from online reviews of pet gates and child gates that some parents already purchase pet gates for use with children, and likewise, pet owners buy child gates

[16] Firms interviewed during the development of the draft proposed rule indicated that the cost of a redesign could be between $400,000 and $1 million (one firm indicated that the cost could be higher in some cases), depending on the material with which the product is constructed, and the extent of the required structural changes.

for pet use. Some of the pet gates already comply with ASTM and JPMA. The least expensive pet gates retail for approximately $20, more than the current price of the least expensive child gates. Therefore, this remarketing likely will not have a measurable impact on the market for either type of gate. However, the least-expensive dog pens are about half the price of the least-expensive enclosures for children. Accordingly, some manufacturers might remarket their noncompliant enclosures as dog pens.

E. Steps To Minimize Economic Impacts on Small Entities

Based on staff's recommendation and a comment on the NPR, the final rule has a 12-month effective date. A later effective date could reduce the economic impact on firms in two ways. Firms would be less likely to experience a lapse in production/importation, which could result if they are unable to comply and obtain third-party testing within the required timeframe, or find a new supplier. Firms could also spread costs over a longer time period. Suppliers interviewed for the NPR indicated that 12 to 18 months might be necessary, if a complete product redesign were required. Unless suppliers choose to add visual side-pressure indicators to a gate that does not currently have them, or the gate/enclosure of any type does not meet multiple requirements in the ASTM standard, a complete redesign should not be necessary.

Additionally, the final rule provides suppliers of pressure-mounted gates with two alternatives to meet the requirement in the final rule to improve consumer feedback regarding installation of pressure-mounted gates. Firms can either: (1) Include wall cups with the gate and place a separate warning label regarding the importance of installation of the wall cups on the top rail of the gate, or (2) use visual side-pressure indicators to demonstrate that the gate is installed correctly. The wall cups option will not require a redesign for gates that can meet the 30-pound push-out test with wall cups; this option only requires a new label on the top rail of the gate. Suppliers that already include effective visual side-pressure indicators on their gates will likely also be able to meet the standard without a redesign. If CPSC did not provide two options to meet the new requirement, nearly all pressure gate manufacturers would have been required to redesign their gates or would have had to include wall cups in the packaging. Providing two alternative requirements for pressure gate suppliers to meet the standard reduces the impact on small entities.

XII. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore, they do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The final rule for gates and enclosures falls within the categorical exemption.

XIII. Paperwork Reduction Act

The final rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under 44 U.S.C. 3507(a)(1)(D), an agency must publish the following information:

- A title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

The preamble to the proposed rule (84 FR 32354–55) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. OMB assigned control number 3041–0182 for this information collection. We did not receive any comment regarding the information collection burden of the proposal. For the final rule, CPSC adjusts the number of small home-based manufacturers from 83 to 80, and the number of other suppliers from 30 to 47. In accordance with PRA requirements, the CPSC provides the following information:

Title: Safety Standard for Gates and Enclosures.

Description: The final rule requires each gate and enclosure to comply with ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures,* with an option to address installation issues associated with pressure-mounted gates. Sections 8 and 9 of ASTM F1004–19 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import gates or enclosures.

Estimated Burden: We estimate the burden of this collection of information under 16 CFR part 1239, as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Type of supplier	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
Labeling	Home-based manufacturers	80	2	160	7	1,120
	Other Suppliers	47	8	376	1	376
Labeling Total						1,496
Instructional literature	Home-based manufacturers	80	2	50	100	8,000
Total Burden						9,496

Our estimate is based on the following:

Two groups of firms that supply gates and enclosures to the U.S. market may need to modify their existing warning labels. The first are very small, home-

based manufacturers (80), who may not currently have warning labels on their gates (CPSC staff did not identify any home-based suppliers of enclosures). CPSC staff estimates that it would take home-based gate manufacturers approximately 15 hours to develop a new label; this translates to approximately 7 hours per response for this group of suppliers. Therefore, the total burden hours for very small, home-based manufacturers is 7 hours per model × 80 entities × 2 models per entity = 1,120 hours.

The second group of firms supplying gates and enclosures to the U.S. market that may need to make some modifications to their existing warning labels are non-home-based manufacturers and importers (47). These are also mostly small domestic firms, but they are not home-based firms, and they do not operate at the low production volume of the home-based firms. For this second group, all with existing warning labels on their products, and who are used to working with warning labels on a variety of other products, we estimate that the time required to make any modifications now or in the future would be about 1 hour per model. Based on an evaluation of supplier product lines, each entity supplies an average of 8 models of gates and/or enclosures; therefore, the estimated burden associated with labels is 1 hour per model × 47 entities × 8 models per entity = 376 hours.

The total burden hours attributable to warning labels is the sum of the burden hours for both groups of entities: Very small, home-based manufacturers (1,120 burden hours) + non-home-based manufacturers and importers (376 burden hours) = 1,496 burden hours. We estimate the hourly compensation for the time required to create and update labels is $34.26 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2020, Supplementary Table 9, total employer costs for employees in private industry: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $51,253 ($34.26 per hour × 1,496 hours = $51,252.96). No operating, maintenance, or capital costs are associated with the collection.

ASTM F1004–19 also requires instructions to be supplied with the product. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' As with the warning labels, the reporting burden of this requirement differs for the two groups.

Many of the home-based gate manufacturers supplying on a very small scale may provide either no instructions or only limited instructions with their products as part of their ''normal course of activities.'' CPSC staff estimates that each home-based entity supplying gates and/or enclosures might require 50 hours to develop an instruction manual to accompany their products. Although the number of home-based suppliers of gates and/or enclosures is likely, over time, to vary substantially, based on CPSC staff's review of the marketplace, currently, there are approximately 80 home-based suppliers of gates and/or enclosures operating in the U.S. market. These firms, on average, typically supply two gates. Therefore, the costs for these firms of designing an instruction manual for their products could be as high as $274,080 (50 hours per model × 80 entities × 2 models per entity = 8,000 hours × $34.26 per hour = $274,080). Not all firms would incur these costs every year, but new firms that enter the market would, and this may be a highly fluctuating market.

The non-home-based manufacturers and importers are already likely providing user instruction manuals with their products, under the normal course of their activities. Therefore, for these entities, there are no burden hours associated with providing instructions.

Based on this analysis, the proposed standard for gates and enclosures would impose an estimated total burden to industry of 9,496 hours at a cost of $325,333 annually. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this final rule to OMB.

XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety standards.'' Therefore, the preemption provision of section 26(a) of the CPSA applies to this final rule issued under section 104.

XV. Amendment to 16 CFR Part 1112 To Include NOR for Gates and Enclosures

The CPSA establishes certain requirements for product certification and testing. Products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. 15 U.S.C. 2063(a)(3). The final rule for gates and enclosures, to be codified at 16 CFR part 1239, is a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third-Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as part 1112). Part 1112 became effective on June 10, 2013, and establishes requirements for accreditation of third party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also codifies a list of all of the NORs that the CPSC issued when CPSC published part 1112. All NORs issued after the Commission published part 1112 require the Commission to amend part 1112. Accordingly, the Commission amends part 1112 to include the safety standard for gates and enclosures in the list of other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third-party conformity assessment body to test to the new standard are required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1239, *Safety Standard for Gates and Enclosures,* included in its scope of accreditation of CPSC safety

rules listed for the laboratory on the CPSC's website at: *www.cpsc.gov/labsearch.*

The Commission certified in the NPR that the proposed NOR for gates and enclosures would not have a significant impact on a substantial number of small laboratories. 84 FR 32356. No substantive factual changes have occurred since the NPR was published, and CPSC did not receive any comments regarding the NOR. Therefore, for the final rule, the Commission continues to certify that amending part 1112 to include the NOR for the gates and enclosures final rule will not have a significant impact on a substantial number of small laboratories.

XVI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1239

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission amends Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

■ 2. Amend § 1112.15 by adding paragraph (b)(49) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

* * * * *

(49) 16 CFR part 1239, Safety Standard for Gates and Enclosures.

* * * * *

■ 3. Add part 1239 to read as follows:

PART 1239—SAFETY STANDARD FOR GATES AND ENCLOSURES

Sec.

1239.1 Scope.

1239.2 Requirements for gates and enclosures.

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

§ 1239.1 Scope.

This part establishes a consumer product safety standard for gates and enclosures.

§ 1239.2 Requirements for gates and enclosures.

(a) Except as provided in paragraph (b) of this section, each gate and enclosure must comply with all applicable provisions of ASTM F1004–19, Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures, approved on June 1, 2019 (ASTM F1004–19). The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *https://www.astm.org.* You may also inspect a copy: Electronically at *https://www.astm.org/READINGLIBRARY/;* in person at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479, email: *cpsc-os@cpsc.gov;* or in person 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: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(b) Comply with ASTM F1004–19 with the following additions or exclusions:

(1) Instead of complying with section 3.1.3 of ASTM F1004–19, comply with the following:

(i) 3.1.3 *conspicuous, adj*—visible when the gate/expandable enclosure is in all manufacturer's recommended use positions, to a person standing near the gate/expandable enclosure at any one position around the gate/expandable enclosure, but not necessarily visible from all positions.

(ii) [Reserved]

(2) Add the following to paragraphs to section 3.1 of ASTM F1004–19:

(i) 3.1.16 *visual side-pressure indicator, n*—a warning system, device, or provision using contrasting colors, lights, or other similar means designed to visually alert the installer/user to the status of the side pressure of a pressure mounted gate during installation and use.

(ii) 3.1.17 *side pressure, n*—force required, at each contact location of the gate and mounting surface, to meet the requirements of 6.3 as determined by the manufacturer.

(3) Add the following paragraphs to section 6 of ASTM F1004–19:

(i) 6.8 *Visual Side-Pressure Indicators*—Any pressure-mounted gate that does not require the use of Pressure-Mounted Gate-Mounting Hardware per 6.7, to meet the performance requirements in 6.3.1, shall include Visual Side-Pressure Indicators.

(ii) 6.8.1 Visual Side-Pressure Indicators shall be conspicuous and readily identifiable to a person installing and standing near the gate.

(iii) 6.8.2 Visual Side-Pressure Indicators shall monitor pressure for each point of contact with the mounting surface utilizing one or more of the following three options. Such indicators, when the gate is tested in accordance with 7.9, shall indicate when the required side pressure has been attained upon installation of the gate, and continue to display the side pressure status while the gate is in a manufacturer's recommend use position.

(iv) 6.8.2.1 A single visual side-pressure indicator for each individual contact point.

(v) 6.8.2.2 A single visual side-pressure indicator for each individual rail (top and bottom), so the opposing horizontal contact points are addressed.

(vi) 6.8.2.3 A single visual side-pressure indicator for the entire gate.

(4) Instead of complying with section 7.9.1.2 of ASTM F1004–19, comply with the following:

(i) 7.9.1.2 Follow the manufacturer's installation instructions when installing the gate in the center of the test opening. For pressure-mounted gates with visual side-pressure indicators, ensure the visual side-pressure indicators are displaying the proper status per manufacturer's instructions.

(ii) [Reserved]

(5) Instead of complying with NOTE 11 of ASTM F1004–19, comply with the following:

(i) Note 11—Address means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product specific is presented. Brackets indicate that optional wording may be used at the manufacturer's discretion if another identifier is more appropriate.

(ii) [Reserved]

(6) Do not comply with section 8.5.3 of ASTM F1004–19.

(7) Add the following paragraphs to section 8.5 of ASTM F1004–19:

(i) 8.5.8 Pressure-mounted gates that provide wall cups or other mounting hardware to meet the requirements of section 6.3 shall have the following warning in the location specified: *You MUST install [wall cups] to keep gate in place. Without [wall cups], child can push out and escape.*

(ii) 8.5.8.1 This warning shall be separate from all other warnings required on the product and shall not include any additional language.

(iii) 8.5.8.2 This warning shall be on the top rail.

(iv) 8.5.8.3 This warning shall be as close as possible to the side of the product where the locking mechanism is located. If the locking mechanism is in the center of the product, then this warning shall be adjacent to the mechanism on either side of it.

(8) Add the following paragraph to section 9 of ASTM F1004–19:

(i) 9.5. For pressure-mounted gates with visual side-pressure indicators, the instructions shall describe the function, use, and importance of the visual side-pressure indicators and shall describe how to make adjustments to meet the side-pressure requirements. Instructions shall include a reminder to routinely check the status of the side pressure indicators during ongoing use of gate.

(ii) [Reserved]

(9) Add the following paragraph to section X1.2.5 of ASTM F1004–19:

(i) X1.2.5.4 The visual side-pressure indicators requirement in 6.8 is to address incidents with pressure-mounted gates, where consumers had difficulty properly installing the gate or uncertainty in the security of the gate, which may lead to the gate being ''pushed out,'' ''pulled down,'' or ''knocked over'' by children.

(ii) [Reserved]

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2020–12561 Filed 7–2–20; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 157

[Docket No. RM20–15–000; Order No. 871]

Limiting Authorizations To Proceed With Construction Activities Pending Rehearing

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this final rule to amend its regulations to preclude the issuance of authorizations to proceed with construction activities with respect to natural gas facilities authorized by order issued pursuant to section 3 or section 7 of the Natural Gas Act until either the time for filing a request for rehearing of such order has passed with no rehearing request being filed or the Commission has acted on the merits of any rehearing request.

DATES: This rule is effective August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Tara DiJohn, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8671, *tara.dijohn@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. By this final rule, the Federal Energy Regulatory Commission (Commission or agency) is revising its regulations to preclude the issuance of authorizations to proceed with construction activities with respect to a Natural Gas Act (NGA) section 3 authorization or section 7(c) certificate order until the Commission acts on the merits of any timely-filed request for rehearing or the time for filing such a request has passed. This rule ensures that construction of an approved natural gas project will not commence until the Commission has acted upon the merits of any request for rehearing. The rule imposes no new obligations on the public.

II. Background

2. The NGA vests the Commission with jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce.[1] To meet these aims, the NGA declares that ''the business of transporting and selling natural gas for ultimate distribution to the public is affected with [the] public interest.'' [2]

3. Before a company can construct a natural gas pipeline, it must obtain approval from the Commission under NGA section 7(e), which provides that the Commission ''shall'' issue a certificate if it determines that a proposed pipeline ''is or will be required by the present or future public convenience and necessity.'' [3]

4. If the Commission grants a certificate of public convenience and necessity, the NGA authorizes the certificate holder to exercise eminent domain authority if it ''cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas[.]'' [4]

5. Separately, NGA section 3 prohibits the import or export of natural gas between the United States and a foreign nation without ''first having secured an order of the Commission authorizing it to do so.'' [5] NGA section 3 authority is divided between the Department of Energy, which oversees the import or export of the natural gas commodity,[6] and the Commission, which oversees the siting, construction, and operation of import or export facilities.[7] The Commission ''shall'' authorize proposed import or export facilities unless it finds that construction and operation of the proposed facilities ''will not be consistent with the public interest.'' [8] Unlike section 7, section 3 does not provide for the acquisition of lands through eminent domain.

6. Pursuant to the NGA, the Commission can approve a proposed

[1] 15 U.S.C. 717(a).

[2] *Id.*

[3] *Id.* 717f(e).

[4] *Id.* 717f(h). The NGA specifies that any such condemnation proceedings shall take place in the federal court for the district in which the property is located or in the relevant state court.

[5] 15 U.S.C. 717b.

[6] *Id.* 717b(a)–(c). In 1977, Congress transferred the regulatory functions of NGA section 3 from the Federal Power Commission to the Department of Energy. 42 U.S.C. 7151(b) (Department of Energy Organization Act). The Department of Energy delegated back to the newly created Federal Energy Regulatory Commission the limited authority under NGA section 3(e) to approve the physical facilities. 15 U.S.C. 717b(e).

[7] 15 U.S.C. 717b(e). *See* DOE Delegation Order No. 00–004.00A (effective May 16, 2006) (renewing delegation to the Commission authority over the construction and operation of LNG facilities); *see also* 43 FR 47,769, 47,772 (Oct. 17, 1978) (1978 delegation); 42 U.S.C. 7172(e) (Commission authority includes any matter assigned by the Department).

[8] 15 U.S.C. 717b(a).

project subject to ''such reasonable terms and conditions as the public convenience and necessity may require.'' [9] The certificate orders typically include conditions a company must meet before construction or operation of the project may begin, and typically provide that a company must receive written authorization from the Director of the Office of Energy Projects (or the Director's designee) before commencing construction of any project facilities.[10] The purpose of requiring a written request for authorization to commence with construction activities (often referred to as a notice to proceed) is not to reexamine the underlying Commission order; rather, it is to ensure that the Commission's preconstruction requirements have been met.

III. Discussion

7. In recent years, the Commission's NGA sections 3 and 7 proceedings have seen increased interest and participation by stakeholders, such as landowners, community members, non-governmental organizations, property rights advocates, and governmental entities, who have raised concerns about proposed projects. The Commission's order granting an authorization under section 3 and/or section 7 fully considers all stakeholder concerns raised during the proceeding.

8. If a party is dissatisfied with the Commission's NGA section 3 authorization or section 7 certificate determination, it may apply for rehearing.[11] The application must ''set forth specifically'' the grounds for rehearing.[12] On rehearing, the Commission is authorized to ''grant or deny'' the request, ''or to abrogate or modify its order[.]'' [13] ''Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied.'' [14] Often, because of the complex nature of the matters raised, the Commission issues an order (known as a tolling order) by the thirtieth day following the filing of a rehearing request, in order to allow additional time for the Commission to provide thoughtful, well-considered attention to the issues raised on rehearing.[15]

9. The rehearing process serves as a mechanism for the Commission to carefully consider the arguments presented, in order to resolve disputes or bring its expertise to bear on complex, technical matters before they are potentially presented to the courts. The Commission balances the interests of numerous stakeholders and renders decisions that address challenging technical, economic, and environmental matters, as well as complex legal issues. This takes time. Only after resolving these ''difficult problems'' [16] does the Commission issue an order on the merits of a rehearing request.

10. Once the Commission issues an order on the merits of a rehearing request, a party may seek judicial review of the Commission's order. An application for agency rehearing is a prerequisite to judicial review, and only those objections raised on rehearing may be presented to the court of appeals.[17] Congress specified that an application for rehearing ''shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order.'' [18] Thus, following issuance of an NGA section 7 certificate or section 3 authorization, a project sponsor may request that the Commission authorize construction while rehearing is pending.

11. In order to balance our commitment to expeditiously respond to parties' concerns in comprehensive orders on rehearing and the serious concerns posed by the possibility of construction proceeding prior to the completion of Commission review, we are exercising our discretion to adopt a new regulation that precludes the issuance of authorizations to proceed with construction of projects authorized under NGA sections 3 and 7 while rehearing of the initial orders is pending. This rule ensures that construction of an approved natural gas project will not commence until the Commission has acted upon the merits of any request for rehearing, regardless of land ownership.

12. This final rule adds to our regulations new § 157.23, which provides that:

With respect to orders issued pursuant to 15 U.S.C. 717b or 15 U.S.C. 717f(c) authorizing the construction of new natural gas transportation, export, or import facilities, no authorization to proceed with construction activities will be issued:

(a) Until the time for the filing of a request for rehearing under 15 U.S.C. 717r(a) has expired with no such request being filed, or

(b) if a timely request for rehearing is filed, until the Commission has acted upon the merits of that request.

13. In addition, we are revising § 153.4 of our regulations to incorporate a cross-reference to new § 157.23.

IV. Information Collection Statement

14. The Paperwork Reduction Act [19] requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (*i.e.,* reporting, recordkeeping, or public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the **Federal Register**.[20] This final rule does not contain any information collection requirements. The Commission is therefore not required to submit this rule to OMB for review.

V. Environmental Analysis

15. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.[21] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[22] This final rule disallows the issuance of authorizations to proceed with construction activities until the Commission acts on the merits of any

[9] *Id.* 717f(e).

[10] *See, e.g., Florida Gas Transmission Co., LLC,* 170 FERC ¶ 61,200, 62,335 (2020) (Environmental Condition 9 requires Florida Gas to ''receive written authorization from the Director of OEP before commencing construction of any project facilities. To obtain such authorization, Florida Gas must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof)''); *Gulf South Pipeline Co., LP,* 170 FERC ¶ 61,201, 62,348 (2020) (same).

[11] 15 U.S.C. 717r(a).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See, e.g., Cal. Co.* v. *FPC,* 411 F.2d 720, 721 (DC Cir. 1969); *Kokajko* v. *FERC,* 837 F.2d 524, 525 (1st Cir. 1988) (''The statutory language, . . . although requiring FERC to 'act' upon the application for rehearing within thirty days after filing, lest the application is deemed denied, does not state . . . that FERC must 'act on the merits' within that time lest the application is deemed denied.''); *Gen. Am. Oil Co. of Tex.* v. *FPC,* 409 F.2d 597, 599 (5th Cir. 1969); *Berkley* v. *Mountain Valley Pipeline, LLC,* 896 F.3d 624, 631 (4th Cir. 2018); *see also Del. Riverkeeper Network* v. *FERC,* 895 F.3d 102, 113 (D.C. Cir. 2018) (rejecting a due process challenge to Commission tolling orders).

[16] *FPC* v. *Colo. Interstate Gas Co.,* 348 U.S. 492, 501 (1955).

[17] 15 U.S.C. 717r(b).

[18] *Id.* 717r(c).

[19] 44 U.S.C. 3501–3521.

[20] *See* 5 CFR 1320.12.

[21] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 41 FERC ¶ 61,284 (1987).

[22] 18 CFR 380.4(a)(2)(ii).

request for rehearing of an NGA section 3 authorization or section 7(c) certificate order. Because this final rule is procedural in nature, preparation of an Environmental Assessment or an Environmental Impact Statement is not required.

VI. Regulatory Flexibility Act

16. The Regulatory Flexibility Act of 1980 (RFA) [23] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. However, final rules promulgated without the publication of a general notice of proposed rulemaking under section 553 of the Administrative Procedure Act (APA) are exempt from the RFA's requirements.[24] Pursuant to section 553(b)(3)(A) of the APA, ''rules of agency organization, procedure, or practice'' may be published without general notice of proposed rulemaking.[25] Because this rule concerns only matters of agency procedure—specifically, the Commission's internal processes and procedure for issuing authorizations to proceed with construction activities under an NGA section 3 authorization or an NGA section 7(c) certificate order, the APA's public notice and comment procedures do not apply. Accordingly, this final rule is exempt from the requirements of the RFA.

VII. Document Availability

17. 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 FERC's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

18. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

19. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date

20. The Commission is issuing this rule as a final rule without a period for public comment. Public notice and comment, otherwise required by 5 U.S.C. 553, do not apply to ''rules of agency organization, procedure, or practice.'' [26] This rule concerns only matters of agency procedure, and will not significantly affect regulated entities or the general public.

21. This rule is effective August 5, 2020. As a matter of policy, however, the Commission will not authorize construction to proceed pending rehearing during the period before this rule becomes effective.

List of Subjects

18 CFR Part 153

Exports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Glick is concurring in part and dissenting in part with a separate statement attached.

Issued June 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is amending parts 153 and 157, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485; 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

■ 2. Revise § 153.4 to read as follows:

§ 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, 157.12, and 157.23 of this chapter are applicable to the applications described in this subpart.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 3. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 4. Add § 157.23 to subpart A to read as follows:

§ 157.23 Authorizations to Proceed with Construction Activities.

With respect to orders issued pursuant to 15 U.S.C. 717b or 15 U.S.C. 717f(c) authorizing the construction of new natural gas transportation, export, or import facilities, no authorization to proceed with construction activities will be issued:

(a) Until the time for the filing of a request for rehearing under 15 U.S.C. 717r(a) has expired with no such request being filed, or

(b) If a timely request for rehearing is filed, until the Commission has acted upon the merits of that request.

The following will not appear in the Code of Federal Regulations

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Limiting Authorizations to Proceed with Construction Activities Pending Rehearing

Docket No. RM20–15–000

GLICK, Commissioner, *concurring in part and dissenting in part:*

1. It is readily apparent that today's final rule attempts to address *some* of the concerns raised in the *Allegheny Defense Project* v. *FERC* proceeding before the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In that proceeding, numerous groups have objected to the Commission's practice of ''tolling'' for months, or even years, requests for rehearing of certificates issued pursuant to § 7 of the Natural Gas Act,[1] thereby preventing landowners from seeking judicial review, even while pipeline developers are permitted to condemn their land and start constructing a pipeline. In her concurring opinion in *Allegheny Defense Project,* Judge Millett correctly characterized the Commission's practice as a ''Kafkaesque regime''—one that allows ''the Commission [to] keep homeowners in

[23] 5 U.S.C. 601–612.

[24] *Id.* 604(a).

[25] *Id.* 553(b)(3)(A).

[26] 5 U.S.C. 553(b)(3)(A).

[1] 15 U.S.C. 717f(c).

seemingly endless administrative limbo while energy companies plow ahead seizing land and constructing the very pipeline that the procedurally handcuffed homeowners seek to stop.'' [2] Now that the *en banc* D.C. Circuit has heard oral argument on the legality of this Kafkaesque regime, the Commission is finally deciding to stop allowing developers to begin constructing a pipeline before the Commission's rehearing process is complete. That is a step in the right direction.

2. Nevertheless, I dissent in part from this final rule because it does nothing to address the concern, articulated clearly in Judge Millett's concurrence, that a pipeline developer should not be able to begin the process of condemning private land before the owners of that land can go to court to challenge the certificate. Eminent domain is among the most significant actions that a government may take with regard to an individual's private property.[3] And the harm to an individual from having his or her land condemned is one that may never be fully remedied, even in the event they receive their constitutionally required compensation.[4] Bearing those basic facts in mind, there is something fundamentally unfair about a regulatory regime that allows a private entity to start the process of condemning an individual's land before the landowner can go to court to contest the basis for that condemnation action.

3. That concern was central to Judge Millett's concurrence in *Allegheny Defense Project.* Throughout her opinion, she touched on the profound inequity of allowing a developer to condemn land and construct a pipeline while the opponents of that pipeline are stuck in ''administrative limbo'' before the Commission.[5] I see nothing in her opinion that suggests that the problem created by the Commission's abuse of tolling orders is limited to the actual construction of a pipeline. To the contrary, Judge Millett pointed repeatedly to the exercise of eminent domain prior to rehearing as an example of how the Commission's use of tolling orders ''runs roughshod over basic principles of fair process.'' [6]

4. And yet this final rule deals only with construction without making any effort to address the exercise of eminent domain during that period when the courthouse doors are closed to landowners seeking to challenge the certificate. That is a shame. And the failure to do anything in that regard is a striking contrast to the Commission's supposed concern for landowners. Rather than remaining silent on this situation, we ought to do everything in our power to address it and ensure that certificate holders are not permitted to go to court before landowners.

5. To that end, I believe that we should adopt a practice of presumptively staying § 7 certificates [7] pending Commission action on the merits of any timely filed requests for rehearing.[8] A practice along those lines would help protect landowners from an action seeking to condemn their property by delaying the issuance of the condition precedent for a condemnation action pursuant to the NGA.[9] Only then will we have addressed the most glaring due process shortcomings associated with the Commission's use of tolling orders in NGA certificate proceedings.

6. During my time at the Commission, I have had the opportunity to meet with many landowners who lost their property rights through eminent domain proceedings authorized by the NGA. It is heartbreaking to hear their stories of watching their land be condemned while the Commission sat on rehearing requests, leaving them helpless to challenge the certificate, even as it was used to seize their land. We should be doing everything in our power to prevent such a patently unfair result.

For these reasons, I respectfully concur in part and dissent in part.

Richard Glick, Commissioner.

[FR Doc. 2020–13015 Filed 7–2–20; 8:45 am]

BILLING CODE 6717–01–P

[2] *Allegheny Def. Project* v. *FERC,* 932 F.3d 940, 948 (D.C. Cir.) (Millett, J., concurring), *reh'g en banc granted, judgment vacated,* 943 F.3d 496 (D.C. Cir. 2019).

[3] *Cf. Dolan* v. *City of Tigard,* 512 U.S. 374, 384 (1994) (observing that government action that provides for ''public access [to private property] would deprive [the owner] of the right to exclude others, 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'") (quoting *Kaiser Aetna* v. *United States,* 444 U.S. 164, 176 (1979)); *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 426 (1982) (''[W]e have long considered a physical intrusion by government to be a property restriction of an unusually serious character for purposes of the Takings Clause.''); *Hendler* v. *United States,* 952 F.2d 1364, 1374 (Fed. Cir. 1991) (''In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to *exclude* strangers, or for that matter friends, but especially the Government.'' (emphasis in the original)).

[4] *See Kimball Laundry Co.* v. *United States,* 338 U.S. 1, 5 (1949) (''The value of property springs from subjective needs and attitudes; its value to the owner may therefore differ widely from its value to the taker.''); *United Church of the Med. Ctr.* v. *Med. Ctr. Comm'n,* 689 F.2d 693, 701 (7th Cir. 1982) (''It is settled beyond the need for citation . . . that a given piece of property is considered to be unique, and its loss is always an irreparable injury.''); *accord Richardson* v. *City & Cty. of Honolulu,* 124 F.3d 1150, 1168 (9th Cir. 1997) (O'Scannlain, J., concurring in part and dissenting in part) (''Whether because of a sentimental attachment to his property or a conviction that the property is actually worth more than what the market will currently bear, a landlord might choose not to sell, even at the 'fair market value.'").

[5] *Allegheny Def. Project,* 932 F.3d at 948, 950, 952–53, 956 (Millett, J., concurring).

[6] *Id.* at 950 (Millett, J., concurring).

[7] Unlike § 7 of the NGA, § 3 does not convey eminent domain authority. *See Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* 171 FERC ¶ 61,201, P 5 (2020). Accordingly, I do not believe it is necessary to presumptively stay the Commission's § 3 determinations. I do, however, agree with my colleagues that it is appropriate to refrain from issuing any notices to proceed with construction under *both* § 3 and § 7 given the potential for irreparable harm due to construction pursuant to either provision of the NGA. *See id.* P 11.

[8] Under such an approach, the Commission could, in its discretion, lift the stay in response to a showing from the pipeline developer that it is necessary or appropriate to commence condemnation proceedings prior to the Commission acting on rehearing.

[9] Multiple courts have contemplated a stay having an effect along those lines. *See, e.g., Mountain Valley Pipeline, LLC* v. *An Easement to Construct, Operate & Maintain a 42-inch Gas Transmission Line,* No. 2:17–CV–04214, 2018 WL 1004745, at *5 (S.D.W. Va. Feb. 21, 2018) (''The landowners insist that the various challenges that Mountain Valley faces before FERC and the courts of appeals counsel against the granting of partial summary judgment. As explained earlier, a FERC order remains in effect unless FERC or a court of appeals issues a stay and no such stay has been issued here.'' (internal citations omitted)); *In re Algonquin Nat. Gas Pipeline Eminent Domain Cases,* No. 15–CV–5076, 2015 WL 10793423, at *7 (S.D.N.Y. Sept. 18, 2015) (''Here, various interested parties have filed Requests for Rehearing with FERC but, absent a stay by FERC, those Requests for Rehearing neither prohibit these proceedings from going forward nor affect Algonquin's substantive right to condemn or the need for immediate possession.''); *Tenn. Gas Pipeline Co.* v. *104 Acres of Land More or Less, in Providence Cty. of State of R.I.,* 749 F. Supp. 427, 431 (D.R.I. 1990) (''Because in this case the Commission's order has not been stayed, condemnation pursuant to that order may proceed.'').

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 319

[Docket ID: DOD–2019–OS–0040]

RIN 0790–AK65

Defense Intelligence Agency Privacy Program

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Intelligence Agency (DIA) Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy

Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: James Schmidli, 202–231–6895.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The DIA Privacy Act Program regulation at 32 CFR part 319, last updated on November 20, 2013 (78 FR 69551), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that DIA internal guidance concerning the implementation of the Privacy Act within DIA is necessary, it will continue to be published in Defense Intelligence Agency Instruction 5400.001, Privacy and Civil Liberties Program, *http://www.dia.mil/FOIA/FOIA-Electronic-Reading-Room/FileId/216384/* (May 19, 2014).

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 319

Privacy.

PART 319—[REMOVED]

Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 319 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13110 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 320

[Docket ID: DOD–2019–OS–0082]

RIN 0790–AK66

National Geospatial-Intelligence Agency (NGA) Privacy Program

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the National Geospatial-Intelligence Agency (NGA) Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Terrance Reeves, 571–558–7641.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. NGA Program regulation at 32 CFR part 320, last updated on January 14, 2004 (69 FR 2066), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest because it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that NGA internal guidance concerning the implementation of the Privacy Act within the National Geospatial-Intelligence Agency is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this separate component Privacy rules and reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published at 84 FR 14728.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 320

Privacy.

PART 320—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 320 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13114 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 322

[Docket ID: DOD–2020–OS–0030]

RIN 0790–AK68

National Security Agency/Central Security Services Privacy Act Program

AGENCY: National Security Agency/Central Security Services, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation concerning the National Security Agency/Central Security Services (NSA/CSS) Privacy Program. On April 11, 2019, the DoD published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mrs. Deneen Farrell, 301–688–6311.

SUPPLEMENTARY INFORMATION: DoD has issued a single consolidated DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The NSA/CSS Privacy Act Program regulation at 32 CFR part 322, last updated on March 30, 2012 (77 FR 19095), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. To the extent that the NSA/CSS's internal guidance concerning the implementation of the Privacy Act within the NSA/CSS is required, a supplemental internal document to the DoD Privacy regulation will be posted to *https://dpcld.defense.gov/Privacy/SORNsIndex/DOD-Component-Notices/NSA-Article-List/.*

This rule is one of 20 separate DoD component Privacy rules that are being rescinded as part of the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this separate component Privacy rule and reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019 (84 FR 14728–14811).

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 32 CFR Part 322

Privacy.

PART 322—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 322 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13112 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 326

[Docket ID: DOD–2019–OS–0067]

RIN 0790–AK71

National Reconnaissance Office Privacy Act Program

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the National Reconnaissance Office Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Lavergne at 703–227–9022.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The National Reconnaissance Office Privacy Program regulation at 32 CFR part 326, last updated on October 29, 2009 (74 FR 55784) is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that National Reconnaissance Office internal guidance concerning the implementation of the Privacy Act within the National Reconnaissance Office is necessary, it will be issued in an internal document.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department is eliminating the need for this separate component Privacy rules and reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 326

Privacy.

PART 326—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 326 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13111 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0128; FRL–10009–93]

Oxathiapiprolin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective July 6, 2020. Objections and requests for hearings must be received on or before September 4, 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–2019–0128, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

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 Publishing 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–2019–0128 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 September 4, 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–2019–0128, 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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), 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 9E8755) 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 180.685 be amended by establishing tolerances for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1*H*-pyrazol-1-yl]-ethanone, in or on the following commodities: Berry, low growing, subgroup 13–07G, except cranberry at 0.4 parts per million (ppm); Hop, dried cones at 5 ppm; Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.1 ppm; individual crops of proposed crop subgroup 6–18B: Edible podded pea legume vegetable subgroup including: Chickpea, edible podded at 1 ppm; Dwarf pea, edible podded at 1 ppm; Edible podded pea at 1 ppm; Grass-pea, edible podded at 1 ppm; Green pea, edible podded at 1 ppm; Lentil, edible podded at 1 ppm; Pigeon pea, edible podded at 1 ppm; Snap pea, edible podded at 1 ppm; Snow pea, edible podded at 1 ppm; and Sugar snap pea, edible podded at 1 ppm; and individual crops of proposed crop subgroup 6–18D: Succulent shelled pea subgroup including: Chickpea, succulent shelled at 0.05 ppm; English pea, succulent shelled at 0.05 ppm; Garden pea, succulent shelled at 0.05 ppm; Green pea, succulent shelled at 0.05 ppm; Lentil, succulent shelled at 0.05 ppm; and Pigeon pea, succulent shelled at 0.05 ppm. In addition, IR–4 requested removal of the following existing tolerances upon establishment of the above tolerances for residues of the fungicide oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1*H*-pyrazol-1-yl]-ethanone, in or on Pea, edible-podded at 1.0 ppm and Pea, succulent shelled at 0.05 ppm.

In the **Federal Register** of June 7, 2019 (84 FR 26630) (FRL–9993–93), 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 9F8736) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, that requested to establish tolerances in 40 CFR part 180.685 for residues of the fungicide oxathiapiprolin (1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1*H*-pyrazol-1-yl]-ethanone), in or on bushberry crop subgroup 13–07B, except lowbush blueberry, at 0.5 ppm; tree nuts, crop group 14–12 at 0.01 ppm; and almond hulls at 0.05 ppm.

These documents referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filings. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is correcting many of the commodity definitions. The reasons for these changes are explained in Unit IV.D.

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 oxathiapiprolin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with oxathiapiprolin follows.

As indicated in the **Federal Register** for previous tolerances established for residues of oxathiapiprolin (see 81 FR 87463, FRL–9954–69, December 6, 2016), the toxicity database for oxathiapiprolin supports a decision to conduct a qualitative risk assessment, due to the lack of treatment-related effects and limited toxicity. While dietary exposure to oxathiapiprolin may occur through food and drinking water, no risks of concern are anticipated due to the lack of toxicity at anticipated human exposure levels. While residential post-application exposures may occur through the registered uses on turf and ornamentals, no risks of concern are anticipated due to the lack of toxicity at anticipated human exposure levels. While dietary and residential exposures may occur through the registered and proposed uses for oxathiapiprolin, no aggregate risks of concern are anticipated due to the lack of toxicity at anticipated human exposure levels.

Therefore, based on the lack of toxicity at anticipated human exposure levels, 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 oxathiapiprolin residues. More detailed information on the subject action to establish tolerances in or on the range of commodities can be found in the document entitled, ''Oxathiapiprolin. Human Health Risk Assessment to Support the Registration for Use on Bushberry Crop Subgroup 13–07B (Except Lowbush Blueberry), Hops, Low Growing Berry Crop Subgroup 13–07G (Except Cranberry), Tree Nut Crop Group 14–12, and Tropical and Subtropical Medium to Large Fruit with Smooth Inedible Peel Crop Subgroup 24B, as well as Tolerance Translations'' dated May 15, 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–2019–0128.

IV. Other Considerations

A. Analytical Enforcement Methodology

Analytical method DuPont-30422, Supplement 1 is a high performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS) method available for the quantitation of oxathiapiprolin residues in plant matrices. Analytical method DuPont-31138 is an HPLC–MS/MS method available for the analytical enforcement of oxathiapiprolin residues in livestock commodities.

The methods 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.

The Codex has established MRLs for oxathiapiprolin in/on peas (pods and succulent-immature seeds) at 1 ppm and in/on peas, shelled (succulent seeds) at 0.05 ppm. The U.S. tolerances for the corresponding commodities are harmonized with these Codex MRLs. The Codex has not established MRLs for oxathiapiprolin on any of the other requested crops or crop groups.

C. Response to Comments

One relevant comment was received from a private citizen who opposed approval of this active ingredient due to combination with other chemicals and not testing toxic pollutants. The existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This comment appears to be directed at the underlying statute and not EPA's implementation of it; the comments provide no information relevant the Agency's safety determination.

D. Revisions to Petitioned-For Tolerances

The Agency corrected the commodity definitions for: Almond, hulls; Bushberry subgroup 13–07B, except lowbush blueberry; Nut, tree, group 14–12; Pea, dwarf, edible podded; Pea, edible podded; Pea, English, succulent shelled; Pea, garden, succulent shelled; Pea, grass, edible podded; Pea, green, edible podded; Pea, green, succulent shelled; Pea, pigeon, edible podded; Pea, pigeon, succulent shelled; Pea, snap, edible podded; Pea, snow, edible podded; and Pea, sugar snap, edible podded.

V. Conclusion

Therefore, tolerances are established for residues of oxathiapiprolin, 1-[4-[4-[5-(2,6-difluorophenyl)-4,5-dihydro-3-isoxazolyl]-2-thiazolyl]-1-piperidinyl]-2-[5-methyl-3-(trifluoromethyl)-1*H*-pyrazol-1-yl]-ethanone, in or on Almond, hulls at 0.05 ppm; Berry, low growing, subgroup 13–07G, except cranberry at 0.4 ppm; Bushberry subgroup 13–07B, except lowbush blueberry at 0.5 ppm; Chickpea, edible podded at 1 ppm; Chickpea, succulent shelled at 0.05 ppm; Hop, dried cones at 5 ppm; Lentil, edible podded at 1 ppm; Lentil, succulent shelled at 0.05 ppm; Nut, tree, group 14–12 at 0.01

ppm; Pea, dwarf, edible podded at 1 ppm; Pea, edible podded at 1 ppm; Pea, English, succulent shelled at 0.05 ppm; Pea, garden, succulent shelled at 0.05 ppm; Pea, grass, edible podded at 1 ppm; Pea, green, edible podded at 1 ppm; Pea, green, succulent shelled at 0.05 ppm; Pea, pigeon, edible podded at 1 ppm; Pea, pigeon, succulent shelled at 0.05 ppm; Pea, snap, edible podded at 1 ppm; Pea, snow, edible podded at 1 ppm; Pea, sugar snap, edible podded at 1 ppm; Tropical and subtropical, medium to large fruit, smooth inedible peel, subgroup 24B at 0.1 ppm. Upon the establishment of the above tolerances, the following tolerances will be removed: Pea, edible-podded at 1.0 ppm and Pea, succulent shelled at 0.05 ppm.

The removal of the ''pea, edible-podded'' and ''pea, succulent shelled'' tolerances as part of this rulemaking will not result in any adulterated pea commodities. The individual pea tolerances being established in this rulemaking cover all the edible-podded and succulent-shelled versions of pea as defined in 40 CFR 180.1, which includes ''Cajanus cajan (includes pigeon pea); Cicer spp. (includes chickpea and garbanzo bean); Lens culinaris (lentil); Pisum spp. (includes dwarf pea, garden pea, green pea, English pea, field pea, and edible pod pea).'' To avoid confusion about the coverage of residues in or on pea commodities as a result of this rulemaking, EPA is clarifying the status of two commodities listed in section 180.1 for which an individual tolerance is not being established in this rulemaking: Garbanzo bean and field pea. Garbanzo bean is the same commodity as chickpea, so residues on garbanzo bean are covered by chickpea tolerances. Field pea is not sold as an edible-podded or succulent shelled pea and thus is not covered by the existing tolerances for ''pea, edible-podded'' and pea, succulent shelled''; removing those tolerances does not change the status of tolerance coverage for field pea and an individual tolerance is not necessary.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to petitions 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: May 26, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I 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 § 180.685, amend the table in paragraph (a) by

■ i. Adding in alphabetical order entries for ''Almond, hulls''; ''Berry, low growing, subgroup 13–07G, except cranberry''; ''Bushberry subgroup 13–07B, except lowbush blueberry''; ''Chickpea, edible podded''; ''Chickpea, succulent shelled''; ''Hop, dried cones''; ''Lentil, edible podded''; ''Lentil, succulent shelled''; ''Nut, tree, group 14–12''; ''Pea, dwarf, edible podded''; ''Pea, edible podded''; ''Pea, English, succulent shelled''; ''Pea, garden, succulent shelled''; ''Pea, grass, edible podded''; ''Pea, green, edible podded''; ''Pea, green, succulent shelled''; ''Pea, pigeon, edible podded''; ''Pea, pigeon, succulent shelled''; ''Pea, snap, edible podded''; ''Pea, snow, edible podded''; ''Pea, sugar snap, edible podded''; and ''Tropical and subtropical, medium to large fruit, smooth inedible peel, subgroup 24B''; and

■ ii. Removing the entries for: ''Pea, edible-podded''; and ''Pea, succulent shelled''.

The additions read as follows:

§ 180.685 Oxathiapiprolin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	0.05
* * * * * * *	
Berry, low growing, subgroup 13–07G, except cranberry	0.4
* * * * * * *	
Bushberry subgroup 13–07B, except lowbush blueberry	0.5
* * * * * * *	
Chickpea, edible podded	1
Chickpea, succulent shelled	0.05
* * * * * * *	
Hop, dried cones	5
* * * * * * *	
Lentil, edible podded	1
Lentil, succulent shelled	0.05
Nut, tree, group 14–12	0.01
* * * * * * *	
Pea, dwarf, edible podded	1
Pea, edible podded	1
Pea, English, succulent shelled	0.05
Pea, garden, succulent shelled	0.05
Pea, grass, edible podded	1
Pea, green, edible podded	1
Pea, green, succulent shelled	0.05
Pea, pigeon, edible podded	1
Pea, pigeon, succulent shelled	0.05
Pea, snap, edible podded	1
Pea, snow, edible podded	1
Pea, sugar snap, edible podded	1
* * * * * * *	
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B	0.1
* * * * * * *	

* * * * *

[FR Doc. 2020–12126 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0610; FRL–10006–65]

2-Propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt; when used as an inert ingredient in a pesticide chemical formulation. Lamberti USA, Incorporated submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt on food or feed commodities.

DATES: This regulation is effective July 6, 2020. Objections and requests for hearings must be received on or before September 4, 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–2019–0610, is available at *http://www.regulations.gov* or by one of the follow methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7505PM), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: 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 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. 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–2019–0610 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 September 4, 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–2019–0610, 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. Background and Statutory Findings

In the **Federal Register** of February 11, 2020 (85 FR 7708) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11339) filed by Lamberti USA, Incorporated, P.O. Box 1000, Hungerford, TX 77448. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt; (CAS Reg. No. 2221936–17–8). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive public comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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 use 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 an exemption from the requirement of 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 . . . '' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated

to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3– or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

The polymer's number average MW of 4,700 daltons is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt is 4,700 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

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.

The Codex has not established a MRL for 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance 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). 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 tolerance 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).

XI. 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: May 15, 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 § 180.960, amend the table by adding alphabetically the polymer ''2-Propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt, minimum number average molecular weight (in amu), 4,000 (CAS No. 2221936–17–8)'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, homopolymer, ester with α-methyl-ω-hydroxypoly(oxy-1,2-ethanediyl) and α-[2,4,6-tris(1-phenylethyl)phenyl]-ω-hydroxypoly(oxy-1,2-ethanediyl), graft, sodium salt, minimum number average molecular weight (in amu), 4,000	2221936–17–8
* * * * * * *	

[FR Doc. 2020–13011 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0367; FRL–10009–44]

1-Aminocyclopropane-1-carboxylic Acid (ACC); Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of 1-aminocyclopropane-1-carboxylic acid (ACC) in or on apples and stone fruits when used in accordance with the terms of the Experimental Use Permit (EUP) under EPA Number 73049–EUP–12. Valent BioSciences, LLC., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting a temporary exemption from the requirement of a tolerance for the use of ACC for a period of three years. This regulation eliminates the need to establish a maximum permissible level for residues of ACC resulting from use in accordance with the EUP No. 73049–EUP–12 under FFDCA. The temporary exemption from the requirement of a tolerance expires on July 6, 2023.

DATES: This regulation is effective July 6, 2020. Objections and requests for hearings must be received on or before September 4, 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–2019–0367, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@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 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(g), 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–2019–0367 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 September 4, 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–2019–0367, 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. Background

In the **Federal Register** of August 2, 2019 (84 FR 37818) (FRL–9996–78), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F8760) by Valent BioSciences, LLC., 870 Technology Way, Libertyville, IL 60048. The petitioner requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for three years for residues of the plant growth regulator 1-aminocyclopropane-1-carboxylic acid (ACC), in or on apples and stone fruits. That document referenced a summary of the petition prepared by the petitioner, Valent BioSciences, LLC., which is available in the docket via *http://www.regulations.gov.* Two comments were received. One approved of the action; one opposed using pesticides on apples. Although EPA recognizes that some do not want any pesticides in or on food, section 408 of the FFDCA authorizes EPA to set tolerances or establish exemptions for residues of pesticide chemicals when it determines that the tolerance or exemption meets the safety standard imposed by that statute. EPA has made that

determination for the ACC exemption established by this final rule. The commenter provided no information supporting a conclusion that the tolerance exemption is not safe.

III. Final Rule

A. EPA's Safety Determination

Section 408(r) of the FFDCA allows EPA to establish a temporary exemption from the requirement of a tolerance for uses covered by an experimental use permit. Under Section 408(c)(2)(A)(i), EPA may establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C) and (D), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption, 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 . . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on 1-aminocyclopropane-1-carboxylic acid (ACC) and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

ACC is a naturally occuring non-protein amino acid found in all plants. It acts as a plant growth regulator (PGR), pre-cursing ethylene, a plant hormone regulating a wide variety of vegetative and developmental processes. The only conversion of ACC for residues should be into ethylene, which would not be measurable as ethylene is a quickly dissipating gas. Ethylene has been reviewed by EPA and is exempt from tolerance (40 CFR 180.1016).

As a biochemical pesticide, ACC is intended for use on apples and stone fruits for fruit thinning and enhanced return bloom and is foliarly applied with an orchard air blast sprayer. ACC's mode of action is as a signaling molecule in plants to regulate fruit ripening, thinning, and enhanced return bloom. No direct application to food is expected as applications are made pre-fruiting, but it is possible that some trace amounts of the active ingredient may be taken up into the plant.

Overall, ACC is considered to be of low toxicity. Toxicological data demonstrate that ACC is of low toxicity relative to all routes of exposure. Additionally, humans have a history of safe natural exposure to ACC as it is present in all fruits and vegetables and is a regular part of the human diet. With specific regard to human oral toxicity, the Agency notes that the human digestive system has evolved to accommodate ACC in its digestive processes. Moreover, it is noted that dietary exposures to the residues of ACC are not anticipated to exceed the naturally occurring background levels as exogenously applied ACC is highly biodegradable. It has a half-life of less than 8.5 days on the plant and is even more biodegradable in aqueous soil conditions.

With regard to the acute toxicological profile of the active ingredient ACC, the active ingredient is of low acute oral, dermal and inhalation toxicity; it is only mildly irritating to the eye and the skin; and it is not a dermal sensitizer.

With regard to the subchronic toxicity, developmental toxicity, reproductive toxicity and mutagenicity data requirements for the active ingredient ACC, all data requirements were satisfied by guideline studies. There were no adverse subchronic effects for any route of exposure. The active ingredient was determined to be non-mutagenic. Finally, no adverse effects were identified relative to either developmental toxicity or reproductive toxicity. Based on this toxicological profile, EPA did not identify any toxicological endpoints of concern for assessing risk.

As part of its qualitative risk assessment for ACC, the Agency also considered the potential for exposure to residues of ACC, including dietary and non-occupational exposures. EPA concludes that dietary exposures are likely to be negligible, due to the short half-life and biodegradable nature of the pesticide. Residential exposures are not expected under the conditions of the association EUP.

Based on ACC's low toxicity, anticipated minimal dietary exposure, and history of safe consumption in foods, no risks of concern have been identified from aggregate exposure to ACC. Similarly, no risks of concern were identified for cumulative exposures to ACC since no common mechanism of toxicity was identified for either ACC or its metabolites. Therefore, based on the lack of toxicity and expected negligible exposures, EPA has determined that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to ACC.

A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the April 16, 2020, document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for 1-aminocyclopropane-1-carboxylic acid (ACC).'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based on its safety determination, EPA is establishing a temporary exemption from the requirement of a tolerance for residues of the plant growth regulator 1-aminocyclopropane-1-carboxylic acid (ACC) in or on apples and stone fruits when used in accordance with the terms of the Experimental Use Permit (EUP) under EPA Number 73049–EUP–12. This temporary exemption from the requirement of a tolerance will expire on July 6, 2023.

B. Analytical Enforcement Methodology

The analytical method for the residues of ACC can be evaluated by Ultra High-Performance Liquid Chromatography-Tandem Mass Spectrometry and is available to EPA for the detection and measurement of these pesticide residues.

IV. Statutory and Executive Order Reviews

This action establishes a temporary exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to EPA. 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 temporary tolerance exemption in this action, 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. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA 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, EPA 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 EPA's 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).

V. 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: May 28, 2020.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I 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. Add § 180.711 to subpart C to read as follows:

§ 180.711 1-Aminocyclopropane-1-carboxylic acid (ACC); temporary exemption from the requirement of a tolerance for residues.

A temporary exemption from the requirement of a tolerance is established for residues of the plant growth regulator, 1-Aminocyclopropane-1-carboxylic acid (ACC) in or on apples and stone fruits when used in accordance with the terms of the Experimental Use Permit (EUP) under EPA Number 73049–EUP–12. This temporary exemption expires on July 6, 2023.

[FR Doc. 2020–12143 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0652 and EPA–HQ–OPP–2020–0047; FRL–10011–10]

S-metolachlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective July 6, 2020. Objections and requests for hearings must be received on or before September 4, 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 dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2019–0652 and EPA–HQ–OPP–2020–0047, are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

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 Publishing 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 numbers EPA–HQ–OPP–2019–0652 and EPA–HQ–OPP–2020–0047 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 September 4, 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 numbers EPA–HQ–OPP–2019–0652 and EPA–HQ–OPP–2020–0047, 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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 8, 2020 (85 FR 27346) (FRL–10008–38), 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 9E8800) by IR–4, Rutgers, the State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.368(a)(2) be amended by establishing tolerances for residues of the herbicide S-metolachlor, S–2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on Dillweed at 5 parts per million (ppm); Dillweed, dried leaves at 9 ppm; Dill, seed at 15 ppm; Rosemary, dried leaves at 2 ppm and Rosemary, fresh leaves 1.5 ppm. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

In the **Federal Register** of March 3, 2020 (85 FR 12454) (FRL–10005–58), 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 9F8764) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.368(a)(2) be amended by revising the tolerances for residues of the herbicide S-metolachlor, S–2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on soybean seed to be 1.0 ppm and grain, aspirated fractions to be 2.0 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC., 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 several tolerances at different levels than petitioned-for tolerances and revised the commodity definitions for grain, aspirated fractions and soybean, seed. The reasons for these changes are explained in Unit IV.D.

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 S-metolachlor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with S-metolachlor follows.

On March 11, 2019, EPA published in the **Federal Register** a final rule establishing tolerances for residues of S-metolachlor in or on several commodities based on the Agency's conclusion that aggregate exposure to S-metolachlor is safe for the general population, including infants and children. *See* (84 FR 8611) (FRL–9983–79). EPA is incorporating the following portions of that document by reference here, as they have not changed in the Agency's current assessment of S-metolachlor tolerances: The toxicological profile and points of departure, the cancer assessment and conclusion that a nonlinear reference dose (RfD) approach is appropriate for assessing cancer risk, the conclusions about cumulative risk, and the Agency's

determination regarding the children's safety factor. Additionally, EPA is incorporating the assumptions for exposure assessment from the March 11, 2019 final rule, which have not changed except as explained in the following paragraph.

EPA's dietary (food and drinking water) exposure assessments have been updated to include the additional exposure from the new uses of S-metolachlor on dill and rosemary and the revised use on soybean. EPA conducted an unrefined chronic dietary (food and drinking water) exposure and risk assessment that incorporates tolerance-level residue values, 100% crop treated, and EPA's 2018 default processing factors.

The estimated drinking water concentrations (EDWCs) of S-metolachlor and its metabolites for chronic exposures have also been updated; the new value used for the chronic assessment to assess the contribution to drinking water is 830 parts per billion (ppb), which is lower than the previous value of 978 ppb.

An acute dietary endpoint (*i.e.,* single dose endpoint) for risk assessment was not identified in the toxicity database for the general U.S. population or any other subpopulation for S-metolachlor; therefore, an acute dietary exposure assessment was not conducted. Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD); they are estimated to be 19% of the cPAD for all infants less than 1 year old, the group with the highest exposure.

There are no proposed new residential uses for S-metolachlor, although commercial use in residential areas may result in the following short-term residential exposures that were used in the Agency's aggregate risk assessment: Post-application dermal exposures to youth (11 to less than 16 years old) from treated turf, to children (6 to less than 11 years old) from treated gardens, and to children (1 to less than 2 years old) from treated turf and post-application incidental oral exposure to children (1 to less than 2 years old) from treated turf.

For aggregate risk assessment, exposures to S-metolachlor in food and drinking water are combined with residential exposures for the relevant exposure duration period. Because acute, intermediate-term, or long-term residential exposures are not expected, aggregate acute and chronic risk is equivalent to the dietary risks, which are below EPA's level of concern. Moreover, based on the chronic exposure assessment, which accounts for potential carcinogenicity, EPA does not expect S-metolachlor to pose a cancer risk. Short-term aggregate risk, which combines chronic (background) exposures with the expected short-term post-application exposures mentioned above, yields margins of exposure (MOEs) ranging from 110 to 1370, which are not of concern because they exceed EPA's level of concern (MOEs less than or equal to 100).

Therefore, 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 S-metolachlor residues. More detailed information can be found in the document entitled, ''S-Metolachlor: Human Health Risk Assessment for Petition for the Establishment of Tolerances and Registration for Use in/on Rosemary and Dill (PP#9E8800) and Amended Use in/on Soybean (PP# 9F8764),'' in docket IDs EPA–HQ–OPP–2019–0652 and EPA–HQ–2020–0047.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies are available in the Pesticide Analytical Manual (PAM) Vol. II for enforcement of S-metolachlor crop and livestock tolerances. Pesticide regulation section 180.368, lists a gas chromatography with nitrogen-phosphorus detector (GC/NPD) method (Method I) for determining residues in/on crop commodities and a gas chromatography with mass selective detector (GC/MSD) method (Method II) for determining residues in livestock commodities. These methods determine residues of metolachlor and its metabolites as either CGA–37913 or CGA–49751 following acid hydrolysis.

The methods 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.

No maximum residue limits (MRLs) for S-metolachlor have been established or proposed by Codex.

C. Response to Comments

There was one comment received on the notice of filing. The comment stated that IR–4 is trying to get this chemical through during a pandemic and without public notice. The commenter also stated that this chemical should not be used on any food products that American's eat. In response, EPA notes the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This comment appears to be directed at the underlying statute and not EPA's implementation of it; the comment provides no information relevant the Agency's safety determination.

D. Revisions to Petitioned-For Tolerances

The Agency is establishing the tolerances for grain, aspirated fractions and soybean, seed at different levels than the petitioner requested. For grain, aspirated fractions, EPA calculated the tolerance level using the highest average field trial (HAFT) residues in combination with the median processing factor from the submitted soybean data. This results in a tolerance of 4 ppm rather than the proposed tolerance of 2.0 ppm. EPA calculated the tolerance level for soybean, seed using the HAFT residue values from the submitted soybean data in the Organization for Economic Cooperation and Development (OECD) MRL calculator. This results in a tolerance of 0.9 ppm rather than the proposed tolerance of 1.0 ppm. In addition, the commodity definitions were revised for grain, aspirated fractions and soybean, seed. Finally, a tolerance for residues in/on soybean, meal at 1.5 ppm has been added by the Agency based on the submitted soybean data, because the HAFT residues in combination with the median processing factor from the submitted data result in a value higher than the tolerance level for soybean, seed.

V. Conclusion

Therefore, tolerances are established for residues of S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor in or on dill, seed at 15 ppm; dillweed at 5 ppm; dillweed, dried leaves at 9 ppm; rosemary, dried leaves at 2 ppm; rosemary, fresh leaves at 1.5 ppm; and soybean, meal at 1.5 ppm. In addition, the Agency is increasing the tolerances for residues of S-metolachlor in or on grain, aspirated fractions to be 4 ppm and soybean, seed to be 0.9 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to petitions 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 19, 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 § 180.368, paragraph (a)(2):

■ i. Add a heading to the table.

■ ii. Add alphabetically the entries ''Dill, seed''; ''Dillweed'' and ''Dillweed, dried leaves''.

■ iii. Revise the entry for ''Grain, aspirated fractions''.

■ iv. Add alphabetically the entries ''Rosemary, dried leaves''; ''Rosemary, fresh leaves'' and ''Soybean, meal''.

■ v. Revise the entry for ''Soybean, seed''.

The additions and revisions read as follows:

§ 180.368 Metolachlor, tolerances for residues.

(a) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
* * * * *	
Dill, seed	15
Dillweed	5
Dillweed, dried leaves	9
* * * * *	
Grain, aspirated fractions	4
* * * * *	
Rosemary, dried leaves	2
Rosemary, fresh leaves	1.5
* * * * *	
Soybean, meal	1.5
Soybean, seed	0.9
* * * * *	

* * * * *

[FR Doc. 2020–14393 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0023; Amdt. No. 192–127]

RIN 2137–AE72

Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments: Response to a Joint Petition for Reconsideration

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document responds to a joint Petition for Reconsideration (Petition) that was submitted on October 31, 2019, by the American Gas Association, the American Petroleum Institute, the American Public Gas Association, and the Interstate Natural Gas Association of America (the Associations). In the Petition, the Associations requested that PHMSA amend the final rule titled ''Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments'' (Gas Transmission Final Rule) published in the **Federal Register** on October 1, 2019. In response to the Petition, PHMSA is amending the Gas Transmission Final Rule to address the requirements for recordkeeping and the applicability of maximum allowable operating pressure (MAOP) reconfirmation. The amendments are intended to clarify the regulatory requirements identified in the Petition without adversely affecting safety.

DATES: The effective date of this rule is July 1, 2020.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Steve Nanney, Project Manager, by telephone at 713–272–2855 or by email at *steve.nanney@dot.gov.* For general information, contact Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361 or by email at *robert.jagger@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2019, (84 FR 52180) PHMSA published a final rule titled, ''Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments,'' (Gas Transmission Final Rule) that amended the Pipeline Safety Regulations (PSR) at 49 CFR part 192 to improve the safety of onshore gas transmission pipelines. The Gas Transmission Final Rule addressed integrity management requirements and other requirements.

The Gas Transmission Final Rule focused on the actions an operator must take to reconfirm the maximum allowable operating pressure (MAOP) of previously untested natural gas transmission pipelines and pipelines lacking certain material or operational records. It also required operators to reconfirm the MAOP of those segments and gather any necessary material property records they might need to do so, where the records needed to substantiate the MAOP are not traceable, verifiable, and complete. Examples of the records necessary to confirm MAOP include pressure test records or material property records (mechanical properties) that verify the MAOP is appropriate for the class location.

On October 31, 2019, the American Public Gas Association, the American Gas Association, the Interstate Natural Gas Association, and the American Petroleum Institute (the Associations) submitted a Petition for Reconsideration of the Gas Transmission Final Rule in accordance with 49 CFR 190.335. In the Petition, the Associations requested that PHMSA (1) clarify that the recordkeeping requirement in § 192.5(d) only applies to transmission pipelines, and (2) limit the applicability of the MAOP reconfirmation requirements in § 192.624(a)(1) to those pipeline segments that do not have a traceable, verifiable, and complete pressure test record under § 192.619(a)(2). PHMSA granted the Petition and responded with a letter dated December 20, 2019, in accordance with 49 CFR 190.337(b).[1] This final rule amends the Gas Transmission Final Rule to implement the changes.

Petition To Clarify the Applicability of the Recordkeeping Requirements of § 192.5(d)

In the Gas Transmission Final Rule published on October 1, 2019, PHMSA added § 192.5(d) to require an operator to have and maintain records that document the current class location of each pipeline segment. In the preamble, PHMSA stated that this recordkeeping requirement applies to each operator of a gas transmission pipeline; however, PHMSA inadvertently omitted language in the rule's regulatory text that would have made clear that the recordkeeping requirements of that section applied only to gas transmission pipelines. In their Petition, the Associations requested that PHMSA clarify that the recordkeeping requirements in § 192.5(d) only apply to gas transmission pipelines. This request aligns with the final rule's original intent.

After reviewing the Petition, the language in the Gas Transmission Final Rule, and the Pipeline Safety Regulations, PHMSA granted the Associations' request to clarify that the recordkeeping requirements in § 192.5(d) only apply to gas transmission pipelines. The recordkeeping requirements of that section apply to records that document current class location determinations and records that demonstrate how an operator arrived at such a determination for each class location. PHMSA has concluded that the change requested in the Petition is appropriate, is consistent with the original intent of the final rule, and does not compromise safety.

Petition To Limit the Applicability of § 192.624(a)(1)

In the Gas Transmission Final Rule, PHMSA defined a set of pipeline segments for which operators must reconfirm the MAOP. Specifically, § 192.624(a)(1) requires operators of certain gas transmission pipelines to reconfirm MAOP if, among other things, the ''records necessary to establish the MAOP in accordance with § 192.619(a) . . . are not traceable, verifiable, and complete'' (TVC). In the Petition, the Associations requested that PHMSA revise § 192.624(a)(1) to clarify that it does not apply where an operator already has records necessary to establish MAOP under § 192.619(a)(2) (*i.e.,* pressure test records). The Associations stated that ''without the specific reference to § 192.619(a)(2), it is unclear whether an operator must reconfirm MAOP when a pipeline segment already has a TVC pressure test record but is missing other records under § 192.619(a)(1) or (a)(3).'' The Associations noted that this revision would align with a corresponding Gas Pipeline Advisory Committee recommendation [2] and confirm that

[1] PHMSA has placed a copy of the Associations' Petition for Reconsideration and PHMSA's response in the Docket for the Gas Transmission Final Rule, *See* Docket No. HYPERLINK ''*https://www.regulations.gov/docket?D=PHMSA-2011-0023*'' PHMSA–2011–0023.

[2] Gas Pipeline Advisory Committee Meeting Final Voting Slides at 1 (Mar. 26–28, 2018). The slide presentation is available in the docket, PHMSA–2011–0023, which can be accessed at *www.regulations.gov.*

§ 192.624(a)(1) does not require operators to reconfirm the MAOP of pipeline segments if they have TVC pressure test records.

PHMSA granted the Associations' Petition to limit the applicability of the MAOP reconfirmation requirements of § 192.624(a)(1) to those pipeline segments that do not have TVC pressure test records under § 192.619(a)(2).[3] PHMSA has determined that the Associations' specific request to limit the applicability of these MAOP reconfirmation requirements in § 192.624(a)(1) will not compromise safety because the availablility of TVC pressure test records under § 192.619(a)(2) allows an operator to establish the MAOP for the pipeline segment without the need for reconfirmation. Further, this change is consistent with recommendations from the Gas Pipeline Advisory Committee and the language proposed in the Notice of Proposed Rulemaking (HYPERLINK ''*https://www.federalregister.gov/citation/81-FR-20722*'' 81 FR 20722; April 8, 2016).

As already specified in the Gas Transmission Rule, if operators are missing any material properties during anomaly evaluations and repairs, operators must confirm those material properties under §§ 192.607 and 192.712(e) through (g).[4] Any pipeline segment that is missing records necessary to comply with other aspects of the PSR must meet all applicable provisions of part 192 for any future MAOP increases. An increase in MAOP must be based upon the applicable requirements for design; pressure testing; highest actual operating pressure (for any segment not re-pressure tested); and the maximum safe operating pressure based upon the pipeline history as required by § 192.619(a)(1) through (4). In addition, any increase in MAOP must be based upon the class location requirements in §§ 192.5 and 192.611 for MAOP determination.

II. Regulatory Analyses and Notices

Statutory/Legal Authority

These amendments are made pursuant to the Federal Pipeline Safety Statutes (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, as delegated to the PHMSA Administrator under 49 CFR 1.97.

Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review'' [5]) requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Similarly, DOT regulations require that regulations issued by PHMSA and other DOT Operating Administrations ''should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety'' and should generally ''not be issued unless their benefits are expected to exceed their costs.'' § 5.5(f)–(g). The Gas Transmission Final Rule was considered a significant regulatory action under Executive Order 12866 and Executive Order 13771 [6] (''Reducing Regulation and Controlling Regulatory Costs''). It was also considered significant under the Regulatory Policies and Procedures of the DOT at 49 CFR part 5 because of substantial congressional, State, industry, and public interest in pipeline safety. Therefore, the Office of Management and Budget (OMB) reviewed the Gas Transmission Final Rule in accordance with Executive Order 12866, and determined the rule was consistent with Executive Order 12866 requirements and 49 U.S.C. 60102(b)(5)–(6). PHMSA published a final regulatory impact analysis for the Gas Transmission Final Rule, which is available in the rulemaking docket.

This document amends the Gas Transmission Final Rule and imposes no incremental changes or costs to the regulated industry, except that the amendments may provide relief to the extent the changes reduce confusion by improving the clarity of the regulations. Therefore, this is a non-significant action and was not reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (5 U.S.C. 601 *et seq.*) requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for any final rule subject to notice-and-comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553), unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. PHMSA prepared a FRFA for the Gas Transmission Final Rule, which is available in the docket for this rulemaking. These amendments to the Gas Transmission Final Rule have no substantial effect on that analysis.

Paperwork Reduction Act

These amendments impose no new requirements for the recordkeeping and reporting contained in the October 1, 2019, Gas Transmission Final Rule.

Unfunded Mandates Reform Act of 1995

These amendments to the Gas Transmission Final Rule do not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.;* UMRA). They do not impose enforceable duties on State, local, or Tribal governments or on the private sector of $100 million or more, adjusted for inflation, in any one year and therefore do not have implications under Section 202 of the UMRA of 1995.

PHMSA prepared an analysis of the UMRA considerations in the final regulatory impact analysis for the Gas Transmission Final Rule, which is available in the docket for the rulemaking. These amendments to the Gas Transmission Final Rule have no substantial effect on that analysis. Therefore, PHMSA determines that these amendments imposes no unfunded mandates.

National Environmental Policy Act

PHMSA had analyzed the Gas Transmission Final Rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and implementing Council on Environmental Quality regulations (40 CFR part 1500) and DOT implementing policies (DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'') and determined the final rule would not significantly affect the quality of the human environment. PHMSA prepared an analysis of the NEPA considerations in an Environmental Analysis for Gas Transmission Final Rule, which is available in the docket for the rulemaking. The amendments to the Gas Transmission Final Rule implemented by this document have no substantial effect on the NEPA analysis.

[3] PHMSA granted the Associations' Petition in a letter dated Dec. 20, 2019. The letters responding to Associations are available in the docket, PHMSA–2011–0023, which can be accessed at *www.regulations.gov.*

[4] PHMSA may provide more clarification on these requirements in the upcoming rulemaking, ''Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments.'' RIN 2137–AE72.

[5] 58 FR 51735 (Oct. 4, 1993).

[6] 82 FR 9339 (Feb. 24, 2017).

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Executive Order 13132

PHMSA analyzed these amendments to the Gas Transmission Final Rule in accordance with Executive Order 13132 (''Federalism'' [7]). The Federal Pipeline Safety Statute, specifically 49 U.S.C. 60104(c), prohibit State safety regulation of interstate pipelines. Under the pipeline safety laws, States have the ability to augment pipeline safety requirements for intrastate pipelines regulated by PHMSA, but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate. It is these statutory provisions, not the rule, that govern preemption of State law.

PHMSA analyzed the Gas Transmission Final Rule and determined that the consultation and funding requirements of Executive Order 13132 do not apply. These amendments to Gas Transmission Final Rule have no substantial effect on that analysis. These amendments to the Gas Transmission Final Rule do not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. These amendments do not impose any substantial direct compliance costs on State and local governments.

Executive Order 13211

PHMSA analyzed the Gas Transmission Final Rule and determined that the requirements of Executive Order 13211 (''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'') [8] do not apply. These amendments to the Gas Transmission Final Rule are not a ''significant energy action'' under Executive Order 13211. These amendments are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated these amendments as a significant energy action.

Executive Order 13175

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [9] and DOT Order 5301.1, ''Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes.'' Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Indian Tribes. The amendments within this document neither impose direct compliance costs on Tribal communities, nor have a substantial direct effect on those communities. Therefore, the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply.

Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation'' [10]), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The amendments in this document do not impact international trade.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 192

Incorporation by reference, Integrity assessments, Material properties verification, MAOP reconfirmation, Pipeline safety, Predicted failure pressure, Recordkeeping, Risk assessment, Safety devices.

In consideration of the foregoing, PHMSA is amending 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.,* and 49 CFR 197.

■ 2. In § 192.5, as amended October 1, 2019, at 84 FR 52243 and effective July 1, 2020, paragraph (d) is revised to read as follows:

§ 192.5 Class locations.

* * * * *

(d) An operator must have records that document the current class location of each gas transmission pipeline segment and that demonstrate how the operator determined each current class location in accordance with this section.

■ 3. In § 192.624, as amended October 1, 2019, at 84 FR 52247 and effective July 1, 2020, paragraph (a)(1) introductory text is revised to read as follows:

§ 192.624 Maximum allowable operating pressure reconfirmation: Onshore steel transmission pipelines.

(a) * * *

(1) Records necessary to establish the MAOP in accordance with § 192.619(a)(2), including records required by § 192.517(a), are not traceable, verifiable, and complete and the pipeline is located in one of the following locations:

* * * * *

Issued in Washington, DC, on June 29, 2020, under authority delegated in 49 CFR part 1.97.

Howard R. Elliott,

Administrator.

[FR Doc. 2020–14403 Filed 7–1–20; 11:15 am]

BILLING CODE 4910–60–P

[7] 64 FR 43255 (Aug. 10, 1999).

[8] 66 FR 28355 (May 22, 2001).

[9] 65 FR 67249 (Nov. 9, 2000).

[10] 77 FR 26413 (Nov. 9, 2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200629–0174]

RTID 0648–XW023

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; 2020–2021 Annual Specifications and Management Measures for Pacific Sardine

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

ACTION: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2020, through June 30, 2021. This final rule will prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest will be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine will be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The annual catch limit for the 2020–2021 Pacific sardine fishing year is 4,288 metric tons. This final rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2020.

ADDRESSES: A copy of the report ''Assessment of Pacific Sardine Resource in 2020 for U.S.A. Management in 2020–2021'' is available at: *https://www.pcouncil.org/documents/2020/03/agenda-item-d-3-attachment-1-stock-assessment-report-executive-summary-assessment-of-the-pacific-sardine-resource-in-2019-for-u-s-management-in-2019-20-full-document-electronic-only.pdf/,* and may be obtained from the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, (562) 436–2462, *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the West Coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

This final rule implements the annual catch levels and reference points for the 2020–2021 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 27, 2020 (85 FR 31733), including the OFL and ABC that take into consideration uncertainty surrounding OFL, including uncertainty in the current estimate of biomass for Pacific sardine in the U.S. EEZ off the U.S. West Coast. The proposed rule for this action included additional background on the specifications and details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (85 FR 31733).

TABLE 1—HARVEST SPECIFICATIONS FOR THE 2020–2021 SARDINE FISHING YEAR IN METRIC TONS (mt)

Biomass estimate	OFL	ABC	HG	ACL	ACT
28,276	5,525	4,288	0	4,288	4,000

This final rule implements an OFL of 5,525 mt and an ABC and an annual catch limit (ACL) of 4,288 mt. These reference points are based on the control rules and management framework in the CPS FMP and on an estimate of Pacific sardine biomass of 28,276 mt from a stock assessment completed by NMFS Southwest Fishery Science Center. The Council and NMFS determined this stock assessment to be the best scientific information available for setting Pacific sardine harvest specifications for the 2020–2021 fishing year.

Additionally, this rule implements an annual catch target (ACT) of 4,000 mt, as well as restrictions on the incidental catch of Pacific sardine by other fisheries and a trip limit that could be imposed on directed fishing for sardine as live bait (see below list of management and accountability measures). The annual harvest limits and management measures were developed in the context of the fact that NMFS declared the Pacific sardine stock overfished in July 2019. Since the biomass remains below its minimum stock size threshold (MSST) of 50,000 mt, the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF (*i.e.,* 150,000 mt threshold below which primary directed harvest is not allowed but above the MSST).

The final specifications include the following management measures and inseason accountability measures for commercial sardine harvest during the 2020–2021 fishing year:

(1) If landings in the live bait fishery reach 2,500 mt, then a 1-mt per trip limit of sardine will apply to the live bait fishery.

(2) A 20-percent incidental per landing by weight catch allowance will apply to other CPS primary directed fisheries (*e.g.,* Pacific mackerel).

(3) If the ACT of 4,000 mt is attained, then a 1-mt per trip limit of sardine will apply to all CPS fisheries (*i.e.,* 1) and 2) would no longer apply).

(4) An incidental per landing allowance of 2 mt of sardine in non-CPS fisheries.

All sources of catch including any EFP set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries, and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when

catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

At the April 2020 Council meeting, although formal review and approval was removed from the Council's agenda, they expressed support for three EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. This action accounts for NMFS' potential approval of up to 1,145 mt of the ACL to be harvested under EFPs.

Comments and Responses

On May 27, 2020, NMFS published a proposed rule for this action and solicited public comments (85 FR 31733) through June 11, 2020. NMFS received two public comments relevant to the proposed rule—one from the CPS industry group California Wetfish Producers Association (CWPA) and one from the environmental group Oceana. The CWPA supported the proposed rule in its entirety. After considering the public comments, no changes were made from the proposed rule. NMFS summarizes and responds to the comment letter from Oceana below.

Comment 1: Oceana supported the prohibition on primary directed fishing for Pacific sardine, but requested that NMFS further reduce Pacific sardine mortality by setting a lower ACL (1,000 mt) and that this ACL be apportioned across the fisheries that incidentally catch Pacific sardine, the live bait and minor directed fisheries in some manner not described in the comment. Oceana also requested that directed fishing under EFPs not be allowed. Oceana states that a 1,000-mt ACL and their additionally proposed management measures would ''better protect the stock and dependent predators during this time of collapse.'' In addition to commenting on the proposed rule, Oceana also requested reconsideration of various aspects of Pacific sardine management and provided recommendations on changes to Pacific sardine management that are not within the scope of this action. These recommendations included changing the start date of the fishery, revising the MSST value, reinitiating the Endangered Species Act (ESA) consultation, and modifying various parameters in the OFL, ABC, and HG control rules, such as Emsy, CUTOFF and Distribution.

Response: NMFS agrees with Oceana regarding the prohibition on primary directed fishing. Changes to the management framework of Pacific sardine and to the Pacific sardine harvest control rules are set in the CPS FMP and are beyond the scope of this rulemaking. NMFS notes that some of these changes, such as to the value for the Distribution parameter in the Pacific sardine harvest control rules and the MSST, have been previously reviewed during specific agenda items at Council meetings. For example, in 2015, a 3-day meeting was held that included agency and non-agency scientists to review the Distribution parameter. The results of this workshop were then presented to the Council and its advisory bodies, including the Science and Statistical Committee (SSC). The Council subsequently concluded that there was no superior data to inform this parameter. Additionally, NMFS notes that the Distribution parameter in the various Pacific sardine control rules is not a required element dictated by the Magnuson-Stevens Act or National Standard 1. Instead, it is an additional precautionary policy adopted and used by the Council to further reduce the harvest of Pacific sardine beyond what is required. However, NMFS will communicate other concerns to the Council for their consideration during related future management planning for the Pacific sardine stock. NMFS is aware of the scientific literature attached by Oceana, and will consider it as appropriate in future discussions on Pacific sardine management.

Much of Oceana's commentary about ESA analysis address concerns beyond the scope of the proposed action, and also appear to conflate species listed under the ESA with species not listed, particularly marine predators. Relevant to this action, Oceana did not introduce any new scientific information that would require NMFS to reinitiate consultation under the ESA. NMFS notes that it determined that the 2020–2021 harvest specifications fall well within the scope of impacts to listed species, including listed marine predators, considered under prior consultations for the fishery, and that fishing activities pursuant to this rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat of any such species.

As it relates to the comment that NMFS should set a lower ACL and further reduce catch in smaller scale fishery sectors, NMFS disagrees that setting a lower ACL is necessary. The ACL should be viewed in the context of the OFL for the northern subpopulation of Pacific sardine of 5,525 mt and the ABC of 4,288 mt that takes into account scientific uncertainty surrounding the OFL. These reference points were recommended by the Council based on the control rules in the FMP and were endorsed by the Council's SSC as the best scientific information available for preventing overfishing. In addition, the management measures adopted by the Council, including an ACT that was set even lower than the ACL (4,000 mt), are more than adequate to ensure catch does not exceed the ACL/ABC and OFL and therefore prevent overfishing.

The assertion in Oceana's comment that NMFS and the Council have set higher catch levels as Pacific sardine has declined is incorrect. Each year that the stock has declined the Council has recommended and NMFS has implemented catch levels commensurate with any decline in the stock. In fact, for this 2020–2021 fishing year the estimated biomass has actually increased from the previous fishing year, however the catch limit has been reduced, which is the opposite of increasing harvest.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of these final harvest specifications for the 2020–2021 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2020. The contents of this rule are based on the best scientific information available on the population status of Pacific sardine. Making these final specifications effective on July 1, the first day of the fishing season, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2020–2021 fishing year because the sardine biomass has dropped below the 150,000-mt threshold for a primary directed commercial fishery. The purpose of this threshold in the FMP, and for prohibiting directed fishing when the biomass drops below this level, is to protect the stock when

biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. A delay in the effectiveness of this rule for a full 30 days would result in the re-opening the directed commercial fishery on July 1.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen are aware that the Council recommended that primary directed fishing be prohibited for the 2020–2021 fishing year and are fully prepared to comply with the prohibition.

This final rule is exempt from the procedures of Executive Order 12866 because this action is an annual fishery management specification under the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

Dated: June 30, 2020.

Chris Oliver,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–14442 Filed 6–30–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 129
Monday, July 6, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0604; Airspace Docket No. 19–ANM–33]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Pendleton, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Eastern Oregon Regional at Pendleton Airport. This action also proposes to amend Class E airspace, designated as a surface area. Additionally, this action proposes to establish Class E airspace, designated as an extension to a Class D or Class E surface area. Further, this action proposes to amend Class E airspace, extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface. This action also proposes to remove the Pendleton VORTAC from the airspace legal descriptions. Lastly, this action proposes administrative corrections to the airspaces legal descriptions. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before August 20, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0604; Airspace Docket No. 19–ANM–33, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend the Class D and Class E airspace at Eastern Oregon Regional at Pendleton Airport, Pendleton, OR, to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0604; Airspace Docket No. 19–ANM–33''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending the Class D airspace at Eastern Oregon Regional at Pendleton Airport, Pendleton, OR. The proposal would reduce the circular radius of the Class D and remove the extension to the west of the airport. The airspace area would be described as follows: That airspace extending upward from the surface to and including 4,000 feet MSL within a 4.1-mile radius of Eastern Oregon Regional at Pendleton Airport. This surface 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 proposes to amend Class E airspace, designated as a surface area, to be coincident with the new Class D dimensions. The airspace area would be described as follows: That airspace extending upward from the surface within a 4.1-mile radius of Eastern Oregon Regional at Pendleton Airport. This surface 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.

Additionally, this action proposes to establish Class E airspace, designated as an extension to a Class D or Class E surface area. The proposed area is designed to contain IFR aircraft descending below 1,000 feet above the surface when arriving from the southeast of the airport. This airspace area would be described as follows: That airspace extending upward from the surface within 1 mile each side of the 129° bearing from the airport, extending from the 4.1-mile radius to 7.3 miles southeast of Eastern Oregon Regional at Pendleton Airport.

Further, this action proposes to amend Class E airspace extending upward from 700 feet above the surface. The action proposes to properly size the airspace to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport, and within 3.5 miles each side of the 090° bearing from the airport extending from the 6.6-mile radius to 14.8 miles east of the airport, and within 3.4 miles each side of the 129° bearing from the airport extending from the 6.6-mile radius to 14.3 miles southeast of the airport, and within 4 miles south and 8 miles north of the 270° bearing from the airport, extending from 4 miles west of the airport to 20 miles west of Eastern Oregon Regional at Pendleton Airport. The proposed description removes the airspace extending over Hermiston Municipal Airport. To contain IFR operations at Hermiston Municipal Airport, a separate NPRM action (FAA–2020–0605) proposes to establish Class E airspace, extending upward from 700 feet above the surface, at Hermiston, OR.

This action also proposes to remove Class E airspace extending upward from 1,200 feet above the surface. This area is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. This area is wholly contained within Class E en route airspace which overlies the entire Pendleton area, duplication is not necessary.

The action proposes to remove the Pendleton VORTAC and all references to the VORTAC from the Class D, E2, and E5 legal descriptions. The navigational aid is not needed to define the airspace. Removal of the navigational aid allows the airspace to be defined from a single reference point which simplifies how the airspace is described.

Lastly, this action proposes administrative corrections to the airspaces legal descriptions. The airport name on the second line of the text header does not match the FAA database and should be updated to ''Eastern Oregon Regional at Pendleton Airport''. The airport's geographic coordinates do not match the FAA database and should be updated to ''lat. 45°41′41″ N, long. 118°50′35″ W'' The last sentence in the Class D and Class E surface area legal descriptions contain the term ''Airport/Facilities Directory'' the term should be updated to ''Chart Supplement''.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D Pendleton, OR [Amended]

Eastern Oregon Regional at Pendleton Airport, OR
(Lat. 45°41′41″ N, long. 118°50′35″ W)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 4.1-mile radius of Eastern Oregon

Regional at Pendleton Airport. This surface area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM OR E2 Pendleton, OR [Amended]

Eastern Oregon Regional at Pendleton Airport, OR
(Lat. 45°41′41″ N, long. 118°50′35″ W)

That airspace extending upward from the surface within a 4.1-mile radius of Eastern Oregon Regional at Pendleton Airport. This surface area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM OR E4 Pendleton, OR [New]

Eastern Oregon Regional at Pendleton Airport, OR
(Lat. 45°41′41″ N, long. 118°50′35″ W)

That airspace extending upward from the surface within 1 mile each side of the 129° bearing from the airport, extending from the 4.1-mile radius to 7.3 miles southeast of Eastern Oregon Regional at Pendleton Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM OR E5 Pendleton, OR [Amended]

Eastern Oregon Regional at Pendleton Airport, OR
(Lat. 45°41′41″ N, long. 118°50′35″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport, and within 3.5 miles each side of the 090° bearing from the airport extending from the 6.6-mile radius to 14.8 miles east of the airport, and within 3.4 miles each side of the 129° bearing from the airport extending from the 6.6-mile radius to 14.3 miles southeast of the airport, and within 4 miles south and 8 miles north of the 270° bearing from the airport, extending from 4 miles west of the airport to 20 miles west of Eastern Oregon Regional at Pendleton Airport.

Issued in Seattle, Washington, on June 29, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–14349 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0606; Airspace Docket No. 19–ANM–100]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Yakima Air Terminal/McAllister Field Airport. This action also proposes to amend Class E airspace, designated as a surface area. Additionally, this action proposes to remove Class E airspace, designated as an extension to a Class D or Class E surface area. Further, this action proposes to amend Class E airspace, extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface. This action also proposes to remove the Yakima VOR from the Class E5 airspace legal description. Lastly, this action proposes administrative corrections to the airspaces legal descriptions. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before August 20, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0606; Airspace Docket No. 19–ANM–100, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend the Class D and Class E airspace at Yakima Air Terminal/McAllister Field Airport, Yakima, WA, to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0606; Airspace Docket No. 19–ANM–100''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending the Class D airspace at Yakima Air Terminal/McAllister Field Airport. To properly contain IFR departures flying toward or over rising terrain, two extensions should be added to the airspace area. One extension would be east of the airport and the other extension would be west of the airport. The airspace area would be described as follows: That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of the airport, and within 2.6 miles each side of the 103° bearing from the airport, extending from the 4.2-mile radius to 8.8 miles east of the airport, and within 2.3 miles each side of the 289° bearing from the airport, extending from the 4.2-mile radius to 6.9 miles west of Yakima Air Terminal/McAllister Field Airport. This surface 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 proposes to amend Class E airspace, designated as a surface area, to be coincident with the new Class D dimensions. The airspace area would be described as follows: That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 2.6 miles each side of the 103° bearing from the airport, extending from the 4.2-mile radius to 8.8 miles east of the airport, and within 2.3 miles each side of the 289° bearing from the airport, extending from the 4.2-mile radius to 6.9 miles west of Yakima Air Terminal/McAllister Field Airport. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, this action proposes to remove Class E airspace, designated as an extension to a Class D or Class E surface area. This area is not required based on the instrument procedures published for the airport.

Further, this action proposes to amend Class E airspace extending upward from 700 feet above the surface. To properly size the area, it should be significantly reduced. This area is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, and within 3.4 miles each side of the 107° bearing from the airport, extending from the 4.2-mile radius to 11.3 miles east of the airport, and within 3.6 miles each side of the 290° bearing from the airport, extending from the 4.2-mile radius to 11.6 miles west of Yakima Air Terminal/McAllister Field Airport.

This action also proposes to remove Class E airspace extending upward from 1,200 feet above the surface. This area is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. This area is wholly contained within Class E en route airspace which overlies the entire Yakima area, duplication is not necessary.

The action proposes to remove the Yakima VOR and all references to the VOR from the Class E5 legal description. The navigational aid is not needed to define the airspace. Removal of the navigational aid allows the airspace to be defined from a single reference point, which simplifies how the airspace is described.

Lastly, this action proposes administrative corrections to the airspaces legal descriptions. The airport name on the second line of the text header does not match the FAA database and should be updated to ''Yakima Air Terminal/McAllister Field Airport''. The airport's geographic coordinates do not match the FAA database and should be updated to ''lat. 46°34′05″ N, long. 120°32′39″ W'' The last two sentences in the Class D and Class E surface area legal descriptions contain incorrect verbiage, the sentences should be updated to ''This Class D (or E, as appropriate) 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.''

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Yakima, WA [Amended]

Yakima Air Terminal/McAllister Field Airport, WA
(Lat. 46°34′05″ N, long. 120°32′39″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of the airport, and within 2.6 miles each side of the 103° bearing from the airport, extending from the 4.2-mile radius to 8.8 miles east of the airport, and within 2.3 miles each side of the 289° bearing from the airport, extending from the 4.2-mile radius to 6.9 miles west of Yakima Air Terminal/McAllister Field Airport. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ANM WA E2 Yakima, WA [Amended]

Yakima Air Terminal/McAllister Field Airport, WA
(Lat. 46°34′05″ N, long. 120°32′39″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 2.6 miles each side of the 103° bearing from the airport, extending from the 4.2-mile radius to 8.8 miles east of the airport, and within 2.3 miles each side of the 289° bearing from the airport, extending from the 4.2-mile radius to 6.9 miles west of Yakima Air Terminal/McAllister Field Airport. This Class E airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM WA E4 Yakima, WA [Revoked]

Yakima Air Terminal/McAllister Field Airport
(Lat. 46°34′05.4″ N, long. 120°32′39″ W)

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ANM WA E5 Yakima, WA [Amended]

Yakima Air Terminal/McAllister Field Airport
(Lat. 46°34′05″ N, long. 120°32′39″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, and within 3.4 miles each side of the 107° bearing from the airport, extending from the 4.2-mile radius to 11.3 miles east of the airport, and within 3.6 miles each side of the 290° bearing from the airport, extending from the 4.2-mile radius to 11.6 miles west of Yakima Air Terminal/McAllister Field Airport.

Issued in Seattle, Washington, on June 29, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–14346 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0605; Airspace Docket No. 19–ANM–34]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Hermiston, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace, extending upward from 700 feet above the surface, at Hermiston Municipal Airport. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before August 20, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0605; Airspace Docket No. 19–ANM–34, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace at Hermiston Municipal Airport, Hermiston, OR, to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0605; Airspace Docket No. 19–ANM–34''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace, extending upward from 700 feet above the surface, at Hermiston Municipal Airport. This area is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area would be described as follows: That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hermiston Municipal Airport.

Class E5 airspace designations are published in paragraph 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 designations listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM OR E5 Hermiston, OR [New]

Hermiston Municipal Airport, OR
(Lat. 45°49′42″ N, long. 119°15′33″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hermiston Municipal Airport.

Issued in Seattle, Washington, on June 29, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–14347 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 200617–0162]

RIN 0648–BI01

Monterey Bay National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; withdrawal of notice of intent to prepare an environmental impact statement; notice of availability of a draft management plan and draft environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing revised regulations, a revised management plan, and a draft environmental assessment for Monterey Bay National Marine Sanctuary (MBNMS or sanctuary). The proposed rule includes four modifications to existing MBNMS regulations, the modification of an appendix to the MBNMS regulations that describes sanctuary zone boundaries, and the addition of one new definition to the MBNMS regulations. A draft environmental assessment (EA) has been prepared for this proposed action. NOAA is soliciting public comments on the proposed rule, draft revised management plan, and draft EA.

DATES: NOAA will consider all comments received by September 4, 2020. NOAA will hold a virtual public meeting at the following date and time: Thursday, July 23, 2020, 6:00 p.m.–8:00 p.m. PT. In addition, NOAA will accept public comments on this proposed rule during the Monterey Bay National Marine Sanctuary virtual advisory council meeting on Friday, August 21, 2020 at 12:30 p.m. PT and at the Greater Farallones National Marine Sanctuary virtual advisory council meeting on Monday, August 24, 2020 at 11:00 a.m. PT.

ADDRESSES: You may submit comments on the proposed rule, the draft management plan, and/or the draft EA, identified by NOAA–NOS–2020–0094, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2020-0094,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Written comments may also be mailed to: Paul Michel, Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Suite 455A, Monterey, California 93940.

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

To participate in the virtual public meetings, online registration is requested in advance via the following links. When joining the session, if possible, select the option to use your computer's audio. If you cannot use computer audio it is possible to select the phone audio option upon joining the event. In GoToWebinar, The phone number and audio PIN will show up in the audio pane when you select phone audio.

(1) Virtual Public Hearing—Thursday, July 23, 2020, 6:00 p.m.–8:00 p.m. PT
Registration: https://attendee.gotowebinar.com/register/3989087231137605 23.
(2) Monterey Bay National Marine Sanctuary virtual advisory council meeting—Friday, August 21, 2020 at 12:30 p.m. PT
Registration: https://attendee.gotowebinar.com/register/3876637613490216459.
(3) Greater Farallones National Marine Sanctuary virtual advisory council meeting—Monday, August 24, 2020 at 11:00 a.m. PT
This meeting will be held on Google Meet. Link: *https://meet.google.com/tyr-enfp-cet.* To participate by phone only, dial: 1 (641) 821–2321, PIN: 135 736 466#

If you would like to comment during the virtual public meetings, please sign up in advance by selecting ''yes'' during the online registration. The order of comments will be based on your date and time of registration. If you will be participating by phone, send an email to *Dawn.Hayes@noaa.gov* to add your name to the speaker list. Please note, no public comments will be audio or video recorded. If you would like to provide public comment anonymously during the virtual public hearing, email your comment to *Dawn.Hayes@noaa.gov* or type your comment into the question box and ask for it to be read anonymously during the assigned time.

For more details on the virtual public meetings, visit *https://montereybay.noaa.gov/.*

Copies of the proposed rule, draft management plan and draft EA can be downloaded or viewed on the internet at *www.regulations.gov* (search for docket #NOAA–NOS–2020–0094) or at *https://montereybay.noaa.gov/intro/mp/2015review/welcome.html.*

Important Note for All Participants: No portion of the virtual public meetings, including any public comments, will be audio or video recorded. All public comments received, including any associated names, will be captured and included in the written meeting minutes, will be public, and will be maintained by NOAA as part of its administrative record. All public comments received will be publicly available at *www.regulations.gov* under docket #NOAA–NOS–2020–0094.

FOR FURTHER INFORMATION CONTACT: Paul Michel, Monterey Bay National Marine Sanctuary Superintendent, at *Paul.Michel@noaa.gov* or 831–647–4201.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

NOAA's Office of National Marine Sanctuaries (ONMS) serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 14 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments.

B. Monterey Bay National Marine Sanctuary

NOAA established MBNMS in 1992 for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area, including the submarine Monterey Canyon and, subsequently, Davidson Seamount. MBNMS is located offshore of California's central coast, encompassing a shoreline length of approximately 276 statute miles (240 nmi) between Rocky Point (Marin County) and Cambria (San Luis Obispo County). With the inclusion of the Davidson Seamount Management Zone (DSMZ) in 2008, the sanctuary spans approximately 6,094 square statute miles (4,602 square nautical miles) of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 statute miles (26 nmi) from shore. Supporting some of the world's most diverse and productive marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, sea turtles and plants.

C. Need for Action

The primary purpose of the proposed action is to fulfill section 304(e) of the National Marine Sanctuaries Act (16

U.S.C. 1431 *et seq.*) (NMSA). Section 304(e), 16 U.S.C 1434(e), requires periodic review of sanctuary management plans to ensure that site-specific management techniques and strategies: (1) Effectively address changing environmental conditions and threats to protected resources and qualities of the sanctuaries; and (2) fulfill the purposes and policies of the NMSA. Accordingly, ONMS conducted a review of the management plan and regulations for MBNMS that has resulted in a proposed new management plan for the sanctuary, and proposed changes to sanctuary regulations.

The management plan review process includes, among other things, an assessment of existing sanctuary regulations to determine if any regulatory changes are needed to support management plan objectives. NOAA is proposing to make four modifications to existing MBNMS regulations, to modify Appendix E to the MBNMS regulations, and to add one new definition to the MBNMS regulations. These changes will support more efficient and effective program management and enhanced stewardship of the sanctuary's natural resources. The need for each individual regulatory action is described in greater detail in section II (Summary of the Proposed Changes to MBNMS Regulations) below.

In accordance with the National Environmental Policy Act (NEPA), on August 27, 2015, NOAA published a notice of intent to prepare an Environmental Impact Statement (EIS) in order to identify and analyze potential impacts associated with a review of the 2008 management plan for MBNMS (80 FR 51973). Preliminary analysis of this revised management plan and the proposed regulatory changes indicates no significant impacts are expected. Accordingly, NOAA determined the preparation of an EIS would not be necessary, and instead prepared an EA, which is available for public review. NOAA is therefore withdrawing the portion of the **Federal Register** Notice published on August 27, 2015, that provided notice of intent to prepare an EIS.

NOAA has conducted an analysis of the revised management plan and the regulatory changes in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500–1508). As required by the Council on Environmental Quality, NEPA, and NEPA's implementing regulations, all reasonable alternatives to the proposed Federal action that meet the purpose and need for the action are considered in the EA. These alternatives include no action and a range of reasonable alternatives for managing MBNMS according to the objectives of the National Marine Sanctuaries Act.

D. Process

The process for this action is composed of four major stages: (1) Information collection and characterization via development and issuance of a sanctuary condition report that describes the status and trends of driving forces and pressures on the ecosystem and natural and archaeological resource conditions in MBNMS, and public scoping to further identify issues associated with revising the management plan (scoping was completed on October 30, 2015); (2) preparation and release of a proposed rule, draft revised management plan, and draft EA in accordance with NEPA; (3) public review and comment on the proposed rule, draft management plan, and draft EA; and (4) preparation and release of a final management plan and final EA, and any final amendments to the MBNMS regulations, if appropriate. With the publication of this proposed rule, NOAA completes the second phase of this process and enters the third phase.

Together with this proposed rule, NOAA is releasing the draft management plan and draft EA. The draft management plan describes proposed strategies and action plans for future conservation and management of the sanctuary, and the draft EA contains more detailed information on the considerations of this proposal, including an assessment of alternatives, analysis of potential environmental impacts, and references. The draft management plan and draft EA can be found through the website listed in the **ADDRESSES** section above.

II. Summary of the Proposed Changes to MBNMS Regulations

A. Beneficial Use of Clean and Suitable Dredged Material

NOAA proposes to add a new definition for ''beneficial use of dredged material'' at 15 CFR 922.131 and to amend 15 CFR 922.132(f) to clarify that *beneficial use* of clean and suitable dredged material for habitat restoration purposes within MBNMS is not *disposal* of dredged material as described at 15 CFR 922.132(a)(2)(i)(F) and 15 CFR 922.132(f).

This action would amend 15 CFR 922.131 by adding a definition for ''beneficial use of dredged material.'' The new definition would clarify that the existing prohibition against permitting the disposal of dredged material in MBNMS does not apply to habitat restoration projects using clean dredged material, because such beneficial use of dredged material would not be considered ''disposal.'' In addition, this definition would apply only to dredged material removed from any of the four public harbors immediately adjacent to the sanctuary (Pillar Point, Santa Cruz, Moss Landing, or Monterey). This action would also amend 15 CFR 922.132(f) to clarify that the disposal of dredged material does not include the beneficial use of dredged material. Together, these regulatory changes would clarify that the language in the terms of designation and MBNMS regulations that prohibit permitting the disposal of dredged material within the sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation (Article V of the MBNMS Terms of Designation, 73 FR 70477, 70494 (Nov. 20, 2008): 15 CFR 922.132(f)), do not preclude NOAA from authorizing the beneficial use of clean dredged material within sanctuary boundaries when suitable for habitat restoration purposes.

In the current MBNMS Management Plan (November 2008 [1]), NOAA stated, ''If investigations indicate that employment of additional beach nourishment sites using clean dredged harbor material would be possible and appropriate, MBNMS may examine whether revision of MBNMS regulations and Designation Document may be warranted; or if a beneficial program might occur via MBNMS permit or authorization in concert with other agencies.'' (Management Plan at 96.) For the reasons explained below, NOAA anticipates that employment of additional habitat restoration sites using clean dredged material would be possible and appropriate, and that beneficial use projects may occur through MBNMS permits or authorizations.

First, there are several examples in which NOAA has accommodated requests for beneficial use of sediment for beach nourishment in locations adjacent to the sanctuary where the bathymetry and topography allow space for sediment placement above the MHW line. Beach replenishment projects currently occur at Del Monte beach in Monterey and Twin Lakes beach in Santa Cruz. The City of Monterey has an MBNMS authorization for the annual placement of clean dredged material from Monterey Harbor at two onshore

[1] Final Management Plan, *available at https://montereybay.noaa.gov/intro/mp/welcome.html.*

locations (approved by EPA) above MHW adjacent to Del Monte Beach. The authorization specifically allows for the decant water from the slurry material to return into the waters of MBNMS. Clean material deposited at these two locations is eventually moved via natural wave action to points within the lower tidal range (*i.e.,* below MHW and thus into MBNMS) and along the beach laterally, effectively maintaining or creating improved coastal habitat and recreational resources within the sanctuary. Both habitat restoration projects at Santa Cruz and Monterey have proven successful in maintaining the integrity of high public use beaches that would otherwise suffer from accelerated erosion due to human interruptions of natural sediment transport patterns in the area. Placement of clean dredged material on these beaches has helped stabilize beach profiles at these sites.

NOAA anticipates that the employment of additional habitat restoration sites—namely, the placement of clean dredged material *below* the MHW line (in the sanctuary) for habitat restoration purposes—would be possible and appropriate. One example would be the potential placement of clean sand (dredged from Pillar Point Harbor) onto an eroded beach (Surfer's Beach) immediately adjacent to the harbor along the sanctuary's shoreward boundary. Due to the interruption of natural sand transport patterns by shoreline infrastructure (*e.g.,* the harbor breakwaters), the beach has eroded to such a degree that ocean waters now extend to the toe of the riprap armoring that safeguards Highway 1 (located along the shoreline from the base of the east Pillar Point Harbor breakwater to the ocean terminus of Coronado Street). Surfer's Beach is now submerged at MHW, and only a fraction of the former beach appears at the lowest tide levels.

Absent clarification in past and current MBNMS regulations that *disposal of dredged material* is a fundamentally different activity than *beneficial use of dredged material for shoreline restoration,* NOAA has not authorized discharges of clean dredged material directly into the sanctuary, pursuant to managerial discretionary authority under 15 CFR 922.48, 922.49, and 922.133. Though NOAA has previously provided information to Pillar Point Harbor about how to implement beach nourishment projects similar to those described above for Santa Cruz and Monterey Harbors, no such project has been pursued by the harbor district. To date, only periodic shoreline armoring has been installed to arrest erosion. But armoring is neither a sustainable long-term solution nor a beach restoration activity. Longer-term, softscape alternatives to armoring are desired to protect the beach and restore beach habitat.

The beneficial use of clean dredged material for habitat restoration purposes would provide an additional effective and sustainable option to address sites in MBNMS where shoreline habitat and resources are increasingly impacted by erosion due to shoreline structures, coastal armoring, sea level rise, and documented, increased storm activity.

The beneficial use of dredged material at sites within the sanctuary, such as Surfer's Beach, would require: A sanctuary permit or authorization; additional rigorous testing and screening of the material to ensure that the material is both clean and suitable for habitat restoration; additional review of the proposed project under NEPA and other applicable statutes; and permitting, as applicable, by other federal, state and local regulatory authorities with jurisdiction over the proposed beneficial use project. Furthermore, a proposed project involving use of dredged material would only be eligible for approval by NOAA if the project demonstrated a sanctuary habitat restoration purpose under the proposed new definition of *beneficial use of dredged material* at 15 CFR 922.131, and if the project otherwise met the permit or authorization procedures and review criteria described in 15 CFR 922.48, 922.49, and 922.133. The permit and environmental reviews of the proposed beneficial use project would continue to prevent the disposal of unsuitable and unclean material into the sanctuary that could adversely affect sanctuary resources.

Clean dredged materials from harbors immediately adjacent to the sanctuary would be considered an eligible source of material for restoring (or partially restoring) habitats degraded by interruption of local sediment transport cells by harbor infrastructure (*e.g.,* jetties, seawalls and piers). Since dredged materials from distant harbors would not be indigenous to local sediment transport cells, NOAA would not approve the use of such materials for habitat restoration purposes. The limitations on use of dredged material would not restrict or limit NOAA's existing authority to permit the use of non-dredged materials for beneficial habitat restoration projects within MBNMS.

This proposed action, which would clarify the ability of NOAA to authorize beneficial use of clean and suitable dredged material originating from any of the four adjacent public harbors for habitat restoration purposes within the sanctuary, would be consistent with the regulatory framework for dredge, fill, and disposal projects as outlined by the Clean Water Act (33 U.S.C. 1251 *et seq.*), the Ocean Dumping Act (33 U.S.C. 1401 *et seq.*), and applicable U.S. Army Corps of Engineers and U.S. Environmental Protection Agency regulations. The existing regulatory framework differentiates between the disposal (*i.e.,* discarding) of dredged material and its beneficial use (*i.e.,* purposeful application). For example, the ''disposal into ocean waters'' of dredged material is regulated under provisions of the Ocean Dumping Act, whereas discharge of dredged material for fill, including beach restoration, is regulated under Section 404 of the Clean Water Act. 33 CFR 336.0. Moreover, any proposed beneficial use of dredged material project in MBNMS would be subject to applicable permit and regulatory reviews of other federal, state and local authorities with jurisdiction over the proposed project.

Finally, pursuing this proposed action would also be consistent with current state and federal coastal management practices that favor softscape approaches to restoring and protecting beaches and shorelines over hardscape methods (*e.g.,* riprap, groins and seawalls). The USACE Engineering and Design Manual on Dredging and Dredged Material (July 2015) [2] states, ''Interest in using dredged material as a manageable, beneficial resource, as an alternative to conventional placement practices, has increased.'' The USACE/USEPA Beneficial Use Planning Manual [3] states, ''the promotion of beneficial uses continues to require a shift from the common perspective of dredged material as a waste product to one in which this material is viewed as a valuable resource that can provide multiple benefits to society.'' The planning manual further notes that in general, ''clean, coarse-grained sediments (sands) are suitable for a wide variety of beneficial uses.'' Finally, the USACE/USEPA Manual on The Role of the Federal Standard in the Beneficial Reuse of Dredged Material [4] indicates,

[2] EM 1110–2–5025 at page 5–1 (July 31, 2015), available at *http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-5025.pdf.*

[3] Identifying, Planning, and Financing Beneficial Use Projects Using Dredged Material at 9 (October 2007, available at *https://www.epa.gov/sites/production/files/2015-08/documents/identifying_planning_and_financing_beneficial_use_projects.pdf.*

[4] EPA842–B–07–002 (October 2007) at 3, available at *https://www.epa.gov/sites/production/*

''a beneficial use option may be selected for a project even if it is not the Federal Standard for that project.''

For all of the above reasons, NOAA anticipates that the placement of clean locally-dredged material in the sanctuary for habitat restoration purposes would be appropriate and consistent with the existing regulatory framework for dredge, fill, and disposal projects. Accordingly, NOAA proposes this regulatory change to clarify the ability of NOAA to authorize the beneficial use of clean and suitable dredged material for habitat restoration purposes within MBNMS, because such proposed use would not be ''disposal of dredged material'' within the meaning of the MBNMS terms of designation and regulations.

B. Modification of Seasonal/Conditional Requirement for Motorized Personal Watercraft Access to MPWC Zone 5 (Mavericks)

With this proposed rule, NOAA would amend MBNMS regulations to reduce the sea state condition required for motorized personal watercraft (MPWC) access to the Mavericks seasonal-conditional MPWC zone at Half Moon Bay. NOAA would change the current High Surf Warning (HSW) requirement to a less stringent High Surf Advisory (HSA) requirement. The seasonal-conditional MPWC zone was created in 2009 primarily to allow MPWC to support big-wave surfing at Mavericks during winter months when wildlife activity is significantly reduced in this area. Currently, MPWC can freely access the Mavericks seasonal-conditional zone only when HSW conditions (predicted breaking waves at the shoreline of 20 feet or greater) are in effect, as announced by the National Weather Service for San Mateo County during the months of December, January, and February. However, due to unique bathymetric features at Mavericks, waves can exceed 20 feet well before HSW conditions are announced county-wide. Allowing MPWC access to Mavericks during HSA conditions (predicted breaking waves at the shoreline of 15 feet or greater) would allow MPWC presence at the break 3–5 more days per year to provide safety assistance to surfers operating in a highly energized surf zone.

Surfers have developed new techniques for paddling onto larger and larger waves, so paddle surfers now routinely surf extremely large waves at Mavericks during winter HSA conditions when MPWC access to the zone is currently prohibited. In February 2017, an MBNMS Advisory Council subcommittee recommended lowering the current conditional threshold for MPWC access to Mavericks from a HSW to a HSA during the months of December, January, and February to allow expanded use of MPWC for safety assistance to surfers recreating in extreme sea conditions. The MBNMS Advisory Council voted unanimously to support the subcommittee recommendation on February 17, 2017. NOAA agrees with the Advisory Council recommendations and believes it would benefit public safety, while posing no significant added threat of disturbance to protected wildlife in the area due to minimal wildlife activity there during winter extreme high-surf events.

C. Exempted Department of Defense Activities Within Davidson Seamount Management Zone

With this proposed rule, NOAA would amend MBNMS regulations by modifying 15 CFR 922.132(c)(1) to correct an error. The current regulatory text at 15 CFR 922.132(c)(1) states, in part, that a list of exempted Department of Defense (DOD) activities at the Davidson Seamount Management Zone (DSMZ) is published in the 2008 MBNMS Management Plan Final Environmental Impact Statement (FEIS). However, due to an administrative error, the list of exempted activities (identified in a December 18, 2006, letter to NOAA from the U.S. Air Force 30th Space Wing and subsequently affirmed by NOAA), was never included in the 2008 FEIS. The MBNMS Superintendent confirmed in a January 5, 2009, letter to the U.S. Air Force 30th Space Wing that NOAA acknowledged the list of exempted activities as valid from the effective date of inclusion of the DSMZ within MBNMS (March 9, 2009) and that NOAA would correct the administrative record and regulations to properly document the exempted DOD activities within the DSMZ. Accordingly, NOAA proposes to modify 15 CFR 922.132(c)(1) by replacing ''2008 Final Environmental Impact Statement'' with ''2020 Final Environmental Assessment for the MBNMS Management Plan Review.''

An appendix in the 2020 draft EA serves as the published list of exempted DOD activities within the DSMZ referenced and confirmed by the January 5, 2009, letter to the U.S. Air Force 30th Space Wing from the MBNMS Superintendent. NOAA herein affirms that the exemptions requested by the Air Force in 2006 and confirmed by NOAA in 2009 have been valid since the effective date of the DSMZ's addition to MBNMS (March 9, 2009).

D. Reconfiguration of Year-Round MPWC Zone Boundaries

With this proposed rule, NOAA would amend MBNMS regulations to modify boundaries of four year-round MPWC riding zones in a manner that maintains NOAA's original intent to provide recreational opportunities for MPWC within the sanctuary, while safeguarding sensitive sanctuary resources and habitats from unique threats of disturbance by these watercraft.

Specifically, the proposed modifications would reduce the number of deployed boundary buoys and associated navigational hazards, aesthetic impacts, and mooring failures that create public safety issues, marine debris, seafloor impacts, and excessive maintenance effort. The zones were established in 1992 to provide recreational use areas for MPWC while safeguarding marine wildlife and habitats from the unique capability of MPWC to sharply maneuver at high speeds in the ocean environment and freely access remote and sensitive marine habitat areas, unlike any other type of motorized vessel (57 FR 43310).

The four MPWC riding zones were established near each of the four harbors in the sanctuary where MPWC operators typically launch. The boundaries were delineated without any consideration of practical matters such as buoy station integrity or sustainability. For example, buoys deployed off rocky points have experienced repeated mooring failures due to heavy wave diffraction/reflection, abrasive and mobile rocky substrate affecting mooring tackle, and lack of soft sediments for secure anchor set. Buoys deployed in deep water have repeatedly failed due to suspected interactions with vessels and commercial fishing gear. Mooring failures cause deposition of chain and anchors on the seafloor and pose a hazard to mariners and the public from drifting buoys. Even when buoys hold station, they could present navigation obstacles. Reducing the number of boundary buoys by utilizing more existing marks and geographical features (*e.g.,* United States Coast Guard navigation buoys and landmarks) can markedly reduce navigational hazards and mooring failures that create public safety issues, marine debris, seafloor impacts, and excessive maintenance effort.

Anecdotal observations of MPWC zone use over time by harbor officials, marine enforcement officers, ocean

files/2015-08/documents/role_of_the_federal_standard_in_the_beneficial_use_of_dredged_material.pdf.

users, sanctuary staff, and volunteers indicate that the zones are rarely used by MPWC operators. Therefore, reconfiguring the zones will have minimal impact to a small number of users.

Reconfiguring zones to be smaller and closer to shore would provide improved MPWC access and operator safety, and would also aid zone monitoring, enforcement, and planned systematic surveys of zone use described in the new MBNMS management plan. Relocation of marker buoys to shallower mooring depths would improve station-keeping, inspection, and maintenance of boundary buoy moorings. Reconfiguration of zones would achieve a 40% reduction in the overall number of deployed MPWC boundary buoys from 15 to 9. It would eliminate six existing buoy mooring stations entirely; replace four existing mooring stations with four new shallower mooring stations; and leave five previous mooring stations unchanged. This would result in the permanent removal of anchors and chain from the seafloor at 10 sites and installation of anchors and chain at four new sites—a 40% net reduction in the number of MPWC boundary buoy mooring sites. As previously stated, the four new mooring stations would be in shallower water and deliberately sited in mud/sand substrate to avoid rocky reef habitat—a purposeful reduction of negative environmental impacts. Zone reconfigurations would result in a 59% reduction of total areal coverage of the four year-round zones, resulting in an equal reduction of surface area subject to direct MPWC interactions with specially protected marine wildlife, such as migratory birds, whales, dolphins, porpoise, turtles, sea lions, and sea otters.

The reconfigured MPWC zones would still provide considerable area adjacent to all four harbors for general use of MPWC, fulfilling the original goal for the zones when established in 1992. The four reconfigured year-round access zones would offer 0.96 square miles (614 acres) of riding area south of Pillar Point Harbor, 2.63 square miles (1,683 acres) off Santa Cruz Harbor, 2.29 square miles (1,466 acres) off Moss Landing Harbor, and 3.10 square miles (1,984 acres) off Monterey Harbor. Maps depicting proposed MPWC zone boundary changes can be found in the draft EA.

The proposed zone reconfigurations would shorten the length of the MPWC access corridors to the Santa Cruz and Monterey zones by 66% and 23% respectively, allowing MPWC operators easier and quicker access to both riding areas. The shorter access corridors would reduce the period of restricted maneuverability for transiting MPWC and thus lower the potential for negative interaction with marine traffic and wildlife as MPWC approach/depart harbor entrances. Planned rotation of the access corridor at Monterey away from the predominant marine traffic pattern to/from the harbor will also reduce the potential for negative interaction with other vessels there. The reconfigured zone boundaries at Santa Cruz would shift that zone closer to shore, improving safety for MPWC operators should they need emergency assistance. A shortened access corridor and zone shift closer to shore at Santa Cruz have been requested by MPWC users in the past.

Each existing MPWC zone would remain at its current general geographical location, with the following changes:

1. Modify the year-round Half Moon Bay MPWC zone by using existing Coast Guard red bell buoy ''2'' and existing Coast Guard green gong buoy ''1S'' as boundary points instead of current MBNMS buoys PP2 and PP3; this would enable permanent removal of two buoys from the ocean. By re-shaping the current zone from a parallelogram to a concave pentagon, the zone's general position south of Pillar Point Harbor would be maintained, the zone area would increase by 9% (from .87 sq mi to .96 sq mi), and two buoys would be permanently removed from the waterway, reducing navigational obstructions, risk of mooring failure, and buoy and tackle loss.

2. Modify the year-round Santa Cruz MPWC zone by using existing Coast Guard red/white whistle buoy ''SC'' as a boundary point, instead of current MBNMS buoy SC7; this would enable permanent removal of one MBNMS buoy from this zone. By re-shaping the current zone from a rectangle to a parallelogram, the zone position would rotate 45° clockwise to the NE, and the zone area would be reduced by 59% (from 6.36 sq mi to 2.63 sq mi). One MBNMS buoy would be permanently removed from the waterway, one buoy would remain on station, and two buoys would be redeployed to shallower depths. The redistributed buoys would be positioned within better visible range of one another, in softer seafloor sediments, and away from rocky points, thus reducing navigational obstructions, risk of mooring failure, and buoy and tackle loss.

The reconfigured zone boundaries at Santa Cruz would shift the zone closer to shore, providing MPWC operators easier and quicker access to the riding area and improved safety, should an MPWC operator need emergency assistance. The transit route to the zone from the entrance of the Santa Cruz Small Craft Harbor would be reduced from 1.35 miles to 0.5 miles, providing a 66% shorter route and transit time for MPWC operators. As noted above, these specific zone modifications have been requested by MPWC users in the past. Since the prescribed 100-yard wide MPWC transit corridor for accessing the zone from the small craft harbor would be shorter, MPWC would be in the transit corridor for less time, resulting in a shorter period of restricted maneuverability and lowered potential for negative interaction with marine traffic and wildlife when approaching/departing the harbor entrance.

3. Modify the year-round Moss Landing MPWC zone by eliminating current MBNMS buoys ML4 and ML5; this would enable permanent removal of two buoys from the ocean. By re-shaping the current zone from an irregular hexagon to a trapezoid, the eastern portion of the zone would remain in its current position, the zone area would be reduced by 72% (from 8.10 sq mi to 2.29 sq mi), and two MBNMS buoys would be permanently removed from the waterway, reducing navigational obstructions, risk of deep-water mooring failures, and buoy and tackle loss.

4. Modify the year-round Monterey MPWC zone by using existing Coast Guard red bell buoy ''4'' as a boundary point instead of MBNMS buoy MY3; this would enable permanent removal of one MBNMS buoy from this zone. By re-shaping the current zone from a trapezoid to a parallelogram, the zone position would rotate 90° clockwise to the NE, and the zone area would be reduced by 51% (from 6.36 sq mi to 3.10 sq mi). One MBNMS buoy would be permanently removed from the waterway, one buoy would remain on station, and two buoys would be redeployed to shallower depths. The redistributed buoys would be positioned within better visible range of one another, in softer seafloor sediments, and away from rocky points and popular commercial squid fishing grounds, thus reducing navigational obstructions, risk of deep-water mooring failure, risk of disruption to commercial fisheries, and buoy and tackle loss.

The length of the prescribed zone transit route from Monterey Harbor would decrease from 1.00 mile to 0.77 mile, reducing the length of the transit corridor by 23% and facilitating more immediate access to and from the harbor by MPWC operators and reduced risk of wildlife disturbance. In addition, the

transit corridor would be rotated 52 degrees further east from the harbor entrance, away from the predominant marine traffic pattern to/from the harbor.

In summary, revising locations of MPWC zone boundaries represents essential adaptive management practice as envisioned in the National Marine Sanctuaries Act and the required management plan review process. The adjustments maintain 9 square miles (5,760 acres) of the sanctuary for operating MPWC off all four harbors in areas with decreased likelihood of wildlife disturbance, which were goals for the original creation of the zones in 1992. Observations by NOAA staff, volunteers, and partner agencies indicate these areas are not highly used. Nevertheless, coupled with the increased operating days at the Mavericks MPWC zone proposed in this draft rule, NOAA's original intent to facilitate MPWC recreational opportunities will be maintained.

The reconfigured boundaries will also improve access to the MPWC zones by shifting them closer to shore and harbor launch points. Reducing the number of necessary MPWC boundary buoys also reduces impacts to benthic habitats, risk of wildlife entanglements, and risk of maritime collisions. Relocating buoys will make them more resistant to storm damage and buoy anchor/chain failure, thereby reducing risks to mariners from drifting buoys and marine debris from unnecessary deposition of chain and anchors on the seafloor. Utilizing mooring locations over soft seafloor sediments can reduce scarring and damage to hard-substrate benthic habitat and organisms from mooring chain. Maps depicting the proposed MPWC zone boundary changes can be found in the draft EA.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment (EA) to evaluate the potential impacts on the human environment of this proposed rulemaking (the preferred regulatory action analyzed in the draft EA), as well as several alternative actions. No significant impacts to resources and the human environment are expected to result from this proposed action, and accordingly, under NEPA (42 U.S.C. 4321 *et seq.*), a draft EA is the appropriate document to analyze the potential impacts of this action. Following the close of the public comment period and the satisfaction of consultation requirements under applicable natural and cultural resource statutes (described below), NOAA will finalize its NEPA analysis and findings and prepare a final NEPA document. Copies of the draft EA are available at the address and website listed in the **ADDRESSES** section of this proposed rule.

B. Executive Order 12866: Regulatory Planning and Review

This rule has been determined to be not significant for purposes of Executive Order 12866.

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

This proposed rule is not an Executive Order 13771 regulatory action because it is not a significant regulatory action under Executive Order 12866.

D. Executive Order 13132: Federalism

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.,* requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The analysis below seeks to fulfill the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The Small Business Administration has established thresholds on the designation of businesses as ''small entities.'' A finfish fishing business is considered a small business if it has annual receipts of less than $20.5 million. Scenic and Sightseeing and Recreational industries are considered small businesses if they have annual receipts not in excess of $7.5 million. According to these limits, each of the businesses potentially affected by this proposed rule would most likely be small businesses. However, as further discussed below, these regulations will not have a significant economic impact on the affected small entities, and the Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. Thus, NOAA is not required to prepare and has not prepared an initial regulatory flexibility analysis.

Methodology. The analysis here is based on limited quantitative information on how much each activity occurs within MBNMS. Consequently, the result is more qualitative than quantitative.

Scales Used for Assessing Impacts. For assessing levels of impacts within an alternative, NOAA used three levels: ''negligible,'' ''moderate'' and ''high,'' in addition to ''no impacts.'' For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change anticipated following the proposed regulatory change). Moderate impacts would be more than 1% but less than or equal to 10% change, and high impacts would be more than 10% change. Negligible and moderate impacts identified in this assessment would not constitute significant economic impacts. NOAA analyzed the impacts on small entities of the four regulatory changes proposed as part of the management plan review process for MBNMS. Small entity user groups include commercial fishing operation, recreation-tourism related businesses, and land use and development businesses.

Proposed Action

(1) Add a new definition for the phrase ''beneficial use of dredged material'' at 15 CFR 922.131, and clarify that the existing prohibition on the disposal of dredged material in MBNMS does not apply to habitat restoration projects using clean dredged material.

Clarifying the authorized uses of clean dredged material from local harbors for habitat restoration in the sanctuary may create additional opportunities for entities such as state and local agencies to propose beneficial use of such dredged materials, which, in turn, may trickle down to opportunities for businesses. The costs would be negligible to non-existent because the regulatory clarification of authorized uses of clean dredged material may facilitate appropriate entities to propose these authorized uses. There may be negligible to moderate benefits to shoreline restoration businesses and negligible to moderate benefits to businesses that clean dredge material due to the additional business opportunities facilitated by this regulatory clarification. There may be negligible to moderate benefits to shoreline recreation businesses such as surf shops, since at least the possible use of clean dredged material at Pillar Point could help improve a prominent surf spot and increase general beach use.

(2) Allow MPWC access to MPWC Zone 5 (Mavericks surf break) during High Surf Advisory conditions rather than High Surf Warning conditions.

With this proposed rule, NOAA would amend MBNMS regulations to increase access to an MPWC zone by reducing the sea state condition required for motorized personal watercraft (MPWC) access to the Mavericks seasonal-condition zone (Zone 5). NOAA would change the current High Surf Warning (HSW) requirement to a less stringent High Surf Advisory (HSA) requirement. Allowing MPWC access to Mavericks during HSA conditions (predicted breaking waves at the shoreline of 15 feet or greater) would allow MPWC presence at the break 3–5 more days per year to provide safety assistance to surfers operating in a highly energized surf zone.

Additional days of MPWC access may result in increased recreational opportunities. This means that businesses that rent MPWC or offer MPWC tours may have additional days when they could rent equipment or offer tours. However, the sea state conditions tend to favor experienced MPWC users (who likely own their MPWC) rather than casual, recreational MPWC users who would be more likely to rent or participate in a tour with an operator. The costs are expected to be non-existent, and the benefits would be negligible.

(3) Rectify an oversight in the 2009 MBNMS rulemaking regarding Exempted Department of Defense activities in the Davidson Seamount Management Zone (DSMZ).

NOAA's proposal to modify 15 CFR 922.132(c)(1) by replacing ''2008 Final Environmental Impact Statement'' with ''2020 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review'' would publish the list of exempted DOD activities in the Davidson Seamount Management Zone that were originally intended for inclusion in the 2008 Final Environmental Impact Statement. There is no expected impact as a result of addressing the oversight from 2008. The changes are superficial in nature and do not result in changes to activities that are or are not prohibited.

(4) Reconfigure motorized personal watercraft (MPWC) zone boundaries.

The regulations allowing the use of MPWC in the zones would not change, but the shape and size of the zones would be altered.

The table below shows the size of the current and reconfigured year-round zones where MPWC are allowed. One zone would increase in size; three zones would decrease in size. The overall size of the year-round zones would decrease by 59%. The size of the Mavericks seasonal-conditional zone would remain unchanged. Observations showed little MPWC use in the areas selected; therefore, NOAA expects a minimal impact on the use of the zones by MPWC. MPWC rental businesses may experience a negligible impact, as MPWC operation would still be allowed in the areas, just in smaller zones. The reduced number of deployed buoys and reduced risk of drifting buoys that have parted from their moorings would produce negligible benefits to boaters (such as commercial fishers) and other water users by reducing risk of collision/allision.

Zone	Current size (sq. mi)	Proposed size (sq. mi)
Pillar Point	0.87	0.96
Santa Cruz	6.36	2.63
Moss Landing	8.10	2.29
Monterey	6.36	3.10
Total	21.69	8.98

The table below summarizes the findings for each proposed regulatory action described above and includes a column for passive use. ''Nonuse'' or ''passive use'' economic values encompass what economists refer to as option value, existence value and other nonuse values. All nonuse economic values are based on the fact that people are willing to pay some dollar amount for a good or service they currently do not use or consume directly. In the case of an ecological reserve, they are not current visitors (users), but derive some benefit from the knowledge that the reserve exists in a certain state and are willing to pay some dollar amount to ensure that the resources are maintained and/or improved.

Regulation [1]	Dredge and restoration	Commercial fishermen	Scuba diving	Recreational water based [2]	Passive use [3]
(1) Adding a new definition for the phrase ''beneficial use of dredged material'' and amending existing sanctuary regulations to clarify the authorized use of clean dredged material for habitat restoration.	Negligible to Moderate Benefits.	No Impact	No Impact	Negligible to Moderate Benefits.	No Impact.
(2) Allowing MPWC access to MPWC Zone 5 (Mavericks surf break) during High Surf Advisories.	No Impact	No Impact	No Impact	Negligible Benefits	No Impact.
(3) Correcting an oversight in the 2009 revised MBNMS management plan rulemaking.	No Impact	No Impact	No Impact	No Impact	No Impact.
(4) Modifying the boundaries of four existing year-round motorized personal watercraft (MPWC) zones.	No Impact	Negligible Benefits	No Impact	Negligible Cost	No Impact.
All Regulations	Negligible to Moderate Benefits.	No Impact	No Impact	Negligible Benefits	No Impact.

[1] For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% but less than or equal to 10%, and high impacts would be more than 10%. No impact means no costs or benefits are expected.

[2] Recreational water based includes businesses that may provide equipment or rent items for recreational water use, such as boats or jet skis that would be used for recreation on the water that does not include fishing or diving.

[3] Passive use may create additional economic value and benefits as people spend time and money to learn about the resources through the purchase of materials such as books, brochures, etc.

F. Paperwork Reduction Act

This proposed rule does not create any new information collection requirement, nor does it revise the information collection requirement that was approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

G. National Historic Preservation Act

In fulfilling its responsibility under the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*) and NEPA, NOAA intends to determine whether the proposed rule is the type of activity that could affect historic properties. If so, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; assess potential adverse effects; and resolve adverse effects. If applicable, NOAA will initiate formal consultation with the State Historic Preservation Officer/Tribal Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties as appropriate; involve the public in accordance with NOAA's NEPA procedures; and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties as appropriate and describe them in the environmental assessment. NOAA will complete applicable NHPA requirements before finalizing its NEPA analysis. Individuals or organizations who wish to participate as a consulting party should notify NOAA.

H. Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. 1531, *et seq.*), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. Federal agencies have an affirmative mandate to conserve ESA-listed species. Section 7(a)(2) of the ESA requires federal agencies, in consultation with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of designated critical habitat. NOAA's ONMS intends to begin informal consultation under the ESA with NOAA's Office of Protected Resources (OPR) and the U.S. Fish and Wildlife Service upon publication of this proposed rule and complete consultation prior to the publication of the final rule or finalization of the NEPA analysis. NOAA's consultation will focus on any potential adverse effects of this action on threatened and endangered species and/or designated critical habitat.

I. Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*), as amended, prohibits the ''take'' [5] of marine mammals in U.S. waters. Section 101(a)(5)(A–D) of the MMPA provides a mechanism for allowing, upon request, the ''incidental,'' but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. ONMS intends to request technical assistance from NMFS upon publication of this proposed rule on ONMS's preliminary assessment that this action is not likely to result in take of marine mammals. If NMFS recommends that ONMS seek an Incidental Harassment Authorization or Letter of Authorization, then ONMS will submit an application for any incidental taking of small numbers of marine mammals that ONMS and NMFS conclude could occur as a result of this proposed rulemaking. NOAA's request for technical assistance will focus on the effects of this action on marine mammals. NOAA will complete any MMPA requirements before finalizing its NEPA analysis.

J. Coastal Zone Management Act

The principal objectives of the Coastal Zone Management Act (CZMA) are to encourage and assist states in developing coastal management programs, to coordinate State activities, and to preserve, protect, develop and, where possible, restore or enhance the resources of the nation's coastal zone. Section 307(c) of the CZMA requires federal activity affecting the land or water uses or natural resources of a state's coastal zone to be consistent with that state's approved coastal management program to the maximum extent practicable. NOAA will provide a copy of this proposed rule, the draft EA, and a consistency determination to the California Coastal Commission (Commission) upon publication. NOAA will wait for concurrence from the Commission prior to publication of the final rule.

[5] The MMPA defines take as: ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.'' 16 U.S.C. 1362. Harassment means any act of pursuit, torment, or annoyance which, (1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B Harassment).

IV. Request for Comments

NOAA requests comments on this proposed rule, the draft management plan, and the draft EA. The comment period will remain open until September 4, 2020.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

Nicole R. LeBoeuf,

Acting Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

For the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart M—Monterey Bay National Marine Sanctuary

■ 2. Amend § 922.131 by adding the definition for ''Beneficial use of dredged material'' to read as follows:

§ 922.131 Definitions.

* * * * *

Beneficial use of dredged material means the use of dredged material removed from any of the four public harbors immediately adjacent to the shoreward boundary of the sanctuary (Pillar Point, Santa Cruz, Moss Landing, and Monterey) that has been determined by the Director to be clean (as defined by this section) and suitable (as consistent with regulatory agency reviews and approvals applicable to the proposed beneficial use) as a resource for habitat restoration purposes only.

Beneficial use of dredged material is not disposal of dredged material.

* * * * *

■ 3. Amend § 922.132 by:

■ A. Revising paragraphs (a)(7) and (c)(1).

■ B. Amending paragraph (f) by adding a new sentence before the last sentence in the paragraph.

The revisions and addition read as follows

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(7) Operating motorized personal watercraft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix E to this subpart. Zone Five (at Pillar Point) exists only when a High Surf Advisory has been issued by the National Weather Service and is in effect for San Mateo County, and only during December, January, and February.

* * * * *

(c) * * *

(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (12) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2020 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (12) of this section by the Director after consultation between the Director and the Department of Defense.

* * * * *

(f) * * * For the purposes of this Subpart, the disposal of dredged material does not include the beneficial use of dredged material as defined by 15 CFR 922.131. * * *

■ 6. Amend Appendix E to Subpart M of Part 922 to read as follows:

Appendix E to Subpart M of Part 922—Motorized Personal Watercraft Zones and Access Routes Within the Sanctuary

The four zones and access routes are:

(1) The 0.96 mi² area off Pillar Point Harbor from harbor launch ramps, through the harbor entrance to the northern boundary of Zone One:

Point ID No.	Latitude	Longitude
1 (flashing white 5-second breakwater entrance light and horn at the seaward end of the outer west breakwater—mounted on 50-ft high white cylindrical structure)	37.49402	–122.48471
2 (triangular red dayboard with a red reflective border and flashing red 6-second light at the seaward end of the outer east breakwater—mounted on 30-ft high skeleton tower)	37.49534	–122.48568
3 (bend in middle of outer east breakwater, 660 yards west of the harbor entrance)	37.49707	–122.47941
4 (Southeast Reef—southern end green gong buoy ''1S'' with flashing green 6-second light)	37.46469	–122.46971
5 (red entrance buoy ''2'' with flashing red 4-second light)	37.47284	–122.48411

(2) The 2.63 mi² area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through the harbor entrance, and then along a 100-yard wide access route southwest along a bearing of approximately 196° true (180° magnetic) toward the red and white whistle buoy at 36.93899 N, 122.009612 W, until crossing between the two yellow can buoys marking, respectively, the northeast and northwest corners of the zone. Zone Two is bounded by:

Point ID No.	Latitude	Longitude
1 (red/white striped whistle buoy ''SC'' with flashing white Morse code ''A'' light)	36.93899	–122.00961
2 (yellow can buoy)	36.95500	–122.00967
3 (yellow can buoy)	36.94167	–121.96667
4 (yellow can buoy)	36.92564	–121.96668

(3) The 2.29 mi² area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100-yard wide access route southwest along a bearing of approximately 230° true (215° magnetic) to the red and white bell buoy at 36.79893 N, 121.80157 W. Zone Three is bounded by:

Point ID No.	Latitude	Longitude
1 (red/white striped bell buoy ''MLA'' with flashing white Morse code ''A'' light)	36.79893	–121.80157
2 (yellow can buoy)	36.77833	–121.81667
3 (yellow can buoy)	36.83333	–121.82167
4 (yellow can buoy)	36.81500	–121.80333

(4) The 3.10 mi² area off of Monterey Harbor from harbor launch ramps to a point midway between the seaward end of the U.S. Coast Guard Pier and the seaward end of Wharf 2, and then along a 100-yard wide access route northeast along a bearing of approximately 67° true (52° magnetic) to the yellow can buoy marking the southeast corner of the zone. Zone Four is bounded by:

Point ID No.	Latitude	Longitude
1 (yellow can buoy)	36.61146	–121.87696
2 (red bell buoy ''4'' with flashing red 4-second light)	36.62459	–121.89594

Point ID No.	Latitude	Longitude
3 (yellow can buoy)	36.65168	–121.87416
4 (yellow can buoy)	36.63833	–121.85500

(5) The .13 mi² area near Pillar Point from the Pillar Point Harbor entrance along a 100-yard wide access route southeast along a bearing of approximately 174° true (159° magnetic) to the green bell buoy (identified as ''Buoy 3'') at 37.48154 N, 122.48156 W and then along a 100-yard wide access route northwest along a bearing of approximately 284° true (269° magnetic) to the green gong buoy (identified as ''Buoy 1'') at 37.48625 N, 122.50603 W, the southwest boundary of Zone Five. Zone Five exists only when a High Surf Advisory has been issued by the National Weather Service and is in effect for San Mateo County and only during December, January, and February. Zone Five is bounded by:

Point ID No.	Latitude	Longitude
1 (green gong buoy ''1'' with flashing green 2.5-second light)	37.48625	–122.50603
2 (intersection of sight lines due north of green gong buoy ''1'' and due west of Sail Rock)	37.49305	–122.50603
3 (Sail Rock)	37.49305	–122.50105
4 (intersection of sight lines due east of green gong buoy ''1'' and due south of Sail Rock)	37.48625	–122.50105

[FR Doc. 2020–14225 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2016–0897]

RIN 1625–AA01

Anchorage Grounds; Atlantic Ocean, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a dedicated offshore anchorage approximately seven nautical miles northeast of the St. Johns River inlet, Florida. This action is necessary to ensure the safety and efficiency of navigation for all vessels transiting in and out of the Port of Jacksonville. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 4, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0964 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Emily Sysko, Sector Jacksonville Waterways Management Division Chief, U.S. Coast Guard; telephone 904–714–7616, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
§ Section

II. Background, Purpose, and Legal Basis

The project to establish an offshore anchorage just outside of the St. Johns River and offshore of Jacksonville was initiated in 2013. From 2013 through 2017, certain port stakeholders (St. Johns Bar Pilots Association (SJBPA), Jacksonville Marine Transportation Exchange (JMTX), National Oceanic and Atmospheric Administration (NOAA), and United States Coast Guard (USCG)) worked to determine a suitable location for the anchorage, with consideration given to, among other things, environmental factors and Seasonal Management Areas. However, a location was not determined during this timeframe. The U.S. Coast Guard conducted a Waterways Analysis and Management System (WAMS) survey for this proposed project and did not receive any comments of concern from the entities previously mentioned.

In 2016, the stakeholders re-engaged the USCG in an attempt to complete the offshore anchorage project. A Notice of Proposed Rulemaking was published on May 4, 2017 (82 FR 20859). Informal National Environmental Protection Act (NEPA) consultations were disseminated requesting feedback on the proposed anchorage location. National Marine Fisheries (NMFS) and NOAA responded with significant concerns regarding the location. The aforementioned agencies requested an environmental study be completed to analyze potential hard bottom locations within the selected anchorage ground and the effects of vessels anchoring in these environmentally sensitive areas. The stakeholders involved at this time were unable to financially support the requested study. Due to these concerns, no further action was taken after the NPRM was published in 2017.

In 2018, the USCG met with the stakeholders again to determine a way forward with the proposed anchorage. Stakeholders concluded that three circular anchorages would meet the needs of an offshore anchorage, while allowing flexibility to avoid hard bottom areas. In 2019, USCG Sector Jacksonville sent out an informal consultation via email to federal, state, and local government and private stakeholders to solicit for feedback on the proposed, new anchorage construct. NMFS agreed with the construct, allowing USCG to move forward with formal NEPA consultation. Towards the end of 2019, USCG sent out formal consultation to approximately 20 different organizations and agencies regarding the anchorage. At this time, NMFS expressed some minor concerns. At the beginning of 2020, stakeholders and NMFS came to an agreement that addressed the minor concerns raised. The USCG is currently moving forward with the rulemaking and public comment period for the proposed anchorage location.

The purpose of this proposed rulemaking is to improve the navigational safety, traffic management

and port security for the Port of Jacksonville.

Currently, there is no dedicated deep draft offshore anchorage for commercial ocean-going vessels arriving at the Port of Jacksonville. Vessels have routinely been anchoring 1.5 nautical miles northeast of the ''STJ'' entrance buoy. Without a designated charted anchorage area, vessels end up drifting or anchoring in the common approaches to the St. Johns River, creating a potential hazardous condition for vessels transiting in and out of the Port of Jacksonville. These conditions have worsened in recent years with the introduction of Liquefied Natural Gas (LNG) vessels transiting the Port of Jacksonville. Additional growth is forecasted to occur because of deepening the channel. There will likely be an increase in the number of large vessels calling on Jacksonville in the near future.

The Coast Guard is proposing this rulemaking under authority in 33 U.S.C. 471.

III. Discussion of Proposed Rule

The Captain of the Port is proposing to establish an offshore anchorage area approximately seven nautical miles northeast of the St. Johns River inlet, Florida. There is not currently a dedicated deep draft offshore anchorage for commercial ocean-going vessels arriving at the Port of Jacksonville. This action is necessary to ensure the safety and efficiency of navigation for vessels transiting in and out of the Port of Jacksonville. The anchorage areas consist of three circles each with a radius of 1,400 feet.The anchorage boundaries are described, using precise coordinates, in the proposed regulatory text at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that there will be minimal impact to routine navigation because the proposed anchorage area would not restrict traffic. The anchorage is located well outside of the established navigation channel. Vessels would still be able to maneuver in, around, and through the anchorage.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing offshore anchorage grounds, which would be comprised of three circles, each with a 1,400-foot radius. The anchorage

grounds are not designated a critical habitat or special management area. Normally such actions are categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.184 to subpart B to read as follows:

§ 110.184 Atlantic Ocean, Offshore Jacksonville, FL.

(a) *Location.* All waters of the Atlantic Ocean encompassed within a radius of 1,400 feet of the following coordinates based on North American Datum 1983:

(1) Anchorage Ground 1 with a center point in position 30°26″48.6′ N, 81°17″14.9′ W.

(2) Anchorage Ground 2 with a center point in position 30°26″20.5′ N, 81°17″30.8′ W; and

(3) Anchorage Ground 3 with a center point in position 30°26″20.2′ N, 81°16″57.8′ W.

(b) *The regulations.* (1) Commercial vessels in the Atlantic Ocean near the Port of Jacksonville desiring to anchor must anchor only within the anchorage area hereby defined and established, except in cases of emergency.

(2) All vessels within the designated anchorage area must maintain a 24-hour bridge watch by a licensed or credentialed deck officer proficient in English, monitoring VHF–FM channel 16. This individual must confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(3) Vessels may anchor anywhere within the designated anchorage area, provided that: Such anchoring does not interfere with the operations of any other vessels currently at anchorage; and all anchor and chain or cable is positioned in such a manner to preclude dragging.

(4) No vessel may anchor in a ''dead ship'' status (that is, propulsion or control unavailable for normal operations) without the prior approval of the COTP. Vessels which are planning to perform main propulsion engine repairs or maintenance, must immediately notify the COTP on VHF–FM Channel 22A. Vessels must also report marine casualties in accordance with 46 CFR 4.05–1.

(5) No vessel may anchor within the designated anchorage for more than 72 hours without the prior approval of the COTP. To obtain this approval, contact the COTP on VHF–FM Channel 22A.

(6) The COTP may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety or security.

(7) Commercial vessels anchoring under emergency circumstances outside the anchorage area must shift to new positions within the anchorage area immediately after the emergency ceases.

Dated: June 22, 2020.

Eric C. Jones,

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

[FR Doc. 2020–13827 Filed 7–2–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2018–1058]

Port Access Route Study: Alaskan Arctic Coast; Reopening of Comment Period

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notification of reopening of commend period.

SUMMARY: The United States Coast Guard is reopening the comment period for the notice of study and request for comments for the Port Access Route Study: Alaskan Arctic Coast that we published on December 21, 2018. This action will provide the public with additional time and opportunity to provide the Coast Guard with information regarding the Port Access Route Study: Alaskan Arctic Coast. The comment period is extended until September 30, 2021.

DATES: The comment period for the document that published on December 21, 2018 (83 FR 65701), which was extended on September 4, 2019 (84 FR 46501), and January 13, 2020 (85 FR 1793), is reopened. Comments and related material must be received by the Coast Guard on or before September 30, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2018–1058 using the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions about this document, please contact LCDR Michael Newell, Seventeenth Coast Guard

District (dpw), at telephone number (907) 463–2263 or email *Michael.D.Newell@uscg.mil*, or Mr. David Seris, Seventeenth Coast Guard District (dpw), at telephone number (907) 463–2267 or email to *David.M.Seris@uscg.mil*, or LT Stephanie Alvarez, Seventeenth Coast Guard District (dpw), at telephone number (907) 463–2265 or email *Stephanie.M.Alvarez@uscg.mil*.

SUPPPLEMENTARY INFORMATION: On December 21, 2018, the Coast Guard published a notice of study and request for comments for the Port Access Route Study: Alaskan Artic Coast (83 FR 65701). The comment period in that document closed September 1, 2019. On September 4, 2019, the Coast Guard published a notification to extend the public comment period until January 30, 2020 (84 FR 46501). On January 13, 2020, the Coast Guard published a notification to extend the public comment period until June 30, 2020 (85 FR 1793). In this action, the Coast Guard is providing notice that the public comment period is reopened until September 30, 2021. The Coast Guard has reopened the comment period to provide adequate opportunity for public meetings in impacted Arctic communities, given recent COVID–19 impacts to travel. These discussions are vital to the Port Access Route Study and necessary to creating a well-informed proposal. The Port Access Route Study remains a high priority for the Coast Guard, critical to maintaining waterway safety in the Arctic. Documents mentioned in this document, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by searching the docket number ''USCG–2018–1058''.

This document is issued under authority of 33 U.S.C. 1223(c) and 5 U.S.C. 552.

Dated: June 26, 2020.

Matthew T. Bell, Jr.,

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

[FR Doc. 2020–14270 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0122; FRL–10011–39–Region 9]

Air Plan Approval; California; Butte County; El Dorado County; Mojave Desert Air Quality Management District; San Diego County; Ventura County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Butte County Air Quality Management District (BCAQMD), El Dorado County Air Quality Management District (EDCAQMD), Mojave Desert Air Quality Management District (MDAQMD), San Diego County Air Pollution Control District (SDCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern rules that include definitions for certain terms that are necessary for the implementation of local rules that regulate sources of air pollution. We are proposing to approve the definitions rules under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0122 at *https://www.regulations.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*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–2304 or by email at *Lazarus.Arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB) to the EPA.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Rescinded	Amended /revised	Submitted
BCAQMD	101	Definitions		12/14/2017	[1] 5/23/2018
BCAQMD	102	Definitions	[2] 12/14/17		[3] 5/23/2018

[1] CARB submitted the amendment to BCAQMD Rule 101 electronically on May 23, 2018. CARB's submittal letter is dated May 18, 2018.

[2] The BCAQMD amended Rule 101 on this date but took no action on Rule 102. The date is from Enclosure A to CARB Executive Order S–18–004, May 18, 2018, which is included in CARB's May 23, 2018 SIP submittal.

[3] CARB submitted the rescission of BCAQMD Rule 102 electronically on May 23, 2018. CARB's submittal letter is dated May 18, 2018.

[4] CARB submitted the amendment to MDAQMD Rule 102 electronically on August 19, 2019. CARB's submittal letter is dated August 16, 2019.

[5] CARB submitted the amendment to VCAPCD Rule 2 electronically on August 19, 2019. CARB's submittal letter is dated August 16, 2019.

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule #	Rule title	Rescinded	Amended /revised	Submitted
EDCAQMD	101	General Provisions and Definitions.		6/20/2017	8/9/2017
MDAQMD	102	Definition of Terms		1/28/2019	[4] 8/19/2019
SDCAPCD	2	Definitions		7/11/2017	11/13/2017
VCAPCD	2	Definitions		4/9/2019	[5] 8/19/2019

Under CAA section 110(k)(1), the EPA must determine whether a SIP submittal meets the minimum completeness criteria established in 40 CFR part 51, appendix V for an official SIP submittal on which the EPA is obligated to take action. If the EPA does not make an affirmative determination of completeness or incompleteness within six months of receipt of a SIP submittal, the submittal is deemed to be complete by operation of law. The submitted rules listed in Table 1 were deemed complete by operation of law on the following dates: February 9, 2018 (EDCAQMD Rule 101), May 13, 2018 (SDCAPCD Rule 2), November 23, 2018 (BCAQMD Rule 101 and rescission of BCAQMD Rule 102), and February 19, 2020 (MDAQMD Rule 102 and VCAPCD Rule 2).

B. Are there other versions of these rules?

We approved an earlier version of BCAQMD Rule 101 into the SIP on June 11, 2015 (80 FR 33195).[6] The BCAQMD adopted revisions to the SIP-approved version on December 14, 2017, and CARB submitted them to us on May 23, 2018. We approved BCAQMD Rule 102 into the SIP on February 3, 1987 (52 FR 3226). Most of the definitions in BCAQMD Rule 102 have been superseded by approval of the definitions in BCAQMD Rule 101 and Rule 300 (''Open Burning Requirements, Prohibitions, and Exemptions'').[7] The only remaining defined terms in BCAQMD Rule 102 are ''submerged fill pipe'' and ''vapor recovery system.''

We approved an earlier version of EDCAQMD Rule 101 into the SIP on October 10, 2001 (66 FR 51578). The EDCAQMD adopted revisions to the SIP-approved version on June 20, 2017, and CARB submitted them to us on August 9, 2017.

We approved an earlier version of MDAQMD Rule 102 into the SIP on July 2, 2019 (84 FR 31682). The MDAQMD adopted revisions to the SIP-approved version on January 28, 2019, and CARB submitted them to us on August 19, 2019.

We approved an earlier version of SDCAPCD Rule 2 into the SIP on June 21, 2017 (82 FR 28240). The SDCAPCD adopted revisions to the SIP-approved version on July 11, 2017, and CARB submitted them to us on November 13, 2017.

We approved an earlier version of VCAPCD Rule 2 into the SIP on December 7, 2012 (77 FR 72968). The VCAPCD adopted revisions to the SIP-approved version on April 9, 2019, and CARB submitted them to us on August 19, 2019.

C. What is the purpose of the submitted rule revisions?

The purpose of these submitted rule revisions is to clarify and update definitions in the districts' rules. Revisions include the following, but a more complete list and discussion can be found in the technical support documents (TSDs) and submitted district staff reports and rules for this rulemaking:

- BCAQMD Rule 101 revisions include removal of Global Warming Potentials table, updating the Exempt Compounds table to be consistent with the definition of ''volatile organic compounds'' (VOC) in 40 CFR 51.100(s), removing greenhouse gases (GHG) and carbon dioxide equivalent emissions from the major source definition and adding definitions for ''Submerged Fill Pipe'' and ''Vapor Recovery System.'' In its submittal letter to CARB, BCAQMD also requests that BCAQMD Rule 102 be rescinded from the SIP,[8] and CARB included the BCAQMD's rescission request in its May 23, 2018 SIP submittal to the EPA.
- EDCAQMD Rule 101 revisions include updating the district's title (previously known as El Dorado Air Pollution Control District), updating the exempt compounds list and adding or revising definitions for ''Global Warming Potential,'' Greenhouse Gases'', ''Owner or Operator,'' ''$PM_{2.5}$,'' ''Responsbile Official,'' and ''Short Lived Climate Pollutants,'' and ''Volatile Organic Compounds.''
- MDAQMD Rule 102 revisions include the addition of definitions that had been included in other MDAQMD rules, the renumbering of the definitions, and the addition of certain definitions associated with CARB's Airborne Toxic Control Measure to reduce emissions of hexavalent chromium and nickel from thermal spraying. Definitions added include ''Agricultural Facility'', ''Confined Animal Facility'', ''Detonation Gun Spraying'', ''Flame Spraying'', ''High-Velocity Oxy-Fuel Spraying'', ''Plasma Spraying'', ''Thermal Spraying Operation'', ''Twin-Wire Electric Arc Spraying'', and ''Volatile Organic Compound''. In its submittal letter to CARB, MDAQMD also requests that CARB submit amended Rule 102 to replace the SIP versions of the rule that are in effect in the San Bernardino County and the Blythe/Palo Verde Valley portions of the District.[9] We have already responded to this request through final action on an earlier version of MDAQMD Rule 102.[10]
- SDCAPCD Rule 2 revisions include adding the Chemical Abstract Service (CAS) Registry Number to each of the compounds in the table of ''exempt compounds'' at the end of Rule 2. ''Exempt compounds'' are excluded from the definition of ''volatile organic compounds.''
- VCAPCD Rule 2 revisions include the addition of nine compounds to the list of ''exempt organic compounds,'' as defined in Rule 2. The revisions also include the addition of CAS Registry Numbers to various compounds included in the list of ''exempt organic compounds,'' and the removal of the Global Warming Potential Table at the end of Rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not

[6] See also 80 FR 59610 (October 2, 2015) (correcting amendment for June 11, 2015 final rule).

[7] We approved BCAQMD Rule 300 at 80 FR 38966 (July 8, 2015).

[8] See letter from Jason Mandly, Associate Air Quality Planner, BCAQMD, to Carol Sutkus, CARB, dated January 9, 2018.

[9] See letter from Alan J. De Salvio, Deputy Director, Mojave Desert Operations, MDAQMD, to Carol Sutkus, CARB, dated April 11, 2019.

[10] 84 FR 31682 (July 2, 2019).

interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2 ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the rules meet the EPA's evaluation criteria?

These rules are consistent with CAA requirements and relevant guidance regarding enforceability. More specifically, the revisions to the definitions rules with respect to the list of ''exempt compounds'' that are exluded from the districts' definitions of ''volatile organic compounds'' are consistent with the definition of ''volatile organic compounds'' in 40 CFR 51.100(s). The deletions of certain GHG-related provisions from certain definitions rules are acceptable in light of recent court decisions involving GHG permitting. With respect to the rescission request for BCAQMD Rule 102, we find that the May 23, 2018 SIP submittal does not include sufficient public process documentation to approve the request; however, approval of amended BCAQMD Rule 101, which we propose herein, will have the effect of superseding BCAQMD Rule 102 in the applicable SIP because the two remaining definitions from Rule 102 will be incorporated into Rule 101 if we finalize the action as proposed. The TSDs have more information on our evaluation.

C. The EPA Recommendations to Further Improve the Rules

The TSDs include recommendations for the next time the local agencies modify their rules.

D. Public Comment and Proposed Action

Pursuant to section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until August 5, 2020. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the BCAQMD's, the EDAQMD's, the MDAQMD's, the SDCAPCD's and the VCAPCD's rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, 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 SIP approvals are exempted 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 23, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–13998 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0095; FRL–10010–99–Region 4]

Air Plan Approval; Kentucky: Revisions to Jefferson County VOC Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a SIP revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky (Commonwealth), through the Energy and Environment Cabinet (Cabinet) on September 5, 2019. The revision was submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) and makes changes to the definition of ''volatile organic compound'' (VOC). EPA is proposing to approve the changes amending the definition of VOC because the Commonwealth has demonstrated that the changes are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before August 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0095 *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bell can be reached by phone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments implement rules to limit the amount of certain VOC and NOx that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. VOC have different levels of reactivity; they do not react at the same speed or form ozone to the same extent.

Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of ''VOC,'' and hence, what compounds shall be treated as VOC for regulatory purposes. It is EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

II. Analysis of State's Submittal

EPA is proposing to approve the Commonwealth's SIP revision which amends the definition of ''Volatile organic compound (VOC)'' at Section 1.84 in LMAPCD Regulation 1.02, *Definitions*.[1] This SIP revision removes an enumerated list of negligibly reactive compounds and incorporates by reference the list of negligibly reactive compounds in the definition of VOC at 40 CFR 51.100(s)(1) as of July 1, 2018, into a new subsection 1.84.1 to ensure that the definition of VOC for the Jefferson County portion of the Commonwealth's SIP is consistent with the most recent version of the federal definition.[2] As a result of this incorporation by reference, the SIP revision adds exclusions to the definition of VOC that were not previously in the Jefferson County portion of the Commonwealth's SIP.

This incorporation by reference has the effect of adding the following compounds to the list of negligibly reactive compounds: trans-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H(HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z). These compounds are excluded from the VOC definition on the basis that each of these compounds make a negligible contribution to tropospheric ozone formation. EPA proposes to find that these changes to the SIP will not interfere with attainment or maintenance of any national ambient air quality standard, reasonable further progress, or any other applicable requirement of the CAA, consistent with CAA section 110(l), because EPA has found the chemicals listed in 40 CFR 51.100(s)(1) to be negligibly reactive. This SIP revision also adds a new subsection 1.84.2 that includes instructions on how to access copies of the Code of Federal Regulations (CFR).

III. 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 LMAPCD Regulation 1.02, *Definitions,* Section 1.84, state-effective June 19, 2019, to revise the definition of ''Volatile organic compound (VOC)'' by referencing the federal list of negligibly reactive compounds and including instructions on how to access the CFR. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the Commonwealth's September 5, 2019 SIP revision that revises the definition of ''Volatile organic compound (VOC)'' at LMAPCD Regulation 1.02, *Definitions,* in the Jefferson County portion of the Kentucky SIP to be consistent with federal regulations and CAA requirements.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

[1] On September 5, 2019, the Commonwealth submitted other SIP revisions which will be addressed in separate actions.

[2] EPA approved revisions to the Jefferson County portion of the Kentucky SIP on July 25, 2019. *See* 84 FR 35828.

Act and applicable Federal regulations. *See* 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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, 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 SIP approvals are exempted 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 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).

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 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 24, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–14093 Filed 7–2–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0197; FRL–10011–11–Region 3]

Air Plan Approval; West Virginia; 1997 8-Hour Ozone Standard Second Maintenance Plan for the West Virginia Portion of the Parkersburg-Marietta, WV-OH Area Comprising Wood County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision pertains to the West Virginia Department of Environmental Protection's (WVDEP) plan for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the West Virginia portion of the Parkersburg-Marietta, WV-OH area (Parkersburg Area), comprising Wood County. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 5, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0197 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: Gregory Becoat, 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) 814–2036. Mr. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2019, WVDEP submitted a revision to the West Virginia SIP to incorporate a plan for maintaining the 1997 ozone NAAQS through June 7, 2027, in accordance with CAA section 175A.[1]

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[2] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower

[1] In its December 10, 2019 submittal, the State consistently refers to the Parkersburg Area, rather than referring to the West Virginia portion of the Parkersburg-Marietta, WV-OH area. While the state's terminology is technically incorrect, it is clear that what the State refers to as the Parkersburg Area is identical to the West Virginia portion of the Parkersburg-Marietta, WV-OH area designated by EPA pursuant to the 1997 8-Hour ozone NAAQS. See 40 CFR 81.349.

[2] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated Parkersburg-Marietta Area, West Virginia-Ohio (WV–OH) as nonattainment for the 1997 8-hr ozone NAAQS. The Parkersburg-Marietta Area, WV-OH nonattainment area consists of Wood County, WV and Washington County, OH.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[3] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On May 8, 2007 (72 FR 25967 effective June 7, 2007), EPA approved a redesignation request (and maintenance plan) from WVDEP for the Parkersburg Area. In accordance with section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[4] However, in *South Coast Air Quality Management District* v. *EPA*[5] (South Coast II), the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like Wood County) that had been redesignated to attainment for the 1997 NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. The Calcagni memo[6] provides that states may generally demonstrate maintenance by either performing air quality modeling to show the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See Calcagni Memo at 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs)[7] that the requirements of CAA section 175A could be met by demonstrating that the area's design value[8] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on December 10, 2019, WVDEP submitted a second maintenance plan for the Parkersburg Area, following EPA's LMP guidance and demonstrating that the area will maintain the 1997 ozone NAAQS through June 7, 2027, *i.e.,* to the end of the 20-year maintenance period.

II. Summary of SIP Revision and EPA Analysis

WVDEP's December 10, 2019 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the Calcagni Memo as follows.

A. Attainment Emissions Inventory

A state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NOx) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Parkersburg Area, WVDEP used 2004 for the attainment year inventory, because 2004 was one of the years in the 2002–2004 three-year period when the area first attained the 1997 8-hour ozone NAAQS. The Parkersburg Area continued to monitor attainment of the 1997 8-hour ozone NAAQS in 2014. Therefore, the emissions inventory from 2014 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS. Thus, WVDEP is using 2014 as representing attainment level emissions for its second maintenance plan. WVDEP used 2014 summer day emissions from EPA's 2014 version 7.0 modeling platform as the basis for the 2014 inventory presented in Table 1.[9]

[3] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[4] See 80 FR 12315 (March 6, 2015).

[5] 882 F.3d 1138 (D.C. Cir. 2018).

[6] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

[7] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM10 Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[8] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

[9] On April 22, 2020, WVDEP submitted a clarifying letter to EPA noting that the headings in Table 4 of its submittal were inadvertently titled, ''2014 Summertime Daily NOx Emissions (tpd)'' instead of ''2014 Summertime Daily VOC Emissions (tpd).'' EPA does not believe that this mislabeling

Continued

TABLE 1—2014 TYPICAL SUMMER DAY VOC AND NO_X EMISSIONS

[Tons/day] [10]

Area	Source category	VOC	NO_X
Wood County, WV	Fire	0.4	0.0
	Nonpoint	4.1	3.1
	Nonroad	1.7	0.8
	Onroad	2.1	4.5
	Point	1.0	3.5
	Subtotal	9.3	11.9
Washington County, OH	Fire	0.3	0.0
	Nonpoint	3.5	3.0
	Nonroad	1.1	0.7
	Onroad	1.9	3.2
	Point	1.8	13.4
	Subtotal	8.6	20.4
Parkersburg-Marietta Area, WV-OH	Totals	17.9	32.3

The 2014 emissions inventory was prepared by WVDEP and uploaded into EPA's Emissions Inventory System (EIS) for inclusion in EPA's National Emission Inventory (NEI). The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and on-road mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to WVDEP.

The fire emissions sector includes emissions from agricultural burning, prescribed fires, wildfires, and other types of fires. The nonpoint emissions sector includes emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, portable fuel containers, home heating, repair and refinishing operations, and crematories. The non-road emissions sector includes emissions from engines that are not primarily used to propel transportation equipment, such as generators, forklifts, and marine pleasure craft. The on-road emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The point source sector includes large industrial operations that are relatively few in number but have large emissions, such as kraft mills, electrical generating units, and pharmaceutical factories. On-road mobile emissions are modelled by WVDEP using EPA's Motor Vehicle Emission Simulator (MOVES). WVDEP generates nonroad mobile source emissions data through the use of EPA's NONROAD2014a model. EPA reviewed the supporting documentation submitted by WVDEP [11] and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).[12]

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value, DV) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document, EPA believes that if the most recent DV for the area is well below the NAAQS (*e.g.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second 10-year maintenance period (absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating a stable or improving air quality trend, West Virginia used a weighted design value of the most recent five design values. The five most recent design values available cover the 2012–2018 ambient air monitoring data. This includes 3-year design values for 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018. Data from 2014, 2015, and 2016 was included in three out of five design values. Table 2 of this document shows the most recent five years of ambient ozone air quality 3-year design values. These design values are from EPA's Air Quality System (AQS). The 7th column is a calculated 5-year weighted design value calculated by West Virginia. This 5-year weighted design value was calculated by averaging all the 4th Max Ozone values from the years 2012–2018. The 8th column is the 5-year design value average calculated by EPA. The 5-year design value average is calculated by averaging the design values for 2012–2014, 2013–2015, 2014–2016, 2015–2017, and 2016–2018. Both the 5-year weighted design value calculated by West Virginia, and the 5-year design value calculated by EPA, for Parkersburg area, were calculated to be

negatively impacts proposed approval of this SIP revision.

[10] Data in Table 1 of the preamble only includes tons/day. See Tables 3 and 4 of WVDEP's December 10, 2019 submittal for data in tons/year.

[11] See Appendix C of WVDEP's December 10, 2019 submittal.

[12] The daily emissions data for 2014 typical summer day VOC and NO_X emissions in Table 1 were excerpted from: *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx* (''2014 2028 area emiss by sector'' tab) posted at *https://www.epa.gov/ground-level-ozone-pollution/1997-ozonenational-ambient-air-quality-standards-naaqs-nonattainment.*

0.066 ppm, which is below the 0.071 ppm threshold level and 79% of the NAAQS. Table 2 shows that the most recent five years of ambient ozone air quality 3-year average DVs for the Parkersburg Area continue to be below 85% of the 1997 ozone NAAQS. It demonstrates that 8-hour ozone air quality levels are significantly below the level of the standard.

TABLE 2—PARKERSBURG AREA 8-HOUR OZONE DESIGN VALUES IN PART PER MILLION (PPM)

Site	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	5-year weighted	5-year design value average (ppm)	Projected 2023
Parkersburg, WV	0.069	0.067	0.068	0.065	0.062	0.066	0.066	0.060

For the 2023 projections shown in Table 2, EPA used a 2011-based air quality modeling platform, which includes emissions, meteorology, and other inputs for 2011 as the base year and emissions for 2023 as the future analytic year base case. Specifically, the modeling platform included a variety of data that contained information pertaining to the modeling domain and simulation period. These include gridded, hourly emissions estimates and meteorological data, and boundary concentrations. Separate emissions inventories were prepared for the 2011 base year and the 2023 base case. All other inputs (*i.e.* meteorological fields, initial concentrations, and boundary concentrations) were specified for the 2011 base year model application and remained unchanged for the future-year model simulations. The 2011 modeling platform and projected 2023 emissions were used to drive the 2011 base year and 2023 future case air quality model simulations. The 2023 projected DV for the Parkersburg Area is 0.060 ppm, well below the level of the 1997 8-hour ozone NAAQS, 0.08 ppm. Therefore, EPA proposes to determine that that future violations of the NAAQS in this area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the December 10, 2019 submittal, West Virginia committed to maintaining an appropriate air quality monitoring network, in accordance with 40 CFR part 58. West Virginia will continue to conduct ambient ozone air quality monitoring in the area throughout the term of the maintenance plan to verify continued attainment with the 1997 8-hour ozone NAAQS and to protect any applicable PSD increments. WVDEP states that air quality measurements will be performed in accordance with appropriate regulations and guidance documents along with EPA quality assurance requirements, and monitoring procedures will be determined in accordance with 40 CFR part 58. WVDEP commits to submitting quality-assured ozone data to EPA through the AQS and ultimately certified by the WVDEP. EPA has analyzed the commitments in the plan and determined that they meet the requirements.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA. WVDEP's December 10, 2019 submittal outlines its adopted permanent and Federally enforceable control measures in order to regulate emission growth. The Parkersburg Area's control measures include the permitting regulations and PSD measures, which will remain in effect through the maintenance plan period. Air permits issued will incorporate applicable PSD, New Source Performance Standard, and National Emission Standards for Hazardous Air Pollutant requirements.

WVDEP's December 10, 2019 submittal included the required contingency plan, to be implemented in the event of NAAQS violations in the future. WVDEP has committed to adopting and implementing one or more of the following control measures within three months after verification of a monitored ozone standard violation in the Parkersburg Area: (1) Extend the applicability of the VOC reasonably available control technology (RACT) rule to include source categories previously excluded (*e.g.,* wastewater treatment facilities); (2) revise permitting requirements establishing more stringent emissions control measures and/or emissions offsets; (3) implement NO_X RACT requirements if necessary; (4) develop regulations to establish plant-wide emission caps; (5) implement Stage II Vapor Recovery regulations; (6) establish a program focusing on increasing the public's understanding of air quality issues and increasing support for actions to improve the air quality; and (7) initiate voluntary local control measures (*e.g.,* bicycle/pedestrian measures, engine idling reduction, partnership with ground freight industry, increase compliance with open burning restrictions, and school bus engine retrofit program).

If there is indeed a violation and the DV exceeds the NAAQS, the contingency plan will be ''triggered,'' based on the following schedule: (1) quality assurance procedures must confirm the monitored violation within 45 days of occurrence; (2) a draft rule would be developed by the WVDEP for any regulation chosen, (3) WVDEP will adopt the selected control measure(s) as emergency rule(s) which will be implemented within six (6) months after adoption and will file the rule(s) as legislative rule(s) for permanent authorization by the legislature; and (4) for each voluntary measure selected, the WVDEP will initiate program development with local governments within the area by the start of the following ozone season.

Furthermore, if the triennial inventories indicate emissions growth in excess of 10% of the 2011 base-year inventory or if a monitored ozone air quality exceedance pattern indicates that an ozone NAAQS violation may be imminent, WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standards.

EPA finds that West Virginia's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A. Importantly, while EPA notes that West Virginia's contingency measures option six (increasing public understanding) and seven (voluntary local control measures), are not enforceable measures that standing alone are likely to lead to reductions in emissions that could promptly correct a violation of the NAAQS, their inclusion among other measures that meet that criterion, is overall SIP-strengthening, and their inclusion does not alter EPA's proposal to find the LMP is fully approvable.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). An MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Parkersburg Area remains under the obligation to meet the applicable conformity requirements for the 1997 8-hour ozone NAAQS.

III. Proposed Action

EPA's review of WVDEP's December 10, 2019 submittal indicates it meets CAA section 175A and all applicable CAA requirements. EPA is proposing to approve the LMP for the 1997 8-hour ozone NAAQS for the Parkersburg Area (comprising Wood County), as a revision to the West Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 that reason, 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 SIP approvals are exempted 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 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 rule, pertaining to West Virginia's second maintenance plan for Wood County, 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 in 40 CFR Part 52

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

Dated: June 25, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–14220 Filed 7–2–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0217; FRL–10011–51–Region 4]

Air Plan Approvals; KY; Prevention of Significant Deterioration and Modeling Infrastructure Requirements for 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the Kentucky infrastructure State Implementation Plan (SIP) submission for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) submitted to EPA on January 11, 2019. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that states adopt and submit a SIP submission to establish that the state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Specifically, EPA is proposing to approve portions of the Kentucky infrastructure SIP submission that address the prevention of significant deterioration (PSD) and modeling requirements for the 2015 8-hour ozone NAAQS. EPA is proposing to approve these portions of the submission as they are consistent with the CAA.

DATES: Comments must be received on or before July 27, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0217, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to make a SIP submission to address the implementation, maintenance, and enforcement of the NAAQS and the applicable requirements of section 110(a)(2) of the CAA within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' [1] States were required to make such SIP submissions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.

EPA is proposing to approve the portions of Kentucky's January 11, 2019,[2] SIP submission provided to EPA through the Kentucky Division of Air Quality (KY DAQ) that address the PSD-related infrastructure SIP requirements for major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prohibiting interference with PSD in other states), 110(a)(2)(J) and the modeling infrastructure requirements of 110(a)(2)(K) for the 2015 8-hour ozone NAAQS. These provisions are discussed in further detail in Sections IV and V of this proposed action. All other applicable infrastructure SIP requirements for the 2015 ozone NAAQS have been or will be addressed in separate rulemakings.

II. What is EPA's approach to the review of infrastructure SIP submissions?

As discussed in section I, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIP submissions that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[3] Unless otherwise noted in the following sections, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[4] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, and so forth that comprise its SIP.

III. What are the infrastructure requirements for PSD-related elements and modeling elements for Kentucky?

Detailed explanations of the specific infrastructure requirements addressed by this proposed rulemaking are provided in the following discussion. As mentioned, this proposed action only addresses the PSD and modeling infrastructure requirements for the 2015 8-hour ozone NAAQS. All other infrastructure requirements for

[1] In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] The Commonwealth of Kentucky submitted its infrastructure submission through the State Planning Electronic Collaboration System on January 9, 2019; however, the cover letter of the submittal is dated January 11, 2019.

[3] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at *https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on the Kentucky infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 41488 (November 21, 2016).

[4] *See Mont. Envtl. Info. Ctr.* v. *Thomas*, 902 F.3d 971 (9th Cir. 2018).

Kentucky for the 2015 8-hour ozone NAAQS have been or will be addressed through separate rulemakings.

a. PSD-Related Elements

Section 110(a)(2)(C) of the Act has three components that must be addressed in infrastructure SIP submissions: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and PSD permitting of new major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by the CAA title I part C (*i.e.,* the major source PSD program).

Section 110(a)(2)(D)(i) of the Act has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that states must address in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), or interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

Section 110(a)(2)(J) of the Act has four components related to: (1) Consultation with government officials, (2) public notification, (3) PSD, and (4) visibility protection.

This proposed rulemaking addresses the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J). With respect to the PSD elements of 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make, for each new or revised NAAQS, an infrastructure SIP submission that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated new source review (NSR) pollutants. The requirements of element 110(D)(i)(II) (prong 3) may also be satisfied when the state's submission demonstrates that the air agency has a complete PSD permitting program addressing all regulated NSR pollutants. More information on these requirements and EPA's rationale for this proposal that Kentucky is meeting these requirements for purposes of the 2015 8-hour ozone NAAQS is provided in sections IV and V of this preamble.

b. Modeling Element

Section 110(a)(2)(K) of the CAA requires that SIPs provide for the performance of air quality modeling as prescribed by the EPA so that air quality effects from emissions of NAAQS pollutants and their precursors can be predicted, and for submission of such data to EPA. More information on this requirement and EPA's rationale for this proposal that Kentucky is meeting this requirement for purposes of the 2015 8-hour ozone NAAQS is provided in sections IV and V of this preamble.

IV. Applicability of Appendix W for Infrastructure Requirements for 2015 8-Hour Ozone NAAQS

On January 17, 2017, EPA promulgated a final rule entitled ''*Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter*'' (also referred to as the 2017 *Guideline*).[5] *See* 82 FR 5182. The preamble to the 2017 *Guideline,* in the 'Dates' section says:

> For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018.

For purposes of infrastructure SIP requirements, regulatory applications of the *Guideline* include the PSD elements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J). EPA's PSD regulations at 40 CFR 51.166(l) require SIP PSD programs to base air quality modeling on the *Guideline.* States were required to integrate the 2017 *Guideline* into their PSD programs by January 17, 2018. Additionally, a state may also rely on the 2017 *Guideline* to satisfy the modeling requirements of Section 110(a)(2)(K).

The most direct way for states to meet this requirement is to integrate the 2017 *Guideline* is to revise the regulations in their SIP to incorporate the 2017 *Guideline.* However, a state may also meet this requirement by showing that its existing SIP-approved regulations provide the state with the authority to integrate and implement the requirements and recommendations of the current version of EPA's *Guideline* (*i.e.* those reflected in the 2017 *Guideline*). Of most relevance here, all versions of the *Guideline,* including 2017 and earlier versions, as well as 40 CFR 51.166(l), allow the use of an ''alternative model'' if the state or permit applicant demonstrates to EPA that the alternative is equivalent to or an improvement over ''preferred models'' in the *Guideline.* As EPA made clear in promulgating the 2017 *Guideline,* the 2017 version incorporated and approved air quality models with scientific updates and associated model performance improvements relative to the preferred models in earlier versions of the *Guideline.* Thus, states with references to earlier versions of the *Guideline* may be able to rely upon their authority to use alternative models, in conjunction with the EPA's rulemaking record from the 2017 *Guideline,* to use an updated model.

V. What is EPA's analysis of how Kentucky addressed relevant portions of PSD-related elements and modeling elements for the 2015 8-hour ozone NAAQS?

EPA's analysis of Kentucky's January 11, 2019, infrastructure SIP submission, as further clarified in a February 4, 2020, letter, related to the PSD and modeling elements for the 2015 8-hour ozone NAAQS is provided in this section.

a. PSD-Related Elements

As discussed, this proposed rulemaking relates to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J). In this section, EPA provides its analysis of these three sub-elements.

1. 110(a)(2)(C) Program for Construction or Modification of Stationary Sources (PSD)

For the PSD program sub-element of section 110(a)(2)(C), EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place meeting applicable PSD requirements for all regulated NSR pollutants. As detailed in EPA's September 2013 infrastructure SIP guidance, a state's PSD permitting program is complete for this sub-element (and prong 3 of D(i)(II), and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation

[5] EPA's *Guideline on Air Quality Models* is codified at 40 CFR part 51, appendix W and is generically referred to as *Guideline* herein.

plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

Kentucky's infrastructure SIP submission cites several SIP-approved regulations under Chapters 50 and 51, including the following: 401 KAR 51:010,[6] *Attainment status designations;* 401 KAR 51:017, *Prevention of significant deterioration of air quality;* and 401 KAR 50:040, *Air quality models,* to meet the PSD program requirements of section 110(a)(2)(C). These SIP-approved regulations provide that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA.

As discussed, EPA's PSD regulations at 40 CFR 51.166(l) require states to conduct modeling in accordance with the *Guideline,* and EPA required states to integrate the 2017 *Guideline* into their regulatory process by January 17, 2018. Therefore, to meet current structural PSD requirements, Kentucky is required to use the 2017 *Guideline* for PSD modeling or provide a demonstration that use of an alternative model equivalent to or an improvement over the EPA-preferred model is being utilized.

The Kentucky SIP at 401 KAR 51:017 establishes the Commonwealth's PSD program and requires that modeling follow the EPA's *Guideline on Air Quality Models.* Additionally, 401 KAR 50:040—*Air Quality Models*—provides that ''[a]ll estimates of ambient concentrations required under the administrative regulations of the Division for Air Quality shall be based on the applicable air quality models, data bases, and other requirements specified in the 'Guidelines on Air Quality Models' (OAQPS 1.2–080, U. S. EPA, Office of Air Quality Planning and Standards).'' Kentucky's SIP-approved rule 401 KAR 50:015 provides incorporations by reference for documents and federal regulations referenced in the Commonwealth's air quality rules and incorporates the 1986 version of the *Guideline.*

On February 4, 2020, KY DAQ provided to EPA a letter related to the use of EPA's *Guideline,* clarifying that, pursuant to 401 KAR 50:040 and 401 KAR 51:017, the Commonwealth has the authority to use alternative modeling, and that modeling based on the *Guideline,* as published on January 17, 2017, is the most appropriate.[7] Specifically, KY DAQ explains in the letter that 401 KAR 50:040, Section 1(2) states: ''Where an air quality impact model specified in the 'Guideline on Air Quality Models' is inappropriate, the model may be modified or another model substituted subject to the approval of the cabinet.'' [8] Additionally, KY DAQ explains that 401 KAR 51:017, Section 10(2) states: ''If an air quality model specified in 40 CFR part 51, appendix W, is inappropriate, the model may be modified or another model substituted.'' KY DAQ concludes that ''[i]n accordance with these provisions, the Division has made a determination that the most appropriate air quality modeling guidance to use is the version of 40 CFR part 51, appendix W, as published January 17, 2017.''

As we have explained, states with references to earlier versions of the *Guideline* may be able to rely upon their authority under the earlier versions of the *Guideline* to use alternative models, in conjunction with the EPA's regulatory record from the 2017 *Guideline,* to establish their authority to use the 2017 *Guideline.* EPA has evaluated Kentucky's January 11, 2019, submittal and the February 4, 2020, letter and is proposing to make the determination that Kentucky has demonstrated that it has the authority to use the 2017 *Guideline,* and notes that the February 4, 2020, letter includes KY DAQ's determination that the 2017 *Guideline* is most appropriate for use. Accordingly, EPA is proposing to approve Kentucky's use of the 2017 *Guideline* as outlined in KY DAQ's February 4, 2020, letter and is proposing to find that Kentucky's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements. Thus, EPA is proposing to conclude that Kentucky's infrastructure SIP submission, supplemented with the February 4, 2020, letter, meets the requirements of 110(a)(2)(C) for the infrastructure requirements for the 2015 8-hour ozone NAAQS.

2. 110(a)(2)(D)(i)(II)—Prong 3

With regard to prong 3 of CAA section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C and a nonattainment NSR (NNSR) program, if the state contains a nonattainment area that has the potential to impact PSD in another state. To meet the requirements of prong 3 of CAA section 110(a)(2)(D)(i)(II), Kentucky cites to its PSD program found in the Kentucky SIP at 401 KAR 51:017, *Prevention of significant deterioration of air quality,* and 401 KAR 50:040, *Air quality models,* in addition to the following SIP-approved regulations: 401 KAR 51:010, *Attainment status designations;* 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas;* and 401 KAR 52:100, *Public, affected state, and US EPA Review.* As already discussed in more detail in the CAA section 110(a)(2)(C) section of this document, Kentucky's SIP contains the relevant provisions to satisfy the current structural PSD requirements to meet prong 3 and a SIP-approved NNSR program at 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas* to address prong 3 for any areas of the Commonwealth designated as nonattainment. EPA is proposing to determine that Kentucky's SIP is adequate for permitting of major sources and major modifications to prevent interference with PSD in other states related to the 2015 8-hour ozone NAAQS for CAA section 110(a)(2)(D)(i)(II) (prong 3).

3. 110(a)(2)(J) PSD

With regard to the PSD element of CAA section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all regulated NSR pollutants. To meet element J, Kentucky's infrastructure SIP submission cites to a number of SIP-approved regulations including 401 KAR 51:017, *Prevention of significant deterioration of air quality.* As already

[6] Throughout this rulemaking, unless otherwise indicated, the term ''Kentucky Administrative Regulations'' or ''KAR'' indicates that the cited regulation has been approved into Kentucky's federally-approved SIP.

[7] See February 4, 2020, letter ''RE: Clarification of the use of appendix W within Kentucky's 2015 8-hour Ozone Infrastructure SIP submittal'' from Melissa Duff, Director of Division of Air Quality for Kentucky Energy and Environment Cabinet, Department of Environmental Protection to Mary S. Walker, Regional Administrator for U.S. Environmental Protection Agency, Region 4. The February 4, 2020, letter is in the docket for this proposed rulemaking.

[8] Section 3 of the *Guideline* and the PSD rules at 40 CFR 51.166(l)(2) allow the use of alternative models upon approval by Regional Administrators.

discussed in more detail in the CAA section 110(a)(2)(C) section of this document, Kentucky's SIP contains the relevant provisions to satisfy the structural PSD requirements of CAA section 110(a)(2)(J). EPA is proposing to determine that Kentucky's SIP is adequate for the PSD element of CAA section 110(a)(2)(J).

b. 110(a)(2)(K) Modeling Element

Section 110(a)(2)(K) of the CAA requires that SIPs provide for the performance of air quality modeling as prescribed by the EPA so that air quality effects of emissions of NAAQS pollutants and their precursors can be predicted, and for submission of such data to EPA. KY DAQ conducts air quality modeling as set forth in Kentucky's regulation, 40 KAR 50:040, *Air Quality Models* and reports the results of such modeling to EPA. Kentucky's SIP submission also refers to a number of other SIP-approved regulations to demonstrate that it meets the requirements of CAA section 110(a)(2)(K). 40 KAR 50:040, *Air Quality Models* provides that ''[a]ll estimates of ambient concentrations required under the administrative regulations of the Division for Air Quality shall be based on the applicable air quality models, data bases, and other requirements specified in the 'Guidelines on Air Quality Models' (OAQPS 1.2–080, U. S. EPA, Office of Air Quality Planning and Standards).'' KY DAQ uses ambient ozone modeling, in conjunction with pre- and post-construction ambient air monitoring to track local and regional scale changes in ozone concentrations. As already discussed in the CAA section 110(a)(2)(C) section of this document, KY DAQ has provided assurances that it has the authority and intention to use the 2017 *Guideline* under this regulatory provision.

Additionally, the Commonwealth supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, the Commonwealth's air quality regulations and practices demonstrate that KY DAQ has the authority to provide relevant data through the performance of modeling as prescribed by EPA for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to EPA's Administrator upon request. EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to CAA section 110(a)(2)(K).

VI. Proposed Action

EPA is proposing to approve the portions of Kentucky's January 11, 2019, 2015 8-hour ozone infrastructure SIP submission that address the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and modeling requirements related to CAA section 110(a)(2)(K). All other applicable infrastructure requirements for the 2015 ozone NAAQS have been or will be addressed in separate rulemakings.

VII. Statutory Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, 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 this action is not significant regulatory action under Executive Order 12866;
- Does not impose information collection burdens 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 mandates 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 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).

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 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 23, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–13893 Filed 7–2–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 101

[WT Docket Nos. 20–133, 10–153, 15–244; RM–11824, RM–11825; FCC 20–76; FRS 16882]

Modernizing and Expanding Access to the 70/80/90 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment to explore innovative new uses of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (collectively, the ''70/80/90 GHz bands''). In particular, the Commission seeks comment on potential rule changes for non-Federal users to facilitate the provision of wireless backhaul for 5G, as well as the deployment of broadband services to aircraft and ships, while protecting incumbent operations in the 70/80/90 GHz bands. The Commission seeks to

promote expanded use of this co-primary millimeter-wave spectrum for a myriad of innovative services by commercial industry, and in particular, the Commission seeks to take advantage of the highly directional signal characteristics of these bands, which may permit the co-existence of multiple types of deployments. The Commission also denies two requests for partial waiver of the antenna standards for the 71–76 and 81–86 GHz bands. Because this is co-primary spectrum for Federal and non-Federal users, the Commission will coordinate any proposed rule changes with the affected agencies and the National Telecommunications and Information Administration (NTIA). This is consistent with established practice, in that, when evaluating any band that includes a shared allocation for Federal use, the FCC will work with NTIA to evaluate potential impacts associated with any new or expanded non-Federal use of shared allocations.

DATES: Comments are due on or before August 5, 2020. Reply comments on or before September 4, 2020.

ADDRESSES: You may submit comments, identified by WT Docket Nos. 20–133 and 10–153, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- 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 INFORMATON CONTACT: Anthony Patrone, Broadband Division, Wireless Telecommunications Bureau, (202) 418–2428, *Anthony.Patrone@FCC.gov* or Jeffrey Tignor, Broadband Division, Wireless Telecommunication Bureau, (202) 418 0774 *Jeffery.Tignor@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM),* WT Docket Nos. 20–133; 10–153, 15–244; FCC 20–76; RMs–11824, 11825, adopted June 9, 2020, and released June 10, 2020. The full text may also be downloaded *https://docs.fcc.gov/public/attachments/FCC-20-76A1.pdf.*

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)

Synopsis

1. *Background—70/80/90 GHz Bands.* In the United States, the 70/80/90 GHz bands are allocated on a co-primary basis for Federal and non-Federal use, as follows.

Band	Non-Federal Use	Federal Use
71–74 GHz	Fixed, Fixed Satellite, Mobile, and Mobile Satellite..	Fixed, Fixed Satellite, Mobile, and Mobile Satellite.
74–76 GHz	Fixed, Fixed Satellite, Mobile, Broadcasting, and Broadcasting Satellite..	Fixed, Fixed Satellite, and Mobile.
81–84 GHz	Fixed, Fixed Satellite, Mobile, Mobile Satellite, and Radio Astronomy..	Fixed, Fixed Satellite, Mobile, Mobile Satellite, and Radio Astronomy.
84–86 GHz	Fixed, Fixed Satellite, Mobile, and Radio Astronomy..	Fixed, Fixed Satellite, Mobile, and Radio Astronomy.
92–94 GHz, 94.1–95 GHz	Fixed, Mobile, Radio Astronomy, and Radiolocation..	Fixed, Mobile, Radio Astronomy, and Radiolocation.

2. In addition, the 94–94.1 GHz segment of the band is allocated for Federal use for Earth Exploration Satellite, Radiolocation, and Space Research and for non-Federal use for Radiolocation. In the 71–76 GHz band (the ''70 GHz band'') and 81–86 GHz band (the ''80 GHz band''), Fixed, Mobile, and Broadcasting services must not cause harmful interference to, nor claim protection from, Federal Fixed-Satellite Service operations located at 28 military installations. In addition, in the 80 GHz band, and in the 92–94 GHz and 94.1–95 GHz bands (collectively, the ''90 GHz band''), licensees proposing to register links located near 18 radio astronomy observatories must coordinate their proposed links with those observatories. Finally, the adjacent 86–92 GHz band is allocated for Earth Exploration-Satellite (passive), Space Research (passive), and Radio Astronomy services. Given that the allocations for these bands include Federal and non-Federal use, the Commission will follow established practices in coordinating with NTIA prior to adopting any new or revised rules in this proceeding that would affect Federal users.[1] In 2003, the Commission established service rules for non-Federal use of the 70/80/90 GHz bands through a two-pronged, non-exclusive licensing regime.[2] Under the first prong, an entity may apply for a nationwide, non-exclusive license for

[1] The Communications Act charges the Commission with the licensing and regulation of commercial and private spectrum use, 47 U.S.C. 151, 301, while NTIA has been delegated authority over radio stations ''belonging to and operated by the United States.'' 47 U.S.C. 305(a); 47 U.S.C. 902(b)(2)(A) (delegating authority to regulate government radio stations to NTIA). The Commission and NTIA coordinate their respective spectrum management responsibilities pursuant to a Memorandum of Understanding, with the goal of promoting the efficient use of the radio spectrum in the public interest. Memorandum of Understanding Between the Federal Communications Commission and the National Telecommunications and Information Administration, at 1 (Jan. 31, 2003), *https://docs.fcc.gov/public/attachments/DOC-230835A2.pdf.*

[2] *Allocations and Service Rules for 71–76 GHz and 92–95 GHz Bands,* WT Docket No. 02–146, Report and Order, 18 FCC Rcd 23318, 23322, para. 5 (2003) (*70/80/90 GHz Report and Order*).

the entire 12.9 gigahertz of the 70/80/90 GHz bands, which serves as a prerequisite to satisfying the second prong. Under the second prong, a licensee may operate links after completing coordination with Federal operations through NTIA's database [3] and after providing an interference analysis to one of the third-party database managers. Licensees are afforded first-in-time priority for successfully registered links relative to subsequently registered links. Non-Federal licensees may use the 70/80/90 GHz bands for any point-to-point, non-broadcast service.

3. The Commission periodically has reviewed the service rules governing the 70/80/90 GHz bands. For example, in 2005, the Commission modified several of its technical rules, including interference protection criteria, antenna characteristics, band segmentation, and power spectral density.[4] In 2012, the Commission sought input on whether modifications of the Commission's antenna standards applicable to a number of microwave bands (including the 70/80/90 GHz bands) would promote wireless backhaul use. In the *2016 Spectrum Frontiers* proceeding, the Commission sought comment on whether to authorize flexible-use services, including mobile, in the 70/80/90 GHz bands, but it ultimately declined to do so.[5]

4. Use of spectrum in the 70/80/90 GHz bands is primarily concentrated along a few routes, with minimal use in large parts of the United States. As of March 23, 2020, there were 658 active non-exclusive nationwide licensees in the 70/80/90 bands. Based upon information available from the third-party database managers responsible for registering links in those bands, as of March 23, 2020, there were 18,770 registered fixed links [6] in the 70 GHz and 80 GHz bands.

5. *Rule Modifications Proposed by Parties.* Several parties supporting expanded use of the 70/80/90 GHz bands propose changes to the rules governing the bands. The Fixed Wireless Communications Coalition (FWCC) proposes several changes to the Commission's part 101 rules governing the 70 GHz and 80 GHz bands. In particular, FWCC asks for the following rule modifications: (1) Allow smaller antennas for fixed point-to-point operations; (2) permit alternate polarization for antennas; (3) prevent the accumulation of never-built links in the registration database and allow certain amendments to registrations; and (4) adopt a channel plan for the bands. In particular, FWCC contends that the use of smaller antennas will support the provision of backhaul for emerging 5G services using higher frequency bands. Because of short-distance propagation in these bands, FWCC asserts that backhaul facilities will be deployed in neighborhoods and communities, and must be smaller, lower-cost, and more aesthetically pleasing than the antennas permitted under the current rules. T-Mobile, Nokia, and 5G Americas have supported FWCC's proposals for smaller antenna sizes in the 70 GHz and 80 GHz bands. Several parties support the accommodation of smaller antennas for 5G backhaul. Additionally, the 5G Wireless Backhaul Advocates support changes to the link registration system to prevent the accumulation of never-constructed links in the system. FWCC and the 5G Backhaul Advocates note that Canada and other countries have rules that permit smaller antennas in the 70 GHz and 80 GHz bands.

6. In 2019, Aeronet Global Communications, Inc. (Aeronet) filed petitions for rulemaking that sought to permit the use of ''Scheduled Dynamic Datalinks'' (SDDLs) to provide broadband service to aircraft or ships in motion in the 70/80/90 GHz bands. Aeronet indicates that its technology would configure and maintain, in real time, multiple networks involving a variety of point-to-point links between nodes, including ground stations, relay nodes, ships, and aircraft. Aeronet asserts that it would use ground or shore stations to transmit narrow beams towards known flight paths or ship routes without causing interference to existing point-to-point links authorized in the bands. The initial connected aircraft or ship also could serve as a conduit through which broadband service could reach other aircraft or ships within a specified area through a sub-mesh network. As Comsearch notes, Aeronet's links for aviation would operate between ground stations and aircraft, and between aircraft; Aeronet's links for maritime would operate between shore stations and ships, between shore stations and aerostats, between aerostats and ships, and between ships. In its 2019 petitions for rulemaking, Aeronet contends that its operations could ''further mitigate any risk of interference'' to not only mobile and terrestrial users of the spectrum for 5G backhaul but also to ''Federal FSS operations located at the 28 military bases'' and the 18 Federal radio astronomy observatories. Aeronet requests that the Commission modify its part 101 rules to authorize SDDLs as a ''fixed service'' that can operate in the 70/80/90 GHz bands and to increase the transmitter power limits that would apply to these operations.

7. In response to the Commission's *Public Notice* seeking comment on Aeronet's petitions,[7] several parties expressed general support for changes to the rules applicable to the 70/80/90 GHz bands provided that any changes do not foreclose other future uses of the bands. Other commenters opposed Aeronet's proposal or argued that the Commission should consider all proposed changes in the 70/80/90 GHz bands in a comprehensive proceeding. Several parties raised concerns about the potential co-existence of multiple services specifically in the 90 GHz band. Nearly all commenters indicated a need for more information about how

[3] If a proposed link does not interfere with existing Federal operations then it is given a ''green light;'' if it may interfere with existing Federal operations, then it is given a ''yellow light,'' indicating that further coordination is necessary. 47 CFR 101.1523; *70/80/90 GHz Report and Order,* 18 FCC Rcd at 23342–43, para. 54; *Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-Exclusive Nationwide Licenses in the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands,* WT Docket No. 02–146, Public Notice, 19 FCC Rcd 9439, 9447 (WTB 2003). The ''green light''/''yellow light'' system protects the sensitive nature of the locations of military installations.

[4] *Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands,* WT Docket No. 02–146, Memorandum Opinion and Order, 20 FCC Rcd 4889, 4905, para. 34 (2005) (*70/80/90 GHz Reconsideration Order*). The current service rules governing the 70/80/90 GHz bands are in 47 CFR 101.1501–101.1527, in addition to other operative subparts of part 101. Unlicensed devices operating in the 92–95 GHz band are governed by part 15 of the Commission's rules. This *Notice of Proposed Rulemaking* does not contemplate changes to the part 15 rules. *See* 47 CFR 15.257.

[5] *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services,* Second Report and Order, Second Further Notice of Proposed Rulemaking, order on Reconsideration, and memorandum Opinion and Order, 32 FCC Rcd 10988, 11054, para.200 (2017) (*2017 Spectrum Frontiers Second Report and Order*). The Commission reserved the right to reconsider mobile use in the 70/80/90 GHz bands as the technology develops. *2017 Spectrum Frontiers Second Report and Order,* 32 FCC Rcd at 11054, para. 201.

[6] A link in this context is defined as a communication path between one location and another in a single direction. Multiple channels registered between the same transmit and receive location are considered separate links. Bi-directional communications are also counted as separate links.

[7] *Aeronet Global Communications Inc.'s Petition for Rulemaking to Amend the Commission's Allocation and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands to Authorize Aviation Scheduled Dynamic Datalinks,* Public Notice, Report No. 3112, CG RM–11824 (2019); *Aeronet Global Communications Inc.'s Petition for Rulemaking to Amend the Commission's Allocation and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands to Authorize Maritime Scheduled Dynamic Datalinks,* Public Notice, Report No. 3113, CG RM–11825 (2019).

Aeronet's proposed system would work, and Aeronet subsequently placed additional information in the record. In developing the record on the Aeronet petitions, several commenters suggested alternative uses for the 70/80/90 GHz bands.

Discussion

8. The Commission proposes targeted changes to its rules to promote additional wireless backhaul for 5G, in furtherance of the Commission's goals of expanding access to broadband and fostering the efficient use of millimeter-wave spectrum in the public interest. Specifically, the Commission proposes changes to the antenna standards applicable to the 70 GHz and 80 GHz bands and seeks comment on whether similar changes are necessary in the 90 GHz band. The Commission seeks comment on whether the Commission should make changes to its current link registration rules for the 70/80/90 GHz bands to eliminate never-constructed links from the database. The Commission also proposes to authorize point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands and to classify those links as a ''mobile'' service. The Commission seeks comment on any technical and operational rules that would be needed to allow these new service offerings in the 70 GHz and 80 GHz bands and to mitigate interference to incumbents and other proposed users of these bands and in adjacent bands. Finally, the Commission seeks comment on whether the Commission should adopt a channelization plan in the 70 GHz and 80 GHz bands.

9. *5G Backhaul—Antenna Rules.* The Commission proposes a number of changes to the antenna standards for the 70 GHz and 80 GHz bands to provide greater flexibility in deploying 5G wireless backhaul. The Commission observed that smaller, lighter antennas are less susceptible to sway and less visually obtrusive than larger antennas, which would make them ideal for 5G network densification. The Commission seeks to leverage these characteristics of smaller antennas to promote 5G deployment, while protecting incumbent uses of these bands and providing opportunities for other innovative uses of these bands.

10. The Commission's rules currently apply a single category of antenna standards to the 70 GHz band and the 80 GHz band. The Commission proposes to increase the maximum beamwidth by 3 dB points, from 1.2 degrees to 2.2 degrees. Additionally, the Commission proposes to reduce minimum antenna gain from 43 dBi to 38 dBi and to retain the proportional EIRP reduction requirement. The Commission seeks comment on these proposals. Both FWCC and the 5G Wireless Backhaul Advocates argue that these proposed changes are critical to deploying nationwide 5G wireless backhaul and fostering network densification. The Commission notes that adoption of these changes would harmonize its rules with Canada's rules, which could facilitate economies of scale in equipment deployment in North America.

11. The Commission also proposes reducing the co-polar and cross-polar discrimination requirement applicable to 70 GHz and 80 GHz antennas.[8] Co-polar and cross-polar discrimination requirements were established to facilitate coordination of multiple links that share the same frequency path. FWCC contends that some of the smaller, lighter antennas its members contemplate using cannot meet the existing requirement. Recognizing that small cell backhaul applications will not involve shared high-capacity paths, the Commission seeks comment on whether its current stricter co-polar and cross-polar discrimination requirements are now unnecessary. Do commenters agree that operators needing relatively short-distance links for small-cell backhaul will not require high-capacity shared paths? The Commission notes that the 5G Wireless Backhaul Advocates suggest eliminating the co-polar discrimination requirement entirely.[9] The Commission seeks comment on this suggestion.

12. In addition, the Commission seeks comment on FWCC's recommendation that it allows +/− 45 degree polarization (also known as slant polarization) in the 70 GHz and 80 GHz bands. Section 101.117 of the Commission's rules generally limits licensees to horizontal or vertical polarization. The Commission seeks comment on FWCC's contention that flat plate antennas generally have cleaner azimuth/elevation radiation pattern envelopes when used in slanted polarization. Would slant polarization aid coordination at congested points in the 70 GHz and 80 GHz bands? Should the Commission consider slant polarization in the 90 GHz band? The Commission seeks comment on any disadvantages of allowing slant polarization. The Commission asks commenters to provide data on the benefits and costs of any proposed changes.

13. Some commenters have suggested that adopting a second category of antenna standards would promote flexibility in the 70 GHz and 80 GHz bands. The Commission's rules for many other services regulated under part 101 allow for two categories of antennas, Category A and Category B; Category A performance standards are more stringent than Category B. The Commission seeks comment on whether to adopt an additional antenna standard—Category B—applicable to the 70 GHz and 80 GHz bands, which could permit less restrictive use under certain circumstances than the Commission's proposed modified antenna standards (which would be the accompanying Category A standards). The Commission seeks comment on the advantages and disadvantages of adopting Category A and Category B standards in the 70 GHz and 80 GHz bands. Should the new Category B standards permit use of even smaller, wider beamwidth antennas, or other less restrictive uses?[10] Under what circumstances should use of such antennas be permitted? Would such changes promote investment in these bands? In other bands, if a station using a Category B antenna causes interference that cannot be eliminated by lowering EIRP, the station must upgrade to a Category A antenna to eliminate the interference. Should the Commission adopt similar rules or other conditions of use here? What impact, if any, should changing from one antenna standard to the other have on a registrant's first-in-time status? Commenters proposing alternative standards should provide a detailed justification for those standards.

14. With respect to the Commission's proposed modifications to the antenna standards for the 70 GHz and 80 GHz bands, or any alternate proposals by commenters, the Commission seeks

[8] *See* FWCC April 4th *Ex Parte* at 2 as amended by FWCC March 24th *Ex Parte* at 1–2. Currently, at angles between 1.2 and 5 degrees from the centerline of the main beam, co-polar discrimination must be G–28, where G is the antenna gain in dBi; and at angles of less than 5 degrees from the centerline of main beam, cross-polar discrimination must be at least 25 dB. *See* 47 CFR 101.115(b)(2) n.15. FWCC proposes that magnitude of co-polar discrimination requirement be reduced from G–28 dB to G–33 dB and only apply between 2.5 and 5 degrees from the centerline of the main beam and that the cross-polar discrimination requirement be reduced from 25 dB to 21 dB. FWCC April 4th *Ex Parte* at 2 as amended by FWCC March 24th *Ex Parte* at 1–2.

[9] 5G Wireless Backhaul Advocates *Ex Parte* at 2 (noting that ''FWCC has suggested a modification to the specification below 5 [degrees] to accommodate 38 dBi antennas, seeking to achieve a similar affect, rather than our proposal to remove the requirement altogether'').

[10] For example, FWCC proposes that Category B antennas would have the same maximum beamwidth and minimum antenna gain as Category A antennas but would have a lower minimum radiation suppression requirement. *See* FWCC *Ex Parte* at Appx. i.

detailed, quantitative data on the relative likely benefits and costs. Such data should include information on cost savings that could result from the changes, as well as increased costs that would result from an increase in interference.

15. The Commission notes that the Commission's antenna standards for the 90 GHz band are considerably different from those that apply to the 70 GHz and 80 GHz bands.[11] While advocates for changes to the Commission's antenna standards for the 70 GHz and 80 GHz bands does not propose changes to the standards for the 90 GHz band, the Commission seeks comment on whether any of the changes discussed in this *NPRM* or other changes should apply to the 90 GHz band.

16. Finally, the Commission seeks comment on how the proposed changes to the antenna standards for the 70 GHz and 80 GHz bands, as well as any changes to the antenna standards for the 90 GHz band, would affect existing Federal operations in these shared bands, including the Radiolocation service. The Commission also seeks comment on how changes to the antenna standards would impact the system for coordination between Federal and non-Federal users. In addition, the Commission seeks comment on how changing the antenna standards may affect future uses of these bands, including for Fixed-Satellite Service.

17. *Link Registration Processes.* The Commission seeks comment on whether the Commission should make changes to the current link registration rules in the 70/80/90 GHz bands. The 5G Wireless Backhaul Advocates and FWCC propose requiring licensees to certify that their registered links are constructed as required. When the Commission adopted service rules for the 70/80/90 GHz bands, it shortened the construction requirement generally applicable to other part 101 services. Licensees in the 70/80/90 GHz bands must complete construction and bring into regular use registered links within 12 months of the date on which a third-party database manager registers the link. Currently, the Commission relies on licensees to notify database managers to withdraw unconstructed links from the database. FWCC alleges that the current registration process encourages licensees to submit multiple registrations at various locations and heights for a single transmit site, ''seeking priority protection while not yet knowing precisely where their equipment will be deployed.'' The 5G Wireless Backhaul Alliance contends that requiring licensees to certify that their links have been constructed at the end of the 12th month construction period, or when they seek to renew their license, would improve ''database hygiene.''

18. Do commenters agree that certain licensees submit multiple registrations at various locations and heights for a single transmit site? If so, does the Commission need to adopt rule revisions to require that each registration satisfies the interference-protection requirements of section 101.1523(b)(2)—including as to the licensee's other current or pending registrations? Do commenters agree that there are registrations in the database that are not operational and likely never will be? If so, how common are such inaccurate registrations? The Commission note that failure to begin operations in a timely manner pursuant to a part 101 authorization results in the automatic cancelation of the authorization. Nevertheless, because the Commission currently does not require licensees to file a construction certification, such cancellations are not automatically reflected in ULS or the third-party database, and the Commission therefore does not have a ready mechanism for accurately tracking them.[12] Should the Commission require 70 GHz and 80 GHz band registrants to file a certification of construction when a link has been placed in operation? If so, when should the Commission require registrants to file the certifications? Should certifications be filed when the links become operational, at any time prior to the expiration of the construction deadline, or whenever a licensee seeks to renew its license? Should different rules apply for registrants in the 90 GHz band? What changes, if any, should the Commission make to its rules to ensure that registrations accurately reflect actual use of the 70/80/90 GHz bands? Should the Commission adopt rules to promote competition and prevent licensees from filing multiple, duplicative registrations that dilute the accuracy of the database and potentially foreclose use of the band from competitors or additional, future uses? If so, how should those rules be structured?

19. If the Commission does adopt a construction certification requirement, how should the Commission manage the certification process? The Commission seeks comment on FWCC's suggestion that certificates be managed through ULS or by a third party. Should the Commission accept construction certifications through one of its systems (*e.g.,* ULS) and pass the certification on to the third-party database administrators? Or should registrants file certifications with the third-party database administrators directly? Should certifications, whether filed in ULS or with database managers, be based on FCC Form 601 Schedule K (Schedule for Required Notifications for Wireless Services) or would a checkmark certification—under penalty of perjury—suffice? Would a directive to the database managers to remove registrations from the database if no certification is filed within 12 months be appropriate? Should the Commission require licensees to list registrations that are beyond the construction deadline as part of their renewal applications, and—for each registration—either certify the link's construction and operation or identify the link for removal from third-party databases? What penalties, if any, should the Commission impose for failure to comply with a certification requirement if the Commission adopt one? Should failure to timely begin operations result in license forfeitures or other penalties? What are the costs and benefits resulting from a construction certification requirement, including potential one-time costs for existing licensees to certify links that have been constructed prior to the certification requirement and projected costs from links that would need to be certified in the future?

20. FWCC also proposes that the Commission allow registrants to amend their registrations under certain circumstances without losing their first-in-time priority rights. The Commission seeks comment on whether licensees should be allowed to amend their registered links without losing first-in-time status. What amendments, if any, should be allowed without losing first-in-time status?

21. *Communications to Ships and Aircraft—Authorization and Framework.* The Commission proposes to authorize point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands under its part 101 rules. The Commission agrees with Aeronet that authorizing these links in the 70 GHz and 80 GHz bands can benefit

[11] For example. the standards for the 90 GHz band do not distinguish between co-polar and cross-polar standards. The 90 GHz standards also set a narrower maximum beamwidth and lower minimum antenna gain. 47 CFR 101.115(b)(2).

[12] FWCC *Ex Parte* at 5 (citing 47 CFR 101.63(c)). Micronet's database provides information about links that have been registered and not constructed, but there is no requirement that Micronet provide this information and there is no requirement that licensees inform Micronet when links are built. Therefore, links that appear in Micronet's database as unconstructed may be constructed. *See* Micronet Database, *http://www.micronetcommunications.com/LinkRegistration/.*

consumers by meeting an increasing demand for broadband services that can be accessed on aircraft and ships, and that using highly directional signals in these bands has the potential to avoid interference to other point-to-point links.

22. *Provision of Broadband to Ships and Planes.* The aviation and maritime markets are currently underserved by broadband providers. According to one study by the London School of Economics,[13] approximately 3.8 billion passengers fly annually across the globe, with only around 25% of planes offering some form of on-board broadband—often of variable quality, coverage, speed, or capacity. According to another study, aviation-based internet access service has an adoption (or take) rate of 10% or less, due to a combination of factors, such as high prices, intermittent coverage, poor performance, and difficult payment mechanisms.[14] Similarly, broadband connectivity on-board passenger ships has been characterized as ''notoriously difficult,'' because broadband internet access service provided at sea ''has been patchy, slow, expensive, and [ ] mainly a luxury associated with premium packages.'' [15]

23. Different systems or services operating at different altitudes or unique locations could create opportunities for expanded use (or reuse) of spectrum frequencies as between traditional terrestrial locations and unique altitudes and locations. Stated another way, ''3D'' spectrum management techniques could allow for the deployment of new broadband products and services while helping to alleviate growing demands for spectrum resources. Innovative products and services are being developed specifically to improve broadband access on-board airplanes, ships, and other methods of transport. A 3D model of spectrum management, however, presents not only potential opportunities but also potential challenges, as managing potential harmful interference between systems becomes more complicated.

24. The 70/80/90 GHz bands could provide a unique spectrum resource for the provisioning of broadband services to airplanes, ships, and other antennas in motion. In general, atmospheric attenuation tends to increase the higher the signal goes in the radio spectrum frequency range, limiting the potential length of transmission paths. The 70/80/90 GHz bands, however, experience less attenuation than frequencies lower down in the 50–60 GHz range.[16]

25. The Commission notes that, in response to Aeronet's petitions, several commenters have raised concerns specific to proposed systems that would operate in the 90 GHz band. Sierra Nevada, for example, opposes use of the 90 GHz band for the types of operations proposed by Aeronet. Sierra Nevada believes these systems will interfere with the Enhanced Flight Visions Systems (EFVS) for which Sierra Nevada seeks to establish rules in this segment of the band. In addition, the Commission proposed to permit use of the 92–95.5 GHz band for EFVS, including amending the Table of Allocations to add a Radionavigation Service allocation in this segment of the band. Moog opposes Aeronet's use of the 90 GHz band because it may interfere with Moog's proposed Foreign Object Debris (FOD) Detection System. The Commission note that the 92–100 GHz band is also recognized worldwide for FOD radar use. Aeronet has acknowledged that the 90 GHz band may pose unique coordination problems for the services it intends to deploy. Because the deployment of links to endpoints in motion in the 90 GHz band may present some unique coordination problems—particularly to EFVS systems that the Commission has already proposed to allow in the 92–95.5 GHz band—the Commission propose to authorize these links to or from (or between) endpoints in motion only in the 70 GHz and 80 GHz bands. The Commission seeks comment on this proposal.

26. The Commission seeks to develop a record on the balance of benefits and costs of permitting new uses of the 70 GHz and 80 GHz bands for communications to points in motion. The Commission seeks comment on the types of benefits to consumers of the services to aircraft and ships proposed by Aeronet. For example, the Commission seeks comment on the value of enhanced competition in the aeronautical and maritime broadband markets that could result from authorizing Aeronet's operations and similar types of services in the 70 GHz and 80 GHz bands. Should the Commission adopt rules to promote competition and prevent licensees from filing multiple registrations that result in a bevy of first-in-time registrations that potentially foreclose use of the band from competitors?

27. How would the introduction of these new types of services in the 70 GHz and 80 GHz bands affect existing point-to-point microwave services or the potential for deployment of other non-Federal and Federal services in the bands? Would aeronautical or maritime deployments, such as the ones proposed by Aeronet and other parties in this proceeding be compatible with more robust use of the band for small cell backhaul, as proposed by FWCC, Ericsson, Nokia, and others? If particular non-Federal use cases are not compatible, then how should the Commission weigh the various public interest considerations in allowing, prohibiting, or prioritizing among such uses? Would aeronautical or maritime deployments in these bands inhibit use of this spectrum by Fixed-Satellite Service systems?

28. The Commission also notes that there are both Federal and non-Federal space-service frequency allocations in the bands discussed here; fixed satellite, mobile satellite, broadcasting satellite, Earth Exploration-Satellite (passive) and radio astronomy. In addition, there are primary Federal allocations in adjacent bands for earth exploration-satellite (passive), space research (passive), and radio astronomy services in the 86–92 GHz band. The Commission seeks comment on any possible impact that the proposals discussed in this *NPRM* may have on Federal use of the 70/80/90 GHz bands by these services.

29. *Classification of Service.* The Commission proposes to classify links to endpoints in motion as a ''mobile'' service under the existing mobile allocation for the 70 GHz and 80 GHz bands. Aeronet asserts that its systems would be ''almost fixed'' because they are ''a forecasted series of fixed point-to-point broadband links'' and ''[t]he location of any given node at any given moment would be knowable in advance and known in real time.'' Aeronet further asserts that links to endpoints in motion could be authorized as fixed services by adding: (1) Definitions in the part 101 rules for ''Scheduled Dynamic Datalink,'' ''Maritime Scheduled Dynamic Datalink,'' ''Aviation Scheduled Dynamic Datalink,'' and

[13] Alexander Grous, London School of Economics and Political Science, *Sky High Economics Chapter One: Quantifying the Commercial Opportunities of Passenger Connectivity for the Global Airline Industry* 3 (2017), *http://www.lse.ac.uk/business-and-consultancy/consulting/assets/documents/sky-high-economics-chapter-one.pdf* (last visited Mar. 18, 2020).

[14] Peter Lemme, Seamless Air Alliance, *The Profitable Economics of Inflight Connectivity* 7 (Mar. 2019), *https://www.seamlessalliance.com/wp-content/uploads/Seamless-Whitepaper-07.pdf* (last visited Mar. 18, 2020).

[15] Eva Grey, *The Race for Faster WiFi on Board Cruise Ships,* Ship Technology (May 15, 2018), *https://www.ship-technology.com/features/race-faster-wifi-board-cruise-ships/* (last visited Mar. 18, 2020).

[16] *See* Lou Frenzel, *Millimeter Waves Will Expand The Wireless Future,* ElectronicDesign (Mar. 6, 2013), *https://www.electronicdesign.com/communications/millimeter-waves-will-expand-wireless-future* (last visited Sept. 11, 2019).

''Scheduled Dynamic Datalink Relay;'' and (2) a note to the relevant frequency assignments specified in § 101.147 of the Commission's rules. The Commission tentatively conclude, however, that the appropriate service classification for Aeronet's proposed services, if the Commission decide to authorize air- and sea-based links or links between antennas in motion in the 70 GHz and 80 GHz bands, should be ''mobile.'' The Commission seeks comment on this tentative conclusion.

30. Aeronet's proposed service classification appears to be inconsistent with the language of the Communications Act and the Commission's rules. While the Communications Act does not define ''fixed stations'' or ''fixed service,'' the Commission rules provide that ''fixed stations'' are stations in the fixed service, which is defined in its rules as a ''radiocommunication service between specified *fixed* points.'' Aircraft and ships must be in motion to serve their intended purposes, and the Commission tentatively concludes that transmission of signals to endpoints on aircraft and ships does not become communication to fixed points simply because, as Aeronet suggests, the expected locations of the aircraft or ships may be known or specified before movement begins. In contrast, the Communications Act defines the term ''mobile station'' to mean ''a radio-communication station capable of being moved and which ordinarily does move.'' The Commission's rules include a similar definition of mobile stations. Moreover, the Commission's rules define ''aeronautical mobile service'' as a ''mobile service between aeronautical stations and aircraft stations, or between aircraft stations . . .'' The Commission rules similarly define ''maritime mobile service'' as a ''mobile service between coast stations and ship stations, or between ship stations . . .''

31. The Commission tentatively conclude that the definitions of ''mobile station'' in the Communications Act and its rules and of ''aeronautical mobile service'' and ''maritime mobile station'' in its rules are consistent with Aeronet's descriptions of its service. Aeronet's antennas on-board aircraft appear to fit most closely within the definition of aircraft stations operating in the aeronautical mobile service, while the ground stations in its system appear to fit the definition of aeronautical stations. Antennas operating on ships appear to fit the description of ship stations operating in the maritime mobile service, while the ground stations and aerostats meet the definition of coast stations. The Commission seek comment on these tentative conclusions.

32. The Commission notes that it's revisiting the Commission's decision in the *2017 Spectrum Frontiers Order* (83 FR 37, 52–53 (Jan. 2, 2018)) not to allow mobile service in the 70/80/90 GHz bands, given the evolution in technology. In the *2017 Spectrum Frontiers Order,* the Commission acknowledged that companies, including Aeronet, Google, and The Elefante Group, proposed different uses of the 70/80/90 GHz bands ''which neither fit the traditional mobile broadband nor fixed link models,'' but it determined that the Commission should consider these proposals and possible future uses in its Wireless Backhaul proceeding. The Commission did, however, reserve the right to revisit this issue as mobile deployments increased in other millimeter-wave bands, as technology developed, and as frameworks for mobile and fixed services to coexist in the bands came to light. Nearly two years later, in February 2019, Aeronet filed its petitions for rulemaking, and in May 2019 Comsearch submitted its compatibility study. Based on this additional information now before the Commission, the Commission consider Aeronet's proposal in conjunction with the targeted rule changes set forth in this *NPRM* to allow for expanded wireless backhaul.

33. The Commission additionally seeks comment on whether any changes to Aeronet's proposed definitions would be necessary to accommodate a classification of these services as mobile, and whether any changes would be necessary to create a provider- and technology-neutral framework for the provision of air- and sea-based links or links between antennas in motion.

34. *Coordination, Licensing, and Registration.* The Commission seeks comment on what changes to the 70/80/90 GHz coordination, licensing, and registration framework would be necessary to permit the operation of links to endpoints in motion under part 101. Currently, non-exclusive nationwide licensees in the 70/80/90 GHz bands coordinate point-to-point links with Federal and other non-Federal users on a first-in-time basis using a coordination mechanism managed by NTIA and shared databases managed by several third-party managers. As an initial matter, the Commission proposes to continue licensing use of the 70 GHz and 80 GHz bands on a non-exclusive, nationwide basis, to the extent the Commission authorize links to endpoints in motion in these bands. This type of flexible licensing approach could facilitate multiple types of uses in these bands, provided that an appropriate Federal coordination and non-Federal registration framework is in place. The Commission seeks comment on this proposal.

35. In that regard, the Commission proposes to require coordination and registration of all air- and sea-based links/links between antennas in motion, and the Commission seeks comment on this proposal. Aeronet asserts that its links involving ground or shore stations can be registered using the existing coordination framework for the 70/80/90 GHz bands, with minor modifications to the registration databases to represent multi-dimensional polygons and polyhedrons, as well as narrow beam-width antennas that operate within a wider-beamwidth cone. Aeronet further represents that links that do not involve a ground or shore station—links between aircraft, links between ships, and links between relay nodes and ships—do not need to be registered at all if Aeronet adopts reasonable limitations on its operations to manage exposures to Fixed Service receivers. The Commission tentatively concludes that coordination and registration should include not only links involving ground or shore stations, but also links between aircraft, links between ships, and links between relay nodes and ships. Requiring appropriate coordination and registration of all links would facilitate protection of Federal and non-Federal operations under the coprimary allocation and allow for future coordination among similar deployments, if additional entrants seek to offer competing services in the 70/80/90 GHz bands. Further, appropriate coordination and registration requirements would potentially allow NTIA and the Commission to track and evaluate the construction and use of all links in the event of interference issues, to the extent the Commission adopts the construction certification requirements proposed in this *NPRM.* The Commission seeks comment on this tentative conclusion.

36. The Commission seeks comment on how these links could be coordinated and registered to represent multi-dimensional areas or polyhedrons, which would involve a significant transformation of NTIA's and the Commission's current systems that coordinate and register two-dimensional point-to-point links. For example, should the coordination and registration requirements for aircraft-to-aircraft links differ depending on the altitude of one or both of the respective aircrafts? How wide should the beams be represented

to account for the potential for aircraft or ships to vary their routes? Will there be any effects from allowing parties to coordinate and register links for wider beams than they potentially may use? Should the databases distinguish between registration of ''phantom'' widebeam antennas such as Aeronet proposes to use to represent the multi-dimensional coverage of ground or shore stations, and wider beamwidth antennas actually used to provide service, as contemplated in this *NPRM*? How should the construction requirements in § 101.63(b) of the Commission's rules, which govern Fixed Service links on a link-by-link basis, apply to the various elements of Aeronet's system that are registered or not registered? Are different construction requirements necessary? The Commission seeks comment on how to address any other technical challenges related to updating the current information technology systems that coordinate and register two-dimensional links to a system that can coordinate and register three-dimensional polyhedrons.

37. Even if aircraft-to-aircraft or ship-to-ship links do not require an interference analysis of traditional Fixed Service links, how would coordination and registration work in the event the 70/80/90 GHz bands are used by multiple air-based or ship-based systems? Should first-in-time priority be afforded to multidimensional areas, and if so, what effect would that have on competing uses of the bands? Is the existing, static third-party database system sufficient to accommodate links to endpoints in motion, or would a more robust coordination and registration mechanism be needed to accommodate services like those Aeronet seeks to deploy? How would coordination and registration mechanisms accommodate Aeronet's proposed operations, which would involve the transmission of signals towards known flight paths or ship routes according to a specified schedule? What are the additional costs and benefits of modifying the coordination and registration framework and associated systems as necessary in light of Aeronet's proposal?

38. In light of the importance of a modified coordination and registration framework to the successful expansion of use of the 70 GHz and 80 GHz bands, the Commission proposes to require FCC review and approval of third-party database managers with the capability of accepting coordination data for air- and sea-based links/links between antennas in motion as a condition precedent to deployment. Currently, two companies (Comsearch and Micronet Communications) serve as third-party database administrators for registering 70/80/90 GHz band links. When the Commission designated database administrators in 2004, it required administrators to monitor and implement FCC rules and policies (including any changes) pertaining to the 70/80/90 GHz bands. Would the undertakings included in the *Designation Order* require the current administrators to make any changes necessary to accommodate air- and sea-based links or links between antennas in motion?

39. Further, the Commission seeks comment on how to continue to protect co-primary and adjacent Federal operations if the Commission authorize links to endpoints in motion. What changes would be needed to NTIA's ''green light''/''yellow light'' coordination system to accommodate deployment of air- or sea-based links, or links between antennas in motion? How would the system effectively manage coordination of commercial aircraft-to-aircraft and aircraft-to-ground links with Federal operations, including the Earth Exploration-Satellite (passive), Space Research (passive), and Radio Astronomy Services?

40. In addition, the Commission notes that certain commenters, while expressing support for Aeronet's proposal, assert that changes to the part 101 rules should be flexible enough to permit other new uses of the 70/80/90 GHz bands. The Commission seeks comment on whether changes to its 70/80/90 GHz rules, including any new definitions, should encompass a broader array of new services. The Commission also seek comment on whether any alternate licensing frameworks would be more effective in facilitating expanded use of these bands.

41. *Technical and Operational Rules.* To facilitate provision of its proposed service, Aeronet requests a change in the maximum allowable mobile Equivalent Isotropically Radiated Power (EIRP) for 71–76 GHz and 81–86 GHz from +55 dBW to +57 dBW. Aeronet also requests that, for purposes of SDDL operation, the Commission increase the maximum transmitter power from 3 watts (5 dBW) to 5 watts (7 dBW) and the maximum transmitter power spectral density from 150 mW per 100 MHz to 500 mW per 100 MHz. Aeronet claims that its proposed services otherwise fit within the current rules for use of the 70/80/90 GHz bands. The Commission seeks comment on whether to increase the maximum allowable EIRP, the maximum transmit power, and the maximum power spectral density applicable to the 70/80/90 GHz bands. What are the potential costs and benefits of increasing the power limits in the 70/80/90 GHz bands, including to existing licensees in those bands or in adjacent bands? The Commission note that vehicular radars operate in the adjacent 76–81 GHz band and the Commission seek comment on whether Aeronet's proposed uses and technical rules would increase the potential for harmful interference to these vehicular radars. Earth Exploration-Satellite (passive) and Space Research (passive) services operate in the adjacent 86–92 GHz band. The Commission seeks comment on whether Aeronet's proposed uses and technical rules would increase the potential for harmful interference to these adjacent band vehicular radars and passive services, and if there is a potential for interference, what technical or operational mechanisms should be considered to mitigate it? The Commission seeks comment on whether changes to other technical or operational rules would be warranted to accommodate the deployment of links to endpoints in motion in the 70/80/90 GHz bands. For example, would rule changes be needed to promote the security of communications to and from aircraft and ships in motion?

42. In addition, the Commission seeks comment on whether the interference mitigation measures proposed by Aeronet and Comsearch would be sufficient to protect co-primary Federal services and, if so, whether they should be required by its part 101 rules. For Aeronet's proposed aviation system, Aeronet would employ ground stations located ''away from urban and suburban areas where part 101 fixed service use of the 70/80/90 GHz bands is concentrated'' and would use a minimum elevation angle of five degrees at the ground stations. Comsearch indicates that Aeronet's ground stations may require coordination zones of up to 35 kilometers. Aeronet also would use aircraft-to-aircraft links that, according to the Comsearch Report, would pose little interference risk to fixed links when operating near horizontally because they can only intersect the main-beam of FS receivers ''at very low or negative elevation angles and at large distances.''

43. For Aeronet's maritime system, the Comsearch Report proposes a coordination zone for ship-to-shore communications of up to 30 kilometers to alleviate the risk of interference, and it recommends frequency planning to avoid ''co-channel operation.'' The Comsearch Report indicates that there is little risk of interference to fixed links from links from shore station-to-

aerostat, aerostat-to-shore station, aerostat-to-ship, and ship-to-ship links because these links would be located at least 20 kilometers out to sea and the antenna beamwidth for links to ships would be directed away from land. Comsearch asserts that shore station-to-aerostat and aerostat-to-shore station links could be registered as ordinary fixed point-to-point links because the aerostats would be tethered and move within +/- 135 meters laterally and –11 meters vertically. For ship-to-ship links and aerostat-to-ship links, the Comsearch Report proposes mitigation measures such as a minimum offshore distance or a minimum off-axis angle towards land.

44. The Commission seeks comment on whether the mitigation measures Comsearch advocates would be necessary or sufficient to protect fixed point-to-point users. The Commission also seeks comment on what additional interference mitigation measures, if any, would be necessary to protect other operations, including vehicular radars, passive services, and the Radio Astronomy Service. Should the Commission amend its part 101 rules to require such measures if SDDLs or other links to endpoints in motion are deployed in these bands? What restrictions or unique operating parameters, if any, should the Commission adopt to mitigate the risk of harmful interference? How far away from traditional fixed stations would ground stations need to be located to avoid interference? What degree of elevation angle would be sufficient to prevent interference? What mitigation measures would be effective to address the risk of harmful interference potentially caused by aircraft-to-aircraft links between aircraft operating at significantly different altitudes? Would other entities be able to operate similar systems without receiving interference from or causing interference to Aeronet's system? In considering these issues, the Commission seeks comment on what assumptions should be made about the number of airports and seaports where SDDLs or similar services would be deployed.

45. *Channelization Plan.* The Commission seeks comment on FWCC's request that the Commission develops a channel plan for the 70 GHz and 80 GHz bands. Supporters of adopting a channelization plan should provide a specific description of changes since the Commission eliminated the 1.25 gigahertz segments in 2005 that necessitate development of a channel plan. Is existing equipment, which has been deployed or is being sold, compatible with FWCC's proposal to adopt a channel plan? Can existing equipment be reprogrammed to conform to a channel plan or would major modifications or replacement be necessary? Would establishing a channel plan restrict the development of innovative equipment for the bands, as the Commission feared in 2005? Alternatively, does the increasing use of these bands justify FWCC's concerns about potential interference that may result due to the absence of a channel plan, particularly in light of FWCC's proposal to loosen antenna standards? Should the Commission, in light of these factors, also consider a channel plan in the 90 GHz band?

46. Commenters should also address whether authorizing links to endpoints in motion requires the Commission to adopt a formal channel plan for the 70/80/90 GHz bands. For example, should the Commission limit SDDL operations to receive (uplink) operations in the 80 GHz band to protect Radio Astronomy Service systems?[17] The Table of Frequency Allocations notes that, in the 76–86 GHz band, emissions from airborne stations can be particularly serious sources of interference to the Radio Astronomy Service. In the event the Commission adopts a channelization plan, should the Commission continue to apply the standard emission limit rules in § 101.1011 (which use a formula for limiting OOBE at the edge of the bandwidth in use, as opposed to subchannels), or does the Commission need to adopt additional or different rules to accommodate a formal channel plan for the 70/80/90 GHz bands or the rule changes requested by Aeronet, FWCC, and others?

47. If the Commission was to adopt a channel plan, then what channel plan should it use? Should the Commission allow for multiple operators to transmit or receive signals in opposite directions (*i.e.,* air-to-ground versus ground-to-air) in the same spectrum? Parties advocating for a formal channel plan or specific designations should explain why a particular band (*e.g.,* 70 GHz or 80 GHz) is more suitable for uplink versus downlink for the advocated-for designations. If the Commission adopts a channel plan, how should it take into account the various new uses of the bands proposed in this *NPRM*? Should the Commission revise § 101.109(c) of its rules to specify a maximum bandwidth less than 5,000 megahertz for the 70 GHz and 80 GHz bands? Should the Commission increase the minimum bit rate of 0.125 bits per second per Hertz to, for example, 1 bit per second per Hertz? Would any specific channel plan and direction of service be particularly conducive to protecting the other co-primary services from interference? Should the Commission adopt a minimum loading requirement before a licensee will be assigned an additional channel? What other changes would be necessary or appropriate to accommodate a channelization plan? Lastly, what are the costs and benefits of adopting channel plans?

48. *Other Considerations.* The Commission seeks comment on whether changes to any other part 101 service rules would be needed to accommodate the various service offerings and potential rule changes examined in this *Notice of Proposed Rulemaking.* For example, could existing microwave links, new small cell backhaul applications, and links to endpoints in motion coexist in the 70 GHz and 80 GHz bands? Would increasing maximum allowable EIRP and increasing maximum output power, as proposed by Aeronet, affect the ability to deploy smaller antennas in the 70 GHz and 80 GHz bands? Would relaxing the antenna standards for the 70 GHz and 80 GHz bands affect the viability of new and innovative proposed uses in these bands?

49. In addition, the Commission notes that § 101.1(b) describes the purpose of the rules in part 101 as ''prescrib[ing] the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations *that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.*'' Similarly, § 101.215 of the Commission's rules requires that, except for remote stations using certain frequencies, ''[e]ach licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station.'' Are revisions to these rules (or others) necessary or advisable to accommodate the services contemplated in this *Notice of Proposed Rulemaking*? If the Commission authorize links to endpoints in motion as a mobile service, what other rule changes would be necessary to accommodate that change?

50. Are any other rule changes necessary to accommodate other potential uses of the 70/80/90 GHz bands? For example, Loon is developing a High-Altitude Platform Station (HAPS) service that may use the 70/80/90 GHz

[17] In the context of SDDL service, ''uplink'' means ground-to-air, shore-to-ship, and shore-to-aerostat. Aeronet Aviation Petition at 28; Aeronet Maritime Petition at 26.

bands to provide ''balloon-powered internet access to unserved and underserved communities.'' Similarly, Elefante seeks to use the 70 GHz and 80 GHz bands to provide 5G and internet-of-Things backhaul. Could these uses co-exist with existing co-primary uses of the band as well as the new uses discussed in this *NPRM*? Would any other rule changes help to promote innovative use of the 70/80/90 GHz bands?

51. In addition, the Commission proposes that any mobile operations be authorized on a non-interference basis to fixed operations in Canada and Mexico and subject to future international agreements. The Commission seeks comment on the international coordination implications of the services proposed in this *Notice of Proposed Rulemaking.* Would the separation/coordination zones defined in the rules for terrestrial Fixed Service, which are based on certain characteristics for terrestrial operations (such as EIRP and antenna height), be sufficient to prevent interference to services in neighboring countries from an aeronautical or maritime service operating with different parameters? What mechanisms should be in place with regard to operation in or over quiet zones and/or near international borders with Canada and Mexico?

52. The Commission notes that any systems for the provision of broadband that it authorize in this proceeding must not create hazards to air navigation, whether near airports, over water, or in any other area. The Commission seeks comment on any necessary rule changes to promote public safety. For example, should any Commission rules, such as those on tower lighting, apply to relay stations, including aerostats or drones?

53. *Wavier Petitions. Aviat Networks and CBF Networks, Inc. Petitions.* Aviat Networks, Inc. (Aviat) and CBF Networks, Inc., d/b/a Fastback Networks (Fastback), each filed a request for partial waiver of the antenna standards for the 71–76 and 81–86 GHz bands (collectively, the Waiver Requests). The relief requested is consistent with FWCC's previously proposed changes to the Commission's antenna rules, and the Waiver Requests acknowledge that any relief granted would be subject to the outcome of any ''rulemaking proceeding affecting 71–76/81–86 GHz antenna standards.'' On October 13, 2015, the Wireless Telecommunications Bureau consolidated the Waiver Requests and sought comment on them. Several commenters support approval of the waiver petitions, while others oppose them or seek to expand their applicability.

54. Generally, the Commission may waive any rule for good cause shown. Waiver is appropriate if special circumstances warrant a deviation from the general rule, such deviation will serve the public interest, and the waiver does not undermine validity of the general rule. More specifically, § 1.925(b)(3) of the Commission's rules requires parties seeking a waiver of wireless radio services licensing rules to demonstrate that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

55. Aviat and Fastback have not met the first prong of § 1.925(b)(3) because they have not shown that the requested waivers would be in the public interest. Specifically, as discussed in this *NPRM,* there are multiple and complex issues to be explored before allowing antennas that do not satisfy the current requirements of § 101.115. The Commission, therefore, also decline suggestions to grant an industry-wide waiver. Moreover, Aviat and Fastback do not meet the second prong of § 1.925(b)(3) because the record does not establish that waivers are justified based on special circumstances. In short, while the Commission agrees that FWCC's proposed changes to the antenna rules merit full consideration, Aviat and Fastback have not justified the need for individual waivers prior to the Commission developing a full record on the proposed rule changes. The Commission concludes that the public interest is best served through a thorough and deliberate examination of the possibility of revising antenna and other rules in the 70/80/90 bands through the rulemaking process rather than on an individual basis.

Procedural Matters

56. *Ex Parte Presentations—Permit-but-disclose.* The proceedings shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all s 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.

Initial Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the *Notice of Proposed Rulemaking.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

58. *Need for, and Objectives of, the Proposed Rules.* In the *NPRM,* the Commission explores various proposals seeking to change its part 101 rules to permit innovative uses of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands, collectively referred to as

the ''70/80/90 GHz bands.'' The potential rule changes seek to facilitate the provision of wireless backhaul for 5G, as well as the deployment of broadband services to aircraft and ships, while protecting incumbent operations in the 70/80/90 GHz bands. Further, in promoting the expanded use of this millimeter-wave spectrum for a myriad of innovative services, the Commission seeks to take advantage of the highly directional signal characteristics of these bands which may permit the co-existence of multiple types of deployments.

59. The 70/80/90 GHz bands are high millimeter-wave bands allocated for co-primary Federal and non-Federal uses in the FS, FSS (70/80 GHz only), Mobile (70/80/90 GHz), Radio Astronomy (80/90 GHz only) and Radiolocation (90 GHz only) services under part 101 of the Commission's Rules. Spectrum use in the 70/80/90 GHz bands is primarily concentrated along a few popular routes, with minimal use in large parts of the United States. These bands are presently used primarily for fixed point-to-point and satellite services via non-exclusive registered links in a third-party registration database. As of March 23, 2020, there were 658 active non-exclusive nationwide licensees in the 70/80/90 bands. Based upon information available from the third-party database managers responsible for registering links in those bands, as of March 23, 2020, there were 18,770 registered fixed links in the 70 GHz and 80 GHz bands. To further the Commission's goals of expanding access to broadband and fostering the efficient use of millimeter wave spectrum, the Commission proposes targeted changes to its rules to facilitate the provision of wireless backhaul for 5G and seek comment. Included in the Commission's discussion of potential rule changes and requests for comments in *NPRM* are proposed changes to its rules in the 70/80/90 GHz bands by the Fixed Wireless Communications Coalition (FWCC), the 5G Wireless Backhaul Advocates and Aeronet Global Communications, Inc. (Aeronet).

60. Specifically, the Commission proposes changes to the antenna standards applicable to the 70 GHz and 80 GHz bands and seeks comment on whether similar changes are necessary in the 90 GHz band. The Commission also proposes to continue licensing use of the 70 GHz and 80 GHz bands on a non-exclusive, nationwide basis, to the extent the Commission authorizes links to endpoints in motion in these bands and seek comment on this proposal. The Commission further proposes to require registration of all air and sea-based links/links between antennas in motion, and the Commission seeks comment on this proposal. In addition, the Commission seeks comment on whether the Commission should make changes to its current link registration rules for the 70/80/90 GHz bands to prevent the registration of never-constructed links. The Commission also proposes to authorize point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands and to classify those links as a ''mobile'' service. The Commission seeks comment on technical and operational rules necessary to facilitate these new service offerings in the 70 GHz and 80 GHz bands and mitigate interference to incumbents and other proposed users of these bands. Finally, the Commission seeks comment on whether the Commission should adopt a channelization plan in the 70 GHz and 80 GHz bands.

61. By modifying the Commission's rules and implementing policies designed to provide for more flexible use of new technologies in the 70/80/90 GHz band, the Commission hopes to ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of a wide variety of services, ultimately leading to greater benefits to consumers.

62. *Legal Basis.* The proposed action is authorized pursuant to §§ 4, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 307.

63. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.'' A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

64. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.

65. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

66. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general-purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

67. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms

had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

68. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, the Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licensees, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

69. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission note, however, that the microwave fixed licensee category includes some large entities.

70. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimate that the majority of satellite telecommunications providers are small entities.

71. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there was a total of 1,442 firms that operated for the entire year. Of these firms, a total of 1400 firms had gross annual receipts of under $25 million and 42 firms had gross annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that a majority of ''All Other Telecommunications'' firms potentially affected by its actions can be considered small.

71. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission conclude that a majority of manufacturers in this industry is small.

72. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission expect the rule proposals in the *NPRM* may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as on other licensees and applicants if adopted. In particular, proposed requirements involving licensing, registration, and construction certification could increase recordkeeping and reporting obligations for small entities and for other licensees and applicants. There may also be new compliance obligations created by antenna standard changes, and changes to part 101 technical and/or operational rules in order to accommodate proposed new service offerings and other potential uses of the 70/80/90 GHz bands. The Commission believes at this time that applying the rules equally to all entities would promote fairness.

73. In the *NPRM,* the Commission is considering adopting rules with the goal of preventing one party from filing a bevy of coordination requests, choking-off the band from competitors. The Commission propose requiring registrants in the 70/80/90 GHz bands to file such certificates of construction, through either ULS or a third party, when a link has been placed into operation. As it currently stands, failure to timely begin operations pursuant to part 101 authorization results in the authorization cancelling automatically, however, the Commission has no way of knowing whether operation has begun without a requirement to file a construction certificate. The *NPRM* seeks comment on whether the Commission should also require licensees to list registrations under their licenses that are beyond their construction deadlines as part of their renewal applications, and—for each registration—either certify the link's construction and use or to identify the link for removal from the third-party

databases. While filing such construction certificates or requiring the listing of registrations with missed construction deadlines with third-party database administrators may appear to increase the paperwork burden on all affected entities, strict construction requirements may actually reduce the overall number of filings to only those that entities would actually build.

74. The record in this proceeding contains assertions that the innovative aeronautical and maritime services proposed by Aeronet have lower interference potential and therefore could avoid the need to engage in the proposed registration process described above. If this becomes the Commission's approach, it would lower the recordkeeping burden on small entities and other licensees. However, to the extent such links would also be coordinated though the current registration system, the recordkeeping burden associated with such new services would presumably remain the same as the burden on legacy systems in the 70/80/90 GHz bands. There are various methods of interference mitigation that could be applicable to the newly proposed services, such as the use of coordination zones or frequency planning which may also place a greater recordkeeping burden on licensees operating these services. However, if new services are able to operate without causing interference to competitors' systems, and existing mitigation techniques remain effective, then related compliance costs may not increase. In the *NPRM,* the Commission seeks comment on the various proposals and considerations.

75. When the Commission first reduced the minimum antenna standard, the Commission did so as a matter of public policy to expand potential use in the bands to more business locations. In the past, the cost of the 70 GHz and 80 GHz antennas were specifically noted as major factors limiting deployment in the 70/80/90 GHz band. As mentioned in the *NPRM,* the antennas mandated in the 70/80/90 GHz bands can cost up to eight times as much as smaller antennas. The FWCC's proposal to permit even smaller antenna designs, could result in more small entities using the band. To the extent such new antenna standards would increase interference between antennas, it is also possible that higher levels of coordination and hence recordkeeping would be essential. However, the Commission does not believe that the costs and/or administrative burdens associated with these rules would unduly burden small entities or other licensees. In the *NPRM,* the Commission seeks comment on these proposals and considerations.

76. The *NPRM* notes that certain part 101 rules need modification, such as the requirement ''[e]ach licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station.'' The Commission asks commenters how to apply this rule (if at all), to stations on-board aircraft or ships or HAPS. In the absence of any modifications, this rule would create a recordkeeping obligation for operators of newly proposed services.

77. At this time, Commission is not currently in a position to determine whether, if adopted, the proposed rules and associated requirements raised in the *NPRM* would require small entities to hire attorneys, engineers, consultants, or other professionals and cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised herein. In the Commission's discussion of these proposals in the *NPRM,* the Commission have sought comments from the parties in the proceeding, and requested cost and benefit analyses, which may help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result in the proceeding.

78. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives for small businesses that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

79. To assist with the Commission's evaluation of the economic impact on small entities, and to better evaluate options and alternatives should there be a significant economic impact on small entities as a result of the proposals in this *NPRM,* the Commission has sought comment from the parties. The proposals in this proceeding for expanded use in the 70/80/90 bands are predicted on Aeronet's petitions for rulemaking to permit the use of SDDLs to enable the provision of broadband service to aircraft or ships in motion. However, alternative uses for the band were raised by commenters on the Aeronet petitions. Sierra Nevada seeks to use the 90 GHz band for Enhanced Flight Vision Systems to allow aircraft to land in low-visibility conditions. Elefante seeks to use the 70 GHz and 80 GHz bands for feeder links in its proposed Stratospheric-Based Communications Service. Loon intends to use a network of balloons at heights of about 20 kilometers to provide internet access unserved and underserved communities. Moog intends to use spectrum in the 90 GHz band for its proposed Foreign Object Debris Detection System to help airplanes avoid hazards on runways. Additionally, as mentioned above, FWCC proposes several changes to the Commission's part 101 rules governing the 71–76 GHz and 81–86 GHz bands. To facilitate further consideration of the various use proposals, in the *NPRM* the Commission seeks comments on how to weigh public interest considerations associated with allowing, prohibiting and prioritization of uses and on the costs and benefits of allowing new uses of the 70/80/90 GHz bands for communications to points in motion. The Commission also seeks comment on whether changes to the 70/80/90 GHz licensing framework would be necessary to accommodate the operation of links to endpoints in motion under part 101.

80. In light of FWCC's proposed changes to the 70 GHz and 80 GHz antenna standards, the Commission seeks comments and alternatives for changing the antenna standards in 70/80/90 GHz bands. The Commission believe that reducing the minimum antenna size will facilitate access to spectrum by a wide variety of small entities at a cost that is substantially less than the antennas currently mandated for the 70/80/90 GHz bands. The Commission seeks detailed quantitative data on the benefits and costs of relaxing antenna standards for the 70/80 GHz bands which may allow the Commission to analyze the impact on small entities. This includes any cost savings from the changes and any cost increases that may result from increased interference. In the *NPRM,* Commission queries whether to require 70 GHz and 80 GHz band registrants to file a certification of construction when a link has been placed into operation in response to FWCC's proposed changes to the Commission's rules for link registration in the 70/80 GHz bands and

seeks comments on these matters. The Commission also queries what penalties should be imposed for failure to comply with a certification requirement, if adopted, and whether license forfeitures or other penalties should be imposed for failure to timely begin operations and seeks comments.

81. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *NPRM.* The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

82. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

83. *Initial Paperwork Reduction Act of 1995 Analysis.* This *Notice of Proposed Rulemaking* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or modified information collection requirements, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comments on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 303, 307, and 47 CFR 1.407, the petitions for rulemaking filed by Aeronet, RM–11824 and RM–11825, are *granted* as discussed herein, and this *Notice of Proposed Rulemaking* in WT Docket No. 20–133 *is adopted.*

85. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

86. *It is further ordered,* pursuant to sections 4(i) –(j) of the Communications Act of 1934, 47 U.S.C. 154(i), (j), and § 1.925 of the Commission's rules, that the Request for Waiver of Aviat Networks, Inc. filed on April 5, 2013, as amended on March 24, 2014; and on November 10, 2014 (to add Radio Frequency Systems as a party), and the Request for Waiver of CBF Networks, Inc. d/b/a Fastback Networks, filed on June 19, 2015, *are denied.* If no petitions for reconsideration are timely filed, WT Docket No. 15–244 is terminated, and its docket shall be closed.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–14064 Filed 7–2–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200622–0165]

RIN 0648–BJ20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Snapper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 51 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf)(FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 51). This proposed rule would establish and modify status determination criteria and harvest levels for the gray snapper stock. The purposes of this proposed rule are to end overfishing of gray snapper and achieve optimum yield (OY).

DATES: Written comments must be received by August 5, 2020.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2019–0116'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0116,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Amendment 51, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-51-establish-gray-snapper-status-determination-criteria-and-modify-annual-catch.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes gray snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Unless otherwise noted, all weights in this proposed rule are in round weight.

Gray snapper in the Gulf exclusive economic zone (EEZ) are managed as a

single stock with a stock annual catch limit (ACL), and a stock annual catch target (ACT). There is no allocation of the stock ACL between the commercial and recreational sectors. Gray snapper occur in estuaries and shelf waters of the Gulf, and are particularly abundant off south and southwest Florida. Generally, the fishing season is open year-round, January 1 through December 31. However, accountability measures (AMs) for gray snapper specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The gray snapper ACL and AMs were implemented in 2012 (76 FR 82044; December 29, 2011) and the stock ACL of 2.42 million lb (1.1 million kg) was not exceeded between 2012 and 2018. Preliminary review of the most recent landings data indicate this ACL is not likely to be exceeded in 2019. However, landings in 2014 and 2016 did exceed the ACLs proposed in this rule.

In 2018, the stock status of gray snapper was evaluated for the first time through a Southeast Data, Assessment, and Review benchmark stock assessment (SEDAR 51). The Council's Scientific and Statistical Committee (SSC) reviewed SEDAR 51 and accepted the assessment as the best scientific information available. The SSC determined that the stock is undergoing overfishing as of 2015, which was the last year of data included in the assessment, because the fishing mortality rate (F) exceeded the current maximum fishing mortality threshold (MFMT). The SSC was not able to determine whether the stock is overfished, because the maximum sustainable yield (MSY) and minimum stock size threshold (MSST) for gray snapper are not specified in the FMP.

SEDAR 51 could not estimate the actual MSY with the best scientific information available. Therefore, the Council considered alternatives for an MSY proxy that uses the spawning potential ratio (SPR). The SPR is the ratio of the average number of eggs per fish over its lifetime when the stock is fished compared to the same value when the stock is not fished. The SPR assumes that a certain amount of fish must survive and spawn in order to replenish the stock. Analyses of stocks with various life histories suggest that, in general, the MSY is most commonly associated with the yield when fishing at an F that corresponds to an SPR between 30 and 40 percent.

After reviewing the SEDAR 51 assessment, the SSC recommended that the MSY proxy be set at the yield when fishing at an F corresponding to a 30 percent SPR ($F_{30\%SPR}$), which is consistent with the current MFMT for gray snapper, set in 1999. However, the Council noted that the Gulf red snapper proxy is set at the yield associated when fishing at an F corresponding 26 percent SPR ($F_{26\%SPR}$), which allows for a larger yield at a given stock size. After further analyses and review, the SSC determined that the yield when fishing at $F_{26\%SPR}$ is scientifically acceptable as a proxy for MSY, but, because of the uncertainty in the SEDAR 51 assessment, maintained its previous recommendation of the more risk-averse MSY proxy using the yield when fishing at $F_{30\%SPR}$. The Council selected the yield when fishing at $F_{26\%SPR}$ for an MSY proxy to balance protection of the gray snapper stock with an increase in social and economic benefits for fishers targeting the species that is expected to result from allowing more harvest.

As a result of the increasing uncertainty with long-range projections, the SSC only provided overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for the gray snapper stock through 2021. From SEDAR 51, the OFLs associated with the MSY proxy selected by the Council are 2.58 million lb (1.17 million kg) for 2020, and 2.57 million lb (1.17 million kg) for 2021, and the ABCs recommended by the SSC are 2.51 million lb (1.14 million kg) for 2020 and subsequent years.

Management Measure Contained in This Proposed Rule

If implemented, this proposed rule would revise the ACL for the Gulf gray snapper stock, and remove the ACT.

Annual Catch Limits and Annual Catch Target

The current ACL for gray snapper is 2.42 million lb (1.1 million kg) and was established based on average landings from 1999 through 2008. The current ACT is set 14 percent below the ACL, at 2.08 million lb.

To determine the new ACLs, the Council used its ACL/ACT control rule to determine whether to apply a buffer to the ABC recommendations to account for management uncertainty. The results indicated that an 11 percent buffer is appropriate. When applied to the 2020–2021 ABC recommendations, the resulting gray snapper stock ACLs in this proposed rule would be 2.24 million lb (1.02 million kg) for the 2020 fishing year. For 2021 and subsequent fishing years, the ACL would be set at 2.23 million lb (1.01 million kg). The Council decided to remove the ACT for gray snapper because it has not been used for management since its implementation in 2012.

Management Measures Contained in Amendment 51 But Not Codified Through This Proposed Rule

Amendment 51 would modify the OFL and ABC for the gray snapper stock as previously explained. Amendment 51 would also modify the MFMT and specify the MSY, MSST, and OY for the stock. NMFS uses the MSST and MFMT to determine whether a stock is overfished or undergoing overfishing, respectively. If the stock biomass falls below the MSST, then the stock is considered overfished and the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. In years when there is a stock assessment, if fishing mortality exceeds the MFMT, a stock is considered to be undergoing overfishing, because this level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, overfishing occurs if landings exceed the OFL.

Amendment 51 would set the MSY proxy as the yield when fishing at $F_{26\%SPR}$. MFMT would be changed from $F_{30\%SPR}$ to $F_{26\%SPR}$, and the MSST would be 50 percent of the biomass at MSY or the MSY proxy. The OY would be the yield when fishing at 90 percent of $F_{MSY(or\ MSY\ proxy)}$. As noted previously, under the current MFMT, overfishing was occurring as of 2015. Under the proposed MFMT of $F_{26\%SPR}$, projections from SEDAR 51 suggest overfishing ended in 2017. Under the proposed MSST, the stock would not be overfished.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on

a substantial number of small entities. The factual basis for this certification is as follows. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the **SUMMARY** section of the preamble.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance requirements are introduced in this proposed rule.

The proposed rule concerns recreational and commercial fishing for gray snapper in Federal waters of the Gulf. It directly affects both anglers (recreational fishers) and commercial fishing businesses that harvest gray snapper in the Gulf EEZ.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests gray snapper in the Gulf EEZ must have a valid Federal Gulf reef fish permit attached to that vessel. From 2013 through 2017, an annual average of 387 permitted vessels reported landing gray snapper. An estimated 295 businesses operate that average number of vessels that land gray snapper annually. All of these businesses are expected to operate primarily in the Gulf commercial fishing industry (NAICS code 11411).

For Regulatory Flexibility Act purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide.

From 2013 through 2017, federally-permitted vessels that reported landing gray snapper received an average of $1,018 (2017 dollars) annually from gray snapper landings and $127,707 (2017 dollars) annually from all landings. Based on those revenues, NMFS has determined that all of the businesses directly affected by the proposed action are small.

This proposed rule would reduce the current gray snapper stock ACL from a constant 2.42 million lb (1.10 million kg) to 2.24 million lb (1.02 million kg) in 2020 and 2.23 million lb (1.01 million kg) in 2021 and subsequent years. That is a decrease of 0.18 to 0.19 million lb (0.82 to 0.86 million kg), which is a reduction of the stock ACL by 7.44 percent to 7.85 percent.

Between 2013 and 2017, the commercial sector accounted for an average of 7.5 percent of the total gray snapper landings in the Gulf, and an average of 83.0 percent of commercial sector landings were made by federally-permitted vessels. NMFS used those average percentages to estimate that the 180,000 lb (81,647 kg) reduction in the stock ACL in 2020 could result in a 13,500 lb (6,124 kg) decrease in commercial landings in 2020, and the 190,000 lb (86,183 kg) reduction in the stock ACL in 2021 and thereafter could reduce commercial landings by 14,250 lb (6,464 kg). Moreover, because permitted vessels report their gray snapper landings in pounds gutted weight, those possible reductions would be equivalent to 10,186 lb (4,620 kg) gutted weight in 2020 and 10,828 lb (4,911 kg) gutted weight in years thereafter. However, any actual decrease in commercial landings would require a closure of the commercial season before the end of the fishing year. A closure would occur if the sum of commercial and recreational landings exceeded the stock ACL during the previous year, and if the sum of commercial and recreational landings reached or was projected to reach the stock ACL in the current year. There have been no closures of the commercial season in recent years. Landings data for 2018 and preliminary data for 2019 indicate combined landings for those years were under the current and proposed stock ACLs, which suggests there would be no closures.

If there were a closure as a result of the reduction in the stock ACL, there would be a reduction of federally-permitted vessels' collective dockside revenues that ranges from $28,419 to $30,001 (2017 dollars), assuming an average dockside price of gray snapper of $2.79 per lb (2017 dollars), gutted weight. Each of the 387 vessels would lose from $73 to $78 in the year of the closure, on average, which represents a 0.06 percent reduction of the average total income ($127,707). The average impact on the 295 small businesses would be $96 to $102 (2017 dollars).

The information provided supports a determination that this proposed rule would not have a significant economic impact on the average annual 295 commercial fishing businesses and their combined 387 federally permitted fishing vessels that harvest gray snapper from the Gulf. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gray snapper, Gulf, Reef fish.

Dated: June 22, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.41, revise paragraph (l) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(l) *Gray snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper, in round weight, is 2.24 million lb (1.02 million kg) for the 2020 fishing year, and 2.23 million lb (1.01 million kg) for the 2021 and subsequent fishing years.

* * * * *

[FR Doc. 2020–13774 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 129
Monday, July 6, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0022]

Use of Radio Frequency Identification Tags as Official Identification in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with Executive Order 13892, Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication, the Animal and Plant Health Inspection Service (APHIS) is soliciting public comments on a proposal wherein APHIS would only approve radio frequency identification tags as official eartags for use in interstate movement of cattle and bison that are covered under certain regulations.

DATES: We will consider all comments that we receive on or before October 5, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0022.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0022* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Aaron Scott, Director, National Animal Disease Traceability and Veterinary Accreditation Center, Strategy & Policy, Veterinary Services, APHIS, 2150 Centre Ave, Fort Collins, CO 80526; (970) 494–7249.

SUPPLEMENTARY INFORMATION:

Background

The Animal Plant Health Inspection Service's (APHIS') Animal Disease Traceability framework was established to improve the ability to trace animals back from slaughter and forward from premises where animals are officially identified in addition to tracing animals' interstate movements. Although 9 CFR part 86 (referred to below as ''the regulations'') provides requirements for official identification and movement documentation for multiple species, the scope of this notice is limited to official eartags for cattle and bison. Knowing where diseased and at-risk exposed animals are, as well as where they have been and when, is indispensable to emergency response and ongoing disease control and eradication programs. The ability to accurately and rapidly trace animals does not prevent disease epidemics but does allow State and Federal veterinarians to contain potentially devastating disease outbreaks early before they can do substantial damage to the U.S. cattle industry.

APHIS has primary regulatory responsibility to control and eradicate communicable diseases of livestock and to prevent the introduction and dissemination of any pest or disease of livestock into the United States. The regulations provide the requirements for identification and documentation for certain classes of cattle and bison to move interstate. These regulations establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. The species covered in the regulations include cattle and bison (sexually intact and 18 months of age or older, all female dairy cattle of any age and male dairy animals born after March 11, 2013, cattle and bison of any age used for rodeo or recreational events, and cattle or bison of any age used for shows or exhibitions), sheep and goats, swine, horses and other equines, captive cervids (*e.g.,* deer and elk), and poultry.

Official identification devices or methods are determined by the APHIS Administrator. An ''official identification device or method'' is defined in § 86.1 of the regulations as ''[a] means approved by the Administrator of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.''

One of the approved identification methods for cattle and bison covered by part 86 is an official eartag. An ''official eartag'' is defined in § 86.1 of the regulations as ''[a]n identification tag approved by APHIS that bears an official identification number for individual animals. . .. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal.''

As of the publication of this notice, APHIS has used visual (metal) tags for animal identification in disease programs for many decades and has approved both visual and radio frequency identification (RFID) tags for use as official identification devices in cattle and bison since the implementation of the regulations in part 86 in 2013.

A comprehensive animal disease traceability system is the best protection against a devastating disease outbreak. The U.S. Department of Agriculture (USDA) is committed to a modern disease traceability system that tracks animals from birth to slaughter using affordable technology that allows for quick tracing of sick and exposed animals to stop disease spread. In September 2018, USDA established four overarching goals to increase traceability. These goals are: (1) Advance the electronic sharing of data among Federal and State animal health officials, veterinarians, and industry; including sharing basic animal disease traceability data with the Federal animal health events repository; (2) use

electronic identification tags for animals requiring individual identification in order to make the transmission of data more efficient; (3) enhance the ability to track animals from birth to slaughter through a system that allows tracking data points to be connected; and (4) elevate the discussion with States and industry to work toward a system where animal health certificates are electronically transmitted from private veterinarians to State animal health officials.

Effective animal traceability is important for slow-moving diseases of cattle, such as bovine tuberculosis. Failure to correctly identify the infected animal can result in prolonged exposure to the disease within a herd, increasing the likelihood of spread. Conversely, incorrect identification can lead to incomplete trace backs or trace forwards with resulting costs to both government and livestock producers for quarantines and testing of animals to find the ones actually exposed.

For fast-moving diseases with short incubation periods, the time to trace animals and contain an outbreak is essential to protect the economic viability and competitive advantage of the U.S. cattle industry. For diseases such as foot-and-mouth disease that could devastate the U.S. cattle industry, emergency response exercises demonstrate that every hour counts towards the successful containment of an outbreak.

While APHIS focuses on interstate movements of livestock, States and Tribal Nations remain responsible for the traceability of livestock within their jurisdictions. APHIS partners with State veterinary officials each year to test the performance of States' animal disease traceability systems. Results of these test exercises currently show that when State veterinary officials are provided an identification number from an animal that has been identified with an official identification tag, either metal or RFID, that has been entered accurately into a data system, over half of States can trace animals through any one of four types of movements in less than 1 hour (these four types of movements are: Finding the State where an animal was tagged, the location in-State where an animal was tagged, the State from which an animal was shipped out of, and the location in-State that an animal was shipped out-of-State from). However, lengthy times in the trace test exercises resulted when numbers from visual (metal) tags were transcribed inaccurately, movement records were not readily available, or information was only retrievable from labor-intensive paper filing systems. RFID tags and electronic record systems provide significant advantage over metal tags to rapidly and accurately read and record tag numbers and retrieve traceability information.

In support of greater efficiency in traceability and in furtherance of the above-listed program goals, in 2020, APHIS started taking steps to enhance capability to rapidly trace and contain diseased and exposed cattle. We have done so by providing RFID ear tags as a no-cost alternative to the metal clip tags currently available from APHIS free of charge to States and accredited veterinarians. The RFID tags are intended for application in replacement heifers that are vaccinated for brucellosis, as well as those in States and herds that do not vaccinate for brucellosis. We believe the increased use of RFID tags is an important step to support the efforts of the cattle industry and State and Federal veterinarians to more accurately and rapidly trace potentially infected and exposed animals.

Executive Order 13892 provides that, in order to avoid unfair surprise, or lack of warning about what a legal standard administered by an Agency requires, Agencies shall publicly state the standards of conduct expected by regulated parties in advance of the enforcement of those standards. In accordance with this Executive Order, and in furtherance of the stated program goals and pursuant to part 86, APHIS is seeking comment from the public on a proposal wherein APHIS would only approve RFID tags as the official eartag for use in interstate movement of cattle and bison that are covered under part 86.

We recognize that, in addition to whether to transition to RFID identification devices, the timeline for such a transition is also important. Accordingly, we also request specific public comment on the following timeline, if, based on the comments received, USDA were to engage in such a transition:

- Beginning January 1, 2022, USDA would no longer approve vendors to use the official USDA shield in production of metal ear tags or other ear tags that do not have RFID components.
- On January 1, 2023, RFID tags would become the only identification devices approved as an official eartag for cattle and bison pursuant to § 86.4(a)(1)(i).
- For cattle and bison that have official USDA metal clip tags in place before January 1, 2023, APHIS would recognize the metal tag as an official identification device for the life of the animal.

This proposed change in what is considered an official eartag would not alter the current regulations in part 86 and would not amend the classes of cattle required to have official identification under the regulations. Likewise, this notice does not change part 86; for example, the State veterinary officials in States sending and receiving cattle could agree to accept alternate forms of identification such as registered brands, tattoos and other identification methods acceptable to breed associations in lieu of an official eartag. The policy for approving tags as official identification would continue to require that tags meet safety, quality, and retention criteria. However, all approved tags applied on or after January 1, 2023 would require an RFID component for the number that could be read visually as well as electronically.

This change would allow rapid and accurate reading and electronic transcription of identification numbers used for interstate health certificates or testing for regulated diseases such as tuberculosis or brucellosis. Implementing RFID as the official eartag in cattle would enhance the ability of State, Federal, and private veterinarians as well as livestock producers to quickly respond to high-impact diseases currently existing in the United States, as well as foreign animal diseases that threaten the viability of the U.S. cattle industry.

We will publish a follow-up notice in the **Federal Register** after reviewing any comments we receive. This notice will respond to any such comments, announce our decision on official eartags for cattle and bison, and, if necessary, provide a timeline for a transition if there is a change to what is an official eartag.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 30th day of June 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–14463 Filed 7–2–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program (SNAP), Store Applications, Forms FNS–252, FNS–252–C, FNS–252–E, FNS–252–FE, FNS–252–R and FNS–252–2

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection. This is a revision of a currently approved collection in the Supplemental Nutrition Assistance Program and concerns Retail Store Applications (Forms FNS–252; FNS–252–C, FNS–252–E; FNS–252–FE; FNS–252–R and FNS–252–2).

DATES: Written comments must be received on or before September 4, 2020.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of 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 may be sent to: Linda Sung-Lee, Acting Chief, Retailer Administration Branch, Supplemental Nutrition Assistance Program, Retailer Policy and Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Room 5042, Alexandria, VA 22314. Comments may be faxed to the attention of Ms. Sung-Lee at (703) 305–1863 or via email to: *RPMDHQ-WEB@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the FNS office located at 1320 Braddock Place, Room 5042, Alexandria, Virginia 22314, during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday).

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Linda Sung-Lee at *RPMDHQ-WEB@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program (SNAP)—Store Applications.

Form Number: FNS–252; 252–E; 252–FE; 252–R; 252–2; and 252–C.

OMB Number: 0584–0008.

Expiration Date: January 31, 2021.

Type of Request: Revision of a currently approved collection of information.

Abstract: Section 9(a) of the Food and Nutrition Act of 2008, as amended, (the Act) (7 U.S.C. 2011 et. seq.) requires that FNS determine the eligibility of retail food stores and certain food service organizations to accept SNAP benefits and to monitor them for compliance and continued eligibility and to ensure Program integrity.

FNS is also responsible for requiring updates to application information and reviewing retail food store applications at least once every five years to ensure that each firm is under the same ownership and continues to meet eligibility requirements. The Act specifies that only those applicants whose participation will ''effectuate the purposes of the program'' should be authorized.

There are six forms associated with this approved Office of Management and Budget (OMB) information collection number 0584–0008—the Supplemental Nutrition Assistance Program Application for Stores, Forms FNS–252 (English and Spanish) and FNS–252–E (paper and online version respectively); Farmer's Market Application, Form FNS–252–FE; Meal Service Application, Form FNS–252–2; Reauthorization Application, Form FNS–252–R; and the Corporation Supplemental Application, Form FNS–252–C used for individual (chain) stores under a corporation. For new authorizations, the majority of applicants use form FNS–252 or FNS–252–E (paper or online, respectively). For reauthorization, form FNS–252–R is used. In addition to these forms, during new authorization or reauthorization, FNS may conduct an on-site store visit of the firm. The store visit of the firm helps FNS confirm that the information provided on an application is correct. An FNS representative or store visit contractor obtains permission to complete the store visit checklist, photograph the store and asks the store owner or manager about the continued ownership of the store.

Applicants using form FNS–252–E or FNS–252–FE must self-register for a Level 1 access account through the USDA eAuthentication system prior to starting an online application. USDA eAuthentication facilitates the electronic authentication of an individual.

The Agricultural Act of 2014 (2014 Farm Bill) amended the Food and Nutrition Act of 2008 (the Act) and the Supplemental Nutrition Assistance Program (SNAP) revised all retailer application forms (paper and electronic) in January, 2018, as a result of regulatory changes required by the Act and amended by the 2014 Farm Bill.

FNS seeks to renew the current information collection, and where appropriate, revise the information collection for all SNAP application forms (paper and electronic) to clarify questions, instructions and examples concerning stocking units of staple food varieties on a continuous basis and to add Individual Taxpayer Identification Number (ITIN) as an alternative form of documentation that respondents may submit to FNS in lieu of a Social Security Number. Such changes would include (1) replacing ''each variety'' with ''at least three varieties''; (2) adding one additional inventory stock example in each staple food category; (3) updating assistance materials such as General and Specific Instruction sections and on-line help screens; (4) inserting ''ITIN'' in the third, fourth, and seventh bullet of the Use and Disclosure—Routine Uses section; and (5) deleting the last two sentences in the last bullet of the Certification and Signature Statement regarding the General Service Administration's (GSA) System for Award Management (SAM). Upon advice of counsel, FNS no longer follows this business practice. FNS also intends to make minor grammatical changes for clarity along with design changes by adding spacing and horizontal lines separating Questions 21–26 and revise FNS' address listed in the Privacy Act and Paperwork Reduction Notice section. Due to recent SNAP website updates, FNS is also updating three website links within the application instructions. The links are: How to Apply; Contacting the RSC; and Retailer Training. Additionally, where applicable, the changes listed above will also be made to the following

application forms: FNS–252–2; FNS–252–C, FNS–252–R, FNS–252–E and FNS–252 Spanish.

FNS estimates that the hourly burden time per response associated with this information collection for respondents remains unchanged from our previous submission. The revisions to the application(s) are due to program adjustments and the update to Question 20a-d, the revision to the Privacy Act, Use and Disclosure—Routine Uses section, and the Certification and Signature Statement.

FNS used FY 2019 data in our calculation of burden estimates associated with this information collection as this was the most complete data available to us at this time. Table A below clarifies the burden of this information collection.

As currently approved by OMB, the hourly burden rate per response varies by the type of application used and the response time per respondent varies from 1 minute to 19 minutes. We estimate the new burden, on average, to be 9.13 minutes per respondent. There is no recordkeeping burden associated with these forms.

Affected Public: Business for Profit; Retail food stores; Farmers' Markets, Military Commissaries and Meal Services.

Estimated Number of Respondents: The total estimated number of respondents is 133,961 annually.

Estimated Number of Responses per Respondent: Respondents complete either 1 application form at initial authorization or 1 reauthorization application, as appropriate, for a total of 1 response each.

Estimated Total Annual Responses: 133,961.

Estimated Time per Response: 9.13 minutes (0.1534924). The estimated time response varies from 1 minute to 19 minutes depending on respondent group, as shown in the table below:

TABLE A—REPORTING ESTIMATE OF HOUR BURDEN: SUMMARY OF BURDEN—#0584–0008

Affected public	Respondent type	(a) Description of collection activity	(b) Form No.	(c) Number respondents	(d) Number responses per respondent	(e) Total annual responses (cxd)	(f) Hours per response	(g) Total burden (exf)
Reporting								
Farms, Business for not for profit.	SNAP Retailer, Farmers' Market, and Meal Service.	Applications Received	252	1,467	1	1,467	0.3167	464.59
		Applications Received	252–E	28,556	1	28,556	0.25	7,139
		E-Authentication	252–E and FNS–252–FE.	29,509	1	29,509	0.1336	3,942.40
		Applications Received	252–FE	953	1	953	0.25	238.25
		Applications Received	252–2	571	1	571	0.25	142.75
		Applications Received	252–C	4,574	1	4,574	0.25	1,143.50
		Store Visits		40,624	1	40,624	0.0167	678.42
		Reauthorization	252–R	27,703	1	27,703	0.25	6,925.75
Sub-Total For Farm & Business				133,957	1	133,957	0.1524872	20,560.69
Federal	Military Commissaries	Applications Received	252–E	4	1	4	0.3167	1.26
		Reauthorization	252–R	0	1	0	0.25	0
Sub-Total For Federal Respondents				4	1	4	0.3167	1.26
Grand Total Reporting Burden				133,961	1	133,961	0.153492	20,561.95
SUMMARY OF BURDEN FOR THIS COLLECTION				133,961	1	133,961	0.1534924	20,562

* **Note**: the respondents for the 252–E and the 252–FE are the same respondents for e-Authentication and therefore not double counted in the total number of respondents.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–14446 Filed 7–2–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Survey of Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Case Management

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for (1) describing States' approaches to SNAP E&T case management, (2) providing a comprehensive picture of States' approaches to SNAP E&T participant assessment, (3) documenting States' approaches to offering participant reimbursements and other supports, and (4) describing States' responses to the new case management requirement.

DATES: Written comments must be received on or before September 4, 2020.

ADDRESSES: Comments may be sent to: Kristen Corey, USDA Food and Nutrition Service, Office of Policy Support, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to Kristen Corey at *kristen.corey@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kristen Corey at 703–305–2517.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Survey of SNAP E&T Case Management.

Form Number: Not Applicable.
OMB Number: 0584–NEW.
Expiration Date: Not Yet Determined.
Type of Request: New Collection.
Abstract: The Agricultural Improvement Act of 2018 (2018 Farm Bill) requires States to provide case management to all E&T participants. Section 17 [7 U.S.C. 2026] (a)(1) of the Food and Nutrition Act of 2008, as amended, provides general legislative authority for the planned data collection. It authorizes the Secretary of Agriculture to enter into contracts with private institutions to undertake research that will help improve the administration and effectiveness of the Supplemental Nutrition Assistance Program (SNAP) in delivering nutrition-related benefits. Case management in E&T programs for low-income populations has great potential to facilitate positive outcomes for participants, but is one of the least studied aspects of such programs. Participants who receive support in their quest to obtain and maintain jobs that pay livable wages might be more likely to engage in program services and progress toward their employment-related goals than those who do not receive such support. Case management involves assessing participants' skills, interests, strengths, and challenges and using this information to develop an individualized plan for addressing barriers, obtaining skills, and gaining employment. Case managers can also use assessments to help identify which reimbursements participants need to successfully complete E&T activities and succeed in future employment. State SNAP agencies are required to provide participants with reimbursements for necessary and reasonable expenses that directly relate to their participation in SNAP E&T, such as child care and transportation. Case managers can help coordinate these reimbursements, as well as referrals to other services and supports, such as clothing for interviews, mental health services, housing resources, training and education services, and work-based learning opportunities. FNS has promoted providing case management and assessments as a best practice in SNAP E&T programs in recent years, including through guidance to States on how to prepare their annual SNAP E&T plans. Although States have provided varying degrees of case management, FNS lacks in-depth information about case management models and the intensity of services. Section 4005 of the Agriculture Improvement Act of 2018 (P.L. 115–334) modified the definition of an Employment and Training program in the Food and Nutrition Act to require that each State provide case management to all SNAP Employment and Training participants. States also must report on how they will provide case management in their fiscal year (FY) 2020 SNAP E&T State plans.

By surveying all 53 State SNAP E&T directors and conducting in-depth case studies of four States, this study will provide FNS a comprehensive picture of case management in SNAP E&T, including how States assess (and reassess) individuals' needs for specific E&T services and supports, and how States provide participant reimbursements and other support services to mitigate barriers to participating in SNAP E&T activities and seeking and maintaining employment. Findings from the study will inform the development of best practices and lessons learned that FNS can share with all State agencies. This information will be particularly important as FNS continues to work with States to implement high quality SNAP E&T programs and fulfill the new case management program requirement by documenting best practices to inform program guidance.

Affected Public: Members of the public affected by the data collection include individuals/Hhouseholds; State and local governments and business not-for-profit or other for-profit agencies administering SNAP E&T programs. The survey will be conducted with State SNAP agency directors and staff. Case studies will be conducted with four of the States, affecting State and local SNAP agency directors and staff, business not-for-profit or other for-profit agencies, and individuals/households.

Survey: After survey recruitment, FNS anticipates 100 percent participation from the State government agencies. We will reach out to fifty-three State or territory SNAP directors to complete a survey, and anticipate that all of these SNAP directors will agree to participate in the survey. Each SNAP director may designate up to three staff to complete sections of the survey, accounting for up to an additional 159 State or territory staff participating as respondents (212 survey respondents total [1]). This is the highest possible number of survey respondents; FNS expects fewer to participate in the survey.

Case studies: FNS will also reach out to eight States to participate in in-depth case studies and expects four to participate. The case studies will involve semi-structured interviews with program administrators and staff of State SNAP agencies and the local SNAP agencies and businesses or other agencies that provide SNAP E&T services. After recruiting the four State SNAP agencies, FNS expects all selected local SNAP agencies and SNAP providers to participate. The case studies will also include observations of staff-participant interactions during one-on-one case management sessions. FNS expects that approximately 14 percent of individuals/households invited to participate will choose not to participate and oversampled to account for nonresponse. The case studies will also include observations of staff and participants during group case management activities.

Respondent groups identified for the survey and case studies include the following:

- State Government or territory SNAP director (53 survey respondents, 0 survey nonrespondents, 4 State case study recruitment respondents, 4 State case study recruitment nonrespondents, 4 case study interview respondents, and 0 case study nonrespondents)
- State Government or territory SNAP E&T director (53 survey respondents, 4 State case study interview respondents, and 0 survey or State case study interview nonrespondents)
- State Government or territory SNAP policy staff (53 survey respondents, 8 State case study interview respondents, and 0 survey or State case study interview nonrespondents)
- State Government or territory SNAP financial staff (53 survey respondents, 4 State case study interview respondents, and 0 survey or State case study interview nonrespondents).
- Local SNAP office administrator (10 case study respondents and 0 case study interview nonrespondents).
- Local SNAP office supervisor (10 case study respondents and 0 case study interview nonrespondents).
- Local SNAP office frontline staff (30 case study interview respondents, 0 case study interview nonrespondents, 6 case study one-on-one observation participants, 0 case study observation nonrespondents, 4 case study group observation participants, and 0 case study group observation nonrespondents).
- Business—SNAP E&T provider administrators from not for profit agencies (5 case study interview respondents and 0 case study interview nonrespondents).
- Business—SNAP E&T provider supervisors from not for profit agencies (5 case study interview respondents and 0 case study interview nonrespondents).

[1] The table below counts a total of 216 State government respondents. This figure includes the 212 State government respondents, as well as four additional State government repondents that may participate in the case studies, but not the survey.

• Business—SNAP E&T provider frontline staff from not for profit agencies (15 case study interview respondents, 0 case study interview nonrespondents, 9 case study one-on-one observation participants, 0 case study one-on-one observation nonrespondents, 8 case study group observation participants, and 0 case study group observation nonrespondents).

• Business—SNAP E&T provider administrators from business or other for profit agencies (5 case study interview respondents and 0 case study interview nonrespondents).

• Business—SNAP E&T provider supervisors from business or other for profit agencies (5 case study interview respondents and 0 case study interview nonrespondents).

• Business—SNAP E&T provider frontline staff from business or other for profit agencies (15 case study interview respondents, 0 case study interview nonrespondents, 9 case study one-on-one observation participants, and 0 case study one-on-one observation nonrespondents, 8 case study group observation participants, and 0 case study group observation nonrespondents).

• Individual/household—SNAP E&T program participants (40 case study one-on-one observation participants, 8 case study one-on-one observation non-respondents, 200 case study group observation participants, and 0 case study group observation nonrespondents).

Estimated Number of Respondents: The total estimated number of respondents and nonrespondents is 564. This includes the following:

• 53 State or territory SNAP directors will be asked to complete the survey (100 percent of whom will complete the survey instrument) and 8 of whom will participate in a case study recruitment call (50 percent of whom will then participate in a semi-structured interview).

• 53 State or territory SNAP E&T directors will be asked to complete the survey (100 percent of whom will complete the survey instrument; 4 of whom will participate in a semi-structured interview).

• 53 State or territory SNAP policy staff will be asked to complete the survey (100 percent of whom will complete the survey instrument; 8 of whom will participate in a semi-structured interview).

• 53 State or territory SNAP financial staff will be asked to complete the survey (100 percent of whom will complete the survey instrument; 4 of whom will participate in a semi-structured interview).

• 10 local SNAP office administrators will participate in a semi-structured interview.

• 10 local SNAP office supervisors will participate in a semi-structured interview.

• 30 local SNAP office frontline staff will participate in a semi-structured interview (6 of whom will participate in one-on-one observations and four of whom will participate in group observations).

• 5 SNAP E&T provider administrators from business not for profit agencies will participate in a semi-structured interview (FNS anticipates 100 percent participation from all business for or not for profit).

• 5 SNAP E&T provider supervisors from business not for profit agencies will participate in a semi-structured interview.

• 15 SNAP E&T provider frontline staff from business not for profit agencies will participate in a semi-structured interview (9 of whom will participate in one-on-one observations and eight of whom will participate in group observations).

• 5 SNAP E&T provider administrators from business or other for profit agencies will participate in a semi-structured interview.

• 5 SNAP E&T provider supervisors from business or other for profit agencies will participate in a semi-structured interview.

• 15 SNAP E&T provider frontline staff from business or other for profit agencies will participate in a semi-structured interview (9 of whom will participate in one-on-one observations and eight of whom will participate in group observations).

• 48 SNAP E&T participants (Individuals/households) will be asked to participate in a one-on-one observation (approximately 40 will go on to participate, that is about 83 percent of whom will agree to participate) and 8 will not go on to fully participate. In addition, 200 SNAP E&T participants will be asked to participate in a group observation. FNS expects 100 percent will go on to participate.

Estimated Number of Responses per Respondent: 1.5531914894.

Each respondent completing a survey section will do so only once. State SNAP directors recruited for the case studies will each participate in one recruitment phone call. Each case study interview respondent will participate in one semi-structured interview. Staff participating in observations will participate in up to two observations each. SNAP E&T participants participating in observations will participate in one observation each.

Estimated Total Annual Responses: 876.

Estimated Time per Response: 0.6198630137.

The estimated time of response varies from 0.13 to 1.00 hours (8 to 60 minutes) depending on respondent group and activity, as shown in the table below, with an average estimated time of 0.62 hours (37.4 minutes) for all responses. The average estimated time is calculated by dividing the 538.20 estimated total hours for responses in the table below by the 864 total estimated responses. The estimated average time for the non-respondent is 0.47 for all non-responses. The average estimated time is calculated by dividing the 5.60 estimated total hours for non-respondents in the table below by the 12 total estimated non-responses.

Estimated Total Annual Burden on Respondents: 543 hours. See the table below for estimated total annual burden for each type of respondent by data collection activity including the non-responses.

				Responsive						Nonresponsive								
Respondent Category	Type of Respondent	Activities	Sample Size	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
State and Local Government																
State/local government	State or territory SNAP director	Case study recruitment	8	4	1.00	4.00	1.00	4.00	4	1.00	4.00	1.00	4.00	8.00	$58.44	$467.52
	State or territory SNAP director	Submit program documents and aggregate data (case study)	4	4	1.00	4.00	4.00	16.00	0	0.00	0.00	0.00	0.00	16.00	$58.44	$935.04
	State or territory SNAP director	Survey recruitment and reminders	53	53	1.00	53.00	0.25	13.25	0	0.00	0.00	0.00	0.00	13.25	$58.44	$774.33
	State or territory SNAP director	Complete survey	53	53	1.00	53.00	0.19	10.07	0	0.00	0.00	0.00	0.00	10.07	$58.44	$588.49
	State or territory SNAP director	Semi-structured interview (case study)	4	4	1.00	4.00	1.00	4.00	0	0.00	0.00	0.00	0.00	4.00	$58.44	$233.76
	State or territory SNAP E&T director	Survey recruitment and reminders	53	53	1.00	53.00	0.13	6.89	0	0.00	0.00	0.00	0.00	6.89	$58.44	$402.65

				Responsive					Nonresponsive							
Respondent Category	Type of Respondent	Activities	Sample Size	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
	State or territory SNAP E&T director	Complete survey	53	53	1.00	53.00	0.19	10.07	0	0.00	0.00	0.00	0.00	10.07	$58.44	$588.49
	State or territory SNAP E&T director	Semi-structured interview (case study)	4	4	1.00	4.00	1.00	4.00	0	0.00	0.00	0.00	0.00	4.00	$58.44	$233.76
	State or territory SNAP policy staff	Survey recruitment and reminders	53	53	1.00	53.00	0.13	6.89	0	0.00	0.00	0.00	0.00	6.89	$48.51	$334.23
	State or territory SNAP policy staff	Complete survey	53	53	1.00	53.00	0.19	10.07	0	0.00	0.00	0.00	0.00	10.07	$48.51	$488.50
	State or territory SNAP policy staff	Semi-structured interview (case study)	8	8	1.00	8.00	1.00	8.00	0	0.00	0.00	0.00	0.00	8.00	$48.51	$388.08
	State or territory SNAP policy staff	Submit program documents and aggregate data (case study)	4	4	1.00	4.00	4.00	16.00	0	0.00	0.00	0.00	0.00	16.00	$48.51	$776.16
	State or territory SNAP financial staff	Survey recruitment and reminders	53	53	1.00	53.00	0.13	6.89	0	0.00	0.00	0.00	0.00	6.89	$39.69	$273.46

				Responsive					Nonresponsive							
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of Nonrespondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**	**Hourly Wage Rate**	**Total Annualized Cost of Respondent Burden**
	State or territory SNAP financial staff	Complete survey	53	53	1.00	53.00	0.19	10.07	0	0.00	0.00	0.00	0.00	10.07	$39.69	$399.68
	State or territory SNAP financial staff	Semi-structured interview (case study)	4	4	1.00	4.00	1.00	4.00	0	0.00	0.00	0.00	0.00	4.00	$39.69	$158.76
	Subtotal for State SNAP staff (unique)[2]		216	216	2.11	456.00	0.29	130.20	4	1.00	4.00	1.00	4.00	134.20	$780.63	$7,042.92
	Local SNAP office director	Semi-structured interview (case study)	10	10	1.00	10.00	1.00	10.00	0	0.00	0.00	0.00	0.00	10.00	$58.44	$584.40
	Local SNAP office supervisor	Semi-structured interview (case study)	10	10	1.00	10.00	1.00	10.00	0	0.00	0.00	0.00	0.00	10.00	$48.51	$485.10
	Local SNAP office frontline staff	Semi-structured interview (case study)	30	30	1.00	30.00	1.00	30.00	0	0.00	0.00	0.00	0.00	30.00	$23.69	$710.70
	Local SNAP office frontline staff	Case management observation (case study)	6	6	2.00	12.00	1.00	12.00	0	0.00	0.00	0.00	0.00	12.00	$23.69	$284.28

[2] State SNAP staff participating in case study activities are a subset of the staff members participating in the survey, except for the four State policy staff submitting program documents and aggregate data for the case studies, but not participating in the survey. Therefore, the counts of unique individuals only include the up to four individuals from each of 53 States and territories and the four State policy staff not participating in the survey.

				Responsive					Nonresponsive							
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of Nonrespondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**	**Hourly Wage Rate**	**Total Annualized Cost of Respondent Burden**
	Local SNAP office frontline staff	Group activity observation (case study)	4	4	1.00	4.00	1.00	4.00	0	0.00	0.00	0.00	0.00	4.00	$23.69	$94.76
	Subtotal for local SNAP office staff (unique)[3]		50	50	1.32	66.00	1.00	66.00	0	0.00	0.00	0.00	0.00	66.00	$178.02	$2,159.24
State/local government subtotal (unique)			266	266	1.96	522.00	0.38	196.20	4	1.00	4.00	1.00	4.00	200.20	$958.65	$9,202.16
Business or Other For-Profit																
Business or other for-profit	SNAP E&T provider director	Semi-structured interview (case study)	5	5	1.00	5.00	1.00	5.00	0	0.00	0.00	0.00	0.00	5.00	$58.44	$292.20
	SNAP E&T provider supervisor	Semi-structured interview (case study)	5	5	1.00	5.00	1.00	5.00	0	0.00	0.00	0.00	0.00	5.00	$48.51	$242.55
	SNAP E&T frontline staff	Semi-structured interview (case study)	15	15	1.00	15.00	1.00	15.00	0	0.00	0.00	0.00	0.00	15.00	$23.69	$355.35
	SNAP E&T frontline staff	Case management observation (case study)	9	9	2.00	18.00	1.00	18.00	0	0.00	0.00	0.00	0.00	18.00	$23.69	$426.42
	SNAP E&T frontline staff	Group activity observation (case study)	8	8	1.00	8.00	1.00	8.00	0	0.00	0.00	0.00	0.00	8.00	$23.69	$189.52

[3] Local SNAP office frontline staff participating in case study observations are a subset of the staff members participating in case study interviews. Therefore, the counts of unique individuals only include the staff participating in interviews.

				Responsive					Nonresponsive							
Respondent Category	**Type of Respondent**	**Activities**	**Sample Size**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Number of Nonrespondents**	**Frequency of Response**	**Total Annual Responses**	**Hours per Response**	**Annual Burden (Hours)**	**Grand Total Annual Burden Estimate (Hours)**	**Hourly Wage Rate**	**Total Annualized Cost of Respondent Burden**
	Subtotal for business or other for-profit (unique)[4]		25	25	2.04	51.00	1.00	51.00	0	0.00	0.00	0.00	0.00	51.00	$178.02	$1,506.04
Not-for-Profit																
Not-for-profit	SNAP E&T provider director	Semi-structured interview (case study)	5	5	1.00	5.00	1.00	5.00	0	0.00	0.00	0.00	0.00	5.00	$34.46	$172.30
	SNAP E&T provider supervisor	Semi-structured interview (case study)	5	5	1.00	5.00	1.00	5.00	0	0.00	0.00	0.00	0.00	5.00	$34.46	$172.30
	SNAP E&T frontline staff	Semi-structured interview (case study)	15	15	1.00	15.00	1.00	15.00	0	0.00	0.00	0.00	0.00	15.00	$22.14	$332.10
	SNAP E&T frontline staff	Case management observation (case study)	9	9	2.00	18.00	1.00	18.00	0	0.00	0.00	0.00	0.00	18.00	$22.14	$398.52
	SNAP E&T frontline staff	Group activity observation (case study)	8	8	1.00	8.00	1.00	8.00	0	0.00	0.00	0.00	0.00	8.00	$22.14	$177.12
	Subtotal for not-for-profit (unique)[5]		25	25	2.04	51.00	1.00	51.00	0	0.00	0.00	0.00	0.00	51.00	$135.34	$1,252.34
Business for and not for profit subtotal (unique)			**50**	**50**	**2.04**	**102.00**	**1.00**	**102.00**	**0**	**0.00**	**0.00**	**0.00**	**0.00**	**102.00**	**$313.36**	**$2,758.38**

[4] SNAP E&T frontline staff from business providers participating in case study observations are a subset of the staff members participating in case study interviews. Therefore, the counts of unique individuals only include the staff participating in interviews.

[5] SNAP E&T frontline staff from not-for-profit providers participating in case study observations are a subset of the staff members participating in case study interviews. Therefore, the counts of unique individuals only include the staff participating in interviews.

				Responsive						Nonresponsive								
Respondent Category	Type of Respondent	Activities	Sample Size	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Individuals	Number of Nonrespondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (Hours)	Grand Total Annual Burden Estimate (Hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden
Individuals	SNAP E&T participants	Case management observation (case study)	48	40	1.00	40.00	1.00	40.00		8	1.00	8.00	0.20	1.60	41.60	$7.25	$301.60
	SNAP E&T participants	Group activity observation (case study)	200	200	1.00	200.00	1.00	200.00		0	0.00	0.00	0.00	0.00	200.00	$7.25	$1,450.00
SNAP E&T participant subtotal (unique)			248	240	1.00	240.00	1.00	240.00		8	1.00	8.00	0.20	1.60	241.60	$14.50	$1,751.60
	TOTAL		**564**	**556**	**1.55**	**864.00**	**0.62**	**538.20**		**12**	**1.00**	**12.00**	**0.47**	**5.60**	**543.80**	**$1,286.51**	**$13,712.14**

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–14445 Filed 7–2–20; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via teleconference on Friday, July 24, 2020 at 1:00 p.m. and on Thursday, August 20, 2020 at 3:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss its project proposal on the ''Civil Rights Implications of FEMA's Response to Hurricane Harvey.''

DATES: The meetings will be held on:

- Friday, July 24, 2020 at 1:00 p.m. CDT
- Thursday, August 20, 2020 at 3:00 p.m. CDT

Public Call Information: Dial: 800–367–2403; Conference ID: 6602335.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 6602335. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion of Project Proposal
IV. Public Comment
V. Adjournment

Dated: June 30, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14456 Filed 7–2–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Business Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension and revision to the Annual Business Survey and extension of the supplemental questions to the Annual Business Survey to capture a baseline of remote work options at businesses in 2019, prior to the submission of these information collection requests (ICRs) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 4, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Annual Business Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0017, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Patrice Hall, Branch Chief, Business Owners Branch, 301–763–7198, *patrice.n.hall@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In an effort to improve the measurement of business dynamics in the United States, the Census Bureau is conducting the Annual Business Survey (ABS). The ABS combines Census Bureau firm-level data collections to reduce respondent burden, increase data quality, reduce operational costs, and operate more efficiently. The ABS replaced the Survey of Business Owners (SBO) for employer businesses, the Annual Survey of Entrepreneurs (ASE), and the Business Research and Development (R&D) and Innovation for Microbusinesses (BRDI–M) surveys. The ABS provides information on select economic and demographic characteristics for businesses and business owners by sex, ethnicity, race, and veteran status. Further, the survey measures research and development for microbusinesses, business topics such

as innovation and technology, as well as other business characteristics. The ABS is sponsored by the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and conducted by the Census Bureau. Title 13, United States Code, Sections 8(b), 131, and 182 and Title 42, United States Code, Section 1861–76 (National Science Foundation Act of 1950, as amended) authorize this collection. Sections 224 and 225 of Title 13, United States Code, require response from sampled firms.

The ABS includes all nonfarm employer businesses filing Internal Revenue Service (IRS) tax forms as individual proprietorships, partnerships, or any other type of corporation, with receipts of $1,000 or more. Every five years, the ABS samples approximately 850,000 employer businesses. The large sample size provides a benchmark and is needed to produce detailed comprehensive estimates for women-, minority-, and veteran-owned businesses at the 2–6-digit NAICS, U.S., state, metropolitan statistical area (MSA), county, and economic place levels. The 2018 ABS sampled approximately 850,000 employer businesses. The sample size is reduced annually to minimize the burden on survey respondents. Starting with the 2019 ABS, the sample was reduced to approximately 300,000 employer businesses. The smaller sample size will yield summary-level estimates for women-, minority-, and veteran-owned businesses at the 2-digit NAICS, U.S., state, and MSA levels. The Census Bureau uses administrative data to estimate the probability that a firm is minority- or women-owned. Each firm is then placed in one of nine frames for sampling. The sampling frames are: American Indian or Alaskan Native, Asian, Black or African American, Hispanic, Non-Hispanic White Men, Native Hawaiian and Other Pacific Islander, Other, Publicly Owned, and Women. The sample is stratified by state, industry, and frame. The Census Bureau selects some companies with certainty based on volume of sales, payroll, and number of paid employees or NAICS. All certainty cases are sure to be selected and represent only themselves.

The Census Bureau plans to request a revision to the currently approved ABS collection to approve substantive changes, including updated content and the expansion to collect R&D data from tax-exempt businesses (otherwise known as nonprofit organizations) who are required to complete IRS form 990, in order to compile national estimates of R&D performance within this sector. The ABS is designed to allow for incorporating new content each year based on topics of relevance. Each year new questions are submitted to the OMB for approval.

The Census Bureau also plans to request an extension to a currently approved emergency clearance to add supplemental questions about remote work to the 2020 ABS. The additional questions are designed to measure the impact of the Coronavirus pandemic on business operations and will provide a baseline of businesses' remote work activity. The emergency clearance is approved under OMB number 0607–1015 and expires November 30, 2020. The current emergency clearance will not cover the entire 2020 ABS collection period. Therefore, the Census Bureau requests an extension of the emergency approval through January 31, 2021. Similar questions will be included on future ABS collections as part of the proposed content and will be submitted to OMB for review annually.

The ABS collects the following information from employer businesses and nonprofit organizations:

- Owner characteristics, including sex, ethnicity, race, and veteran status from the principal owner(s) of the business.
- Company information including, worldwide sales, domestic sales, number of employees, and business ownership from all businesses in the sample.
- Business characteristics from all businesses in the sample.
- Research and development from businesses with between 1–9 employees.
- Research and development from nonprofit organizations.

Additional topics on business owners may include military service, owner acquisition, job functions, number of hours worked, primary income, prior business ownership, age of owner, education and field of degree, citizenship and place of birth, disability, and owner's reason for owning the business. Additional topics on the businesses may include number of owners and percent ownership, family owned and operated, business aspirations, funding sources, profitability, types of customers, types of workers, employee benefits, franchise operations, work from home practices, and business activity. Potential module topics for the ABS may cover innovation, technology and internet usage; management and business practices; exporting practices; domestic and foreign transactions; design; worker training; and financing.

II. Method of Collection

The ABS primary collection method is via an electronic instrument. Those selected for the survey receive an initial letter informing the respondents of their requirement to complete the survey as well as instructions on accessing the survey. Responses will be due approximately 30 days from initial mailing. Respondents will also receive a due date reminder approximately one week before responses are due. The Census Bureau plans to conduct two follow-up mailings and an optional third follow-up if deemed necessary based on check-in. Nonrespondents may receive a certified mailing for the second and third follow-up mailings. The Census Bureau may also plan to conduct an email follow-up to select nonrespondents reminding them to submit their report in the electronic instrument. Follow-up operations may also include a paper questionnaire to assist with collecting data from select nonrespondents. Response data will be processed as they are received. Upon the close of the collection period, data processing will continue and records will be edited, reviewed, tabulated, and released publicly.

III. Data

OMB Control Number: 0607–1004 and 0607–1015.

Form Number(s): ABS–1.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection (ABS—0607–1004) and Request for an Extension, without Change, of a Currently Approved Collection (Supplemental questions—0607–1015).

Affected Public: Business or other for-profit organizations (large and small employer businesses), nonprofit organizations.

Estimated Number of Respondents: 300,000.

Estimated Time per Response: ABS—52 minutes; Supplemental questions—3 minutes.

Estimated Total Annual Burden Hours: ABS—260,000; Supplemental questions—15,000.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 8(b), 131, and 182 and Title 42, United States Code,

Section 1861–76 (National Science Foundation Act of 1950, as amended) authorize this collection. Sections 224 and 225 of Title 13, United States Code, require response from sampled firms.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14413 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2020 Public Use Microdata Areas Program

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed new information collection of the 2020 Public Use Microdata Areas Program, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 4, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *robin.a.pennington@census.gov.* Please reference ''2020 Public Use Microdata Areas Program'' in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0015, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All personally identifiable information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Robin A. Pennington, Decennial Census Management Division, Program Management Office, by phone at 301–763–8132 or by email to *robin.a.pennington@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Use Microdata Areas, or PUMAs, are nonoverlapping, statistical geographic areas that partition each state or equivalent entity into geographic areas containing no fewer than 100,000 people each. They cover the entirety of the United States, Puerto Rico, Guam, and the U.S. Virgin Islands. The Census Bureau defines PUMAs for the tabulation and dissemination of Public Use Microdata Sample (PUMS) data. Additionally, the American Community Survey and Puerto Rico Community Survey use them to disseminate their respective period estimates.

The Census Bureau invites State Data Centers from each state, the District of Columbia, and Puerto Rico to delineate PUMAs. States or equivalent entities with less than 200,000 people (*e.g.,* Guam and U.S. Virgin Islands) are not eligible to participate because their populations do not meet the minimum threshold to delineate more than one PUMA. The Census Bureau provides a 90-day review period for State Data Centers to prepare their 2020 PUMA submission.

The Census Bureau asks State Data Centers to involve interested data users, such as those in tribal, state, and local (*e.g.,* county, incorporated place, and town/township) governments, as well as regional planning agencies or organizations to ensure that the PUMAs meet the needs of a variety of data users. Collaboration between State Data Centers and other interested data users is especially important for areas with population exceeding 100,000. The Geographic Update Partnership Software (GUPS), required for use in 2020 PUMA delineation, allows for the sharing of work performed by multiple participants to facilitate a collaborative effort. Though collaboration is encouraged, the State Data Centers are the official participants for this program and must coordinate the delineation work suggested or prepared from others. The Census Bureau only accepts PUMA delineations from each state's respective state data center.

The Census Bureau will provide an overview of the 2020 PUMA and will present the proposed criteria and guidelines of PUMAs to the State Data Centers during the Census Advisory Committee meeting scheduled for the fall of 2020. The proposal will be available on the PUMA website by the end of the calendar year. The State Data Centers and the public may provide comments on the proposal through February 2021. The Census Bureau will resolve and respond to comments received on the proposal prior to posting the final 2020 PUMA criteria and guidelines on the PUMA website later in the spring of 2021. To prepare suitable delineations, State Data Centers must ensure the final criteria and guidelines are implemented.

After the Census Advisory Committee meeting, the Census Bureau will contact the State Data Centers by phone to establish a 2020 PUMA point of contact and gather their contact information (*e.g.,* phone number and email address). The point of contact will receive an

email notification officially announcing the program in September 2021. This email will include the notification of the availability of the 2020 PUMA materials (criteria, instructions, software, etc.) on the PUMA website. The Census Bureau will conduct follow-up by phone to the point of contact to confirm receipt of the email notification, awareness of the material availability, and to reinforce the 90-day review period for the 2020 PUMA.

The Census Bureau will produce a detailed set of instructions for using GUPS and provide other historical and resource reference materials on the PUMA website. Once the program is underway, the Census Bureau plans to conduct two online webinar trainings and an in-person training to support PUMA delineation.

II. Method of Collection

The State Data Centers (and other interested data users, if applicable) will download GUPS from the PUMA website and install the software locally on their computers to perform their work. No other method of collection for PUMA delineation is available.

State Data Centers will use the Census Bureau's Secure Web Incoming Module (SWIM) to submit their PUMAs to the Census Bureau for processing once they complete their delineation in GUPS. Verification, or creation, of a SWIM account occurs during the phone follow-up made to the point of contact after the program notification email. Other than to converse by phone or email regarding issues with the submission, there are no plans for formal feedback to State Data Centers.

Final 2020 PUMAs and their associated PUMS data will be available online for use beginning in summer of 2022.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): None.

Type of Review: Regular submission, New Information Collection Request.

Affected Public: State Data Centers in the 50 states, District of Columbia, and Puerto Rico.

Estimated Number of Respondents: Maximum is 52.

Estimated Time Per Response: Varies by state, but on average, estimate 40 hours.

Estimated Total Annual Burden Hours: 2,080.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 6.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14411 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Retail Trade Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Annual Retail Trade Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before September 4, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Annual Retail Trade Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0016, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Chris Savage, Chief, Retail Trade Branch, Economy-Wide Statistics Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233; (301) 763–4834; or *john.c.savage@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Retail Trade Survey (ARTS) covers employer firms with establishments located in the United States and classified in the retail trade sector, as defined by the North American Industry Classification System (NAICS).

Firms are selected for this survey using a stratified random sample where strata are defined by industry and annual sales size. The sample consisting of businesses classified in the Retail Trade sector as defined by the 2012

NAICS, is drawn from the Business Register (BR). The BR is the Census Bureau's master business list and contains basic economic information for more than 160,000 multi-establishment companies representing 1.8 million affiliated establishments, 5 million single establishment companies, and nearly 21 million non-employer businesses. The BR obtains information through direct data collections and administrative record information from other federal agencies. The ARTS sample is updated quarterly to reflect employer business ''births'' and ''deaths'', adding new employer businesses identified in the Business and Professional Classification Survey and deleting firms and subunits of firms identified by their Employer Identification Numbers (EINs) when it is determined they are no longer active. The sample is also updated to reflect mergers, acquisitions, divestitures, splits, and other changes to the business universe.

The data items requested in the ARTS include annual sales, annual e-commerce sales, year-end inventories, sales taxes, total operating expenses, detailed operating expenses in reference years ending in 2 and 7, purchases, accounts receivables, and, for selected industries, sales by merchandise line. These data are used to satisfy a variety of public and business needs such as economic market analysis, company performance, and forecasting future demands.

Data are collected electronically using the Census Bureau's secure online reporting instrument (Centurion). This electronic system of reporting is designed to allow respondents easier access, convenience and flexibility. Data are automatically stored and results are available immediately. In rare cases where the company has no access to the internet, the Census Bureau can arrange for the company to provide data to an analyst via telephone.

From survey year 2016 through survey year 2019, there were eight electronic form types (SA–44, SA–44A, SA–44C, SA–44D, SA–44E, SA–44N SA–44S and SA–44T). Starting with survey year 2020 (which will be collected in 2021), there will only be four electronic form types (SA–44C, SA–44D, SA44–S and SA44–T). Forms SA–44A, SA–44E and SA–44N are being removed to streamline data collection operations.

Government agencies, private businesses, and researchers often use the estimates generated from the ARTS. For example, the ARTS serves as a benchmark for the estimates produced from the Census Bureau's Monthly Retail Trade Survey (MRTS). The BEA utilizes the data when developing its gross domestic product (GDP) estimates and the national accounts' input-output tables. The Bureau of Labor Statistics (BLS) uses the data as an input to its producer price indices and in developing productivity measurements. Furthermore, business and industry groups utilize the data to forecast future demand.

Estimates generated from the ARTS are released to the public approximately 13 months after the reference year has concluded. These national-level estimates are published (for the various items collected) by NAICS code and type of operation. Currently, the data are disseminated through the ARTS website. In the future, however, the data will be released via the Census Bureau's dissemination platform, *data.census.gov.* The survey year 2020 data products are scheduled to be released through the U.S. Census Bureau enterprise dissemination platform, *data.census.gov.*

II. Method of Collection

The Census Bureau primarily collects this information via the internet. In the rare situation where a respondent does not have access to the internet, the data are collected by telephone.

III. Data

OMB Control Number: 0607–0013.

Form Number(s): SA–44C, SA–44D, SA44–S and SA44–T.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 17,297.

Estimated Time per Response: 39 minutes (2020 and 2021 survey years);

201 minutes (2022 survey year—additional items collected).

Estimated Total Annual Burden Hours: 11,243 hours (2020 and 2021 survey years);

57,945 hours (2022 survey year—additional items collected).

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 131 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–14415 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Management and Organizational Practices Survey-Hospitals

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize

the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 27, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Management and Organizational Practices Survey-Hospitals.

OMB Control Number: 0607–XXXX.

Form Number(s): MP–2000.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: 4,500

Average Hours Per Response: 45 minutes.

Burden Hours: 3,375.

Needs and Uses: The Census Bureau proposes conducting the Management and Organizational Practices Survey-Hospitals (MOPS–HP) in order to provide critical information on the health sector to our many stakeholders in support of our mission to serve as ''the leading source of quality data about the nation's people and economy.'' The MOPS–HP will collect information on the use of structured management practices from Chief Nursing Officers (CNOs) at approximately 4,500 hospitals with the goal of producing four publicly-available indices that measure key characteristics of these structured management practices. The proposed MOPS–HP will ask about performance monitoring, goals, staff management, the use of standardized clinical protocols, and medical record documentation. Some questions are adapted from the Management and Organizational Practices Survey (MOPS) (OMB Approval Number 0607–0963), conducted in the manufacturing sector, allowing for inter-sectoral comparisons.

The MOPS–HP will provide a deeper understanding of the business processes which impact an increasingly important sector of the economy; total national health expenditures represented almost 18 percent of U.S. gross domestic product in 2017 (National Center for Health Statistics). The MOPS–HP will provide a nationally representative sample, enabling stakeholders to understand the role of structured management practices in financial and clinical outcomes in U.S. hospitals. In much the same way that the MOPS allowed for the measurement of the importance of these structured management practices for productivity and growth in the manufacturing sector,[1] the MOPS–HP will inform our understanding of hospitals. Questions developed and tested for the MOPS–HP instrument are adapted from the 2015 MOPS and the 2009 World Management Survey's (WMS) healthcare instrument.[2] [3] The Census Bureau conducted the MOPS in 2010 and 2015 with approximately 35,000 manufacturing plants to measure management practices.[4] [5] These data show that management practices are strongly correlated with plant profitability and productivity.[6] The WMS has collected data on 20 basic management practices for approximately 2,000 hospitals in nine countries, including 307 in the U.S.[7] Interviewers ask open-ended questions and rate responses to indicate whether the management practices are more or less structured.[8] [9] Data from the WMS show large variations in these practices and their systematic relationship with clinical outcomes such as mortality rates from heart attacks.[10]

The current pandemic highlights the relevance of hospital management practices, especially as they relate to hospitals' ability to respond to shocks to their organization and the health care system. The Census Bureau has included two questions in the MOPS–HP content to help improve measurement of hospital preparedness. These questions will provide information on two elements of responsiveness, hospitals' coordinated deployment of frontline clinical workers and hospitals' ability to quickly respond to needed changes in standardized clinical protocols. In an effort to limit respondent burden while adding this content, adjustments were made to keep the total number of questions and estimated burden per response unchanged. Because the content changes were developed in response to the current pandemic, they were made after the pre-submission notice for the MOPS–HP was published in the **Federal Register**.

The MOPS–HP will be a supplement to the Service Annual Survey (SAS) and will utilize a subset of its mail-out sample. Its sample will consist of hospital locations for enterprises classified under General Medical and Surgical Hospitals (NAICS 6221) and sampled in the SAS. The survey will be mailed separately from the 2019 SAS and collected electronically through the Census Bureau's Centurion online reporting system. Respondents will be sent an initial letter with instructions detailing how to log into the instrument and report their information. These letters will be addressed to the location's Chief Nursing Officer (CNO). Collection is scheduled to begin in November 2020 and end in June 2021. Due to the nature of the respondents, this schedule may be impacted by the effects of the Coronavirus (COVID–19). The Census Bureau is monitoring the ongoing situation and will adjust dates as necessary as the collection start date approaches as we do not want to add burden to an overly burdened sector of the economy.

The Census Bureau will produce a publicly-available press release to describe the survey and discuss the results. The Census Bureau will also write at least one research paper describing the MOPS–HP collection, processing, and data findings. Conditional on quality, the Census Bureau will construct and publish in a research paper indices of management practices, which can be used in tabulations and empirical analyses for potential use by the public, clinicians, hospitals, and researchers. These indices as well as microdata will be available to approved Federal Statistical Research Data Centers (FSRDC) users and will provide benefits to other Federal agencies and the public.

Examining factors that impact clinical and financial outcomes is essential to understanding the health care industry, which makes up a large portion of the U.S. economy. The MOPS–HP will provide unique national-level estimates on management and organizational practices in hospitals that could

[1] Bloom, N., E. Brynjolfsson, L. Foster, R. Jarmin, M. Patnaik, I. Saporta Eksten and J. Van Reenen. 2019. ''What Drives Differences in Management Practices?'' *American Economic Review.*

[2] 2015 MOPS' *Questionnaire https://www.census.gov/programs-surveys/mops/technical-documentation/questionnaires.html* and an *overview https://www.census.gov/programs-surveys/mops.html.*

[3] WMS' *2009 instrument for healthcare https://worldmanagementsurvey.org/survey-data/methodology/ and academic research papers https://worldmanagementsurvey.org/academic-research/healthcare/.*

[4] Throughout this document, any reference to the ''MOPS'' refers to the surveys conducted for the manufacturing sector, while the hospital survey will always be denoted as the ''MOPS–HP.''

[5] Buffington, C., L. Foster, R. Jarmin, and S. Ohlmacher. 2017. ''The Management and Organizational Practices Survey (MOPS): An Overview.'' *Journal of Economic and Social Measurement,* 42(1), 1–26.

[6] Bloom, N., E. Brynjolfsson, L. Foster, R. Jarmin, M. Patnaik, I. Saporta Eksten and J. Van Reenen. 2019. ''What Drives Differences in Management Practices?'' *American Economic Review.*

[7] Bloom, N., R. Lemos, R. Sadun and J. Van Reenen. 2019. ''Healthy Business? Managerial Education and Management in Healthcare.'' *Review of Economics and Statistics,* forthcoming.

[8] Bloom, N. and J. Van Reenen. 2007. ''Measuring and Explaining Management Practices Across Firms and Countries.'' *The Quarterly Journal of Economics* 122(4): 1351–1408.

[9] Bloom, N., R. Lemos, R. Sadun, D. Scur and J. Van Reenen. 2014. ''The New Empirical Economics of Management.'' *Journal of the European Economics Association.*

[10] Bloom, N., R. Lemos, R. Sadun and J. Van Reenen. 2019. ''Healthy Business? Managerial Education and Management in Healthcare.'' *Review of Economics and Statistics,* forthcoming.

improve our understanding of the hospital industry:

• The Centers for Medicare and Medicaid Services' Hospital Compare data or the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey could be used in conjunction with the MOPS–HP to determine whether hospitals with more structured management practices have higher overall patient ratings and are more likely to be recommended.[11]

• The National Hospital Care Survey from the National Center for Health Statistics could be used in combination with the MOPS–HP's index to evaluate how management practices relate to hospital utilization and patient care.

• Data from the Surveys on Patient Safety Culture-Hospital Survey from the Agency for Healthcare Research and Quality could be used to study whether hospitals with more structured management practices have fewer patient safety events.

• Policymakers could use the data to understand how management and organizational practices are evolving in hospitals, which can help understand changes in the industry.[12] The Census Bureau plans to use the data collected from the MOPS–HP's questions on medical record documentation to construct an index measuring the management of multiple objectives—clinical and financial—that would inform policymakers concerned with both aspects of hospital performance. By examining any links between the survey's measures of management practices and clinical outcomes, the survey may help to inform policymakers and to encourage practices that are beneficial to patients and our population as a whole.

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• Hospital administrators could utilize planned public indices to benchmark their own practices, and subsequently make decisions or set policies to improve their financial and clinical outcomes.

• The MOPS–HP data could be used in combination with the Census Bureau's collected data on hospital finances, including revenues and expenses, to improve our understanding on how management practices may impact financial performance.

• In a letter of support, the Bureau of Economic Analysis expressed their interest in the MOPS–HP and noted that it will help aid their mission to promote ''. . . a better understanding of the U.S. economy . . .'' The letter states that the MOPS–HP will ''fill a critical gap in our current understanding of how management systems affect patient health outcomes and healthcare expenditures.''

Affected Public: Business or other for-profit; State, local or Tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

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

Sheleen Dumas,

Department PRA Clearance Officer,Office of the Chief Information Officer,Commerce Department.

[FR Doc. 2020–14414 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–07–P

[11] More structured management practices are associated with more rather than less frequent reviews of performance, communication with all levels of staff and not just senior staff, and promotions based on performance and ability and not just tenure. See Question 2.c. in the Supporting Statement B for more details on measuring whether management practices are more or less structured.

[12] By collecting data for both 2019 and 2014, the MOPS–HP will help measure the evolution of management practices in hospitals over this five-year period.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

RIN 0694–XC059

Publication of a Report on the Effect of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Publication of a report.

SUMMARY: The Bureau of Industry and Security (BIS) in this notice is publishing a report that summarizes the findings of an investigation conducted by the U.S. Department of Commerce (the ''Department'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (''Section 232''), into the effect of imports of steel mill products (''steel'') on the national security of the United States. This report was completed on January 11, 2018 and posted on the BIS website on February 16, 2018. BIS has not published the appendices to the report in this notification of report findings, but they are available online at the BIS website, along with the rest of the report (*see* the **ADDRESSES** section).

DATES: The report was completed on January 11, 2018. The report was posted on the BIS website on February 16, 2018.

ADDRESSES: The full report, including the appendices to the report, are available online at*https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination.*

FOR FURTHER INFORMATION CONTACT: For further information about this report contact Erika Maynard, Special Projects Manager, (202) 482–5572; and David Boylan-Kolchin, Trade and Industry Analyst, (202) 482–7816. For more information about the Office of Technology Evaluation and the Section 232 Investigations, please visit: *http://www.bis.doc.gov/232.*

SUPPLEMENTARY INFORMATION:

THE EFFECT OF IMPORTS OF STEEL ON THE NATIONAL SECURITY—AN INVESTIGATION CONDUCTED UNDER SECTION 232 OF THE TRADE EXPANSION ACT OF 1962, AS AMENDED

January 11, 2018

Prepared by U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation

The Effect of Imports of Steel on the National Security

Table of Contents

Prepared by Bureau of Industry and Security www.bis.doc.gov.

Appendices [i]

I. Executive Summary

Overview

This report summarizes the findings of an investigation conducted by the U.S. Department of Commerce (the ''Department'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862 (''Section 232'')), into the effect of imports of steel mill products (''steel'') on the national security of the United States.

In conducting this investigation, the Secretary of Commerce (the ''Secretary'') noted the Department's prior investigations under Section 232. This report incorporates the statutory analysis from the Department's 2001 Report [1] with respect to applying the terms ''national defense'' and ''national security'' in a manner that is consistent with the statute and legislative intent.[2] As in the 2001 Report, the Secretary in this investigation determined that ''national security'' for purposes of Section 232 includes the ''general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical to minimum operations of the economy and government.'' [3]

As required under Section 232, the Secretary examined the effect of imports on national security requirements, including: domestic production needed for projected national defense requirements; the capacity of domestic industries to meet such requirements; existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense; the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth; and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries; and the capacity of the United States to meet national security requirements.

The Secretary also recognized the close relation of the economic welfare of the United States to its national security; the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills, or any other serious effects resulting from the displacement of any domestic products by excessive imports, without excluding other factors, in determining whether a weakening of the U.S. economy by such imports may impair national security. In particular, this report assesses whether steel is being imported ''in such quantities'' and ''under such circumstances'' as to ''threaten to impair the national security.'' [4]

Findings

In conducting the investigation, the Secretary found:

A. Steel Is Important to U.S. National Security

1. National security includes projected national defense requirements for the U.S. Department of Defense.

2. National security also encompasses U.S. critical infrastructure sectors including transportation systems, the

[i] BIS has not published the appendices, but they are available online at *https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination,* along with the rest of the report.

[1] Department of Commerce, Bureau of Export Administration ''The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security-Oct/2001'' (2001 Report).

[2] *Id.* at 5.

[3] *Id.*

[4] 19 U.S.C. 1862(b)(3)(A).

electric power grid, water systems, and energy generation systems.

3. Domestic steel production is essential for national security applications. Statutory provisions illustrate that Congress believes domestic production capability is essential for defense requirements and critical infrastructure needs, and ultimately to the national security of the United States.[5] U.S. Government actions on steel across earlier Administrations further demonstrate domestic steel production is vital to national security.[6]

4. Domestic steel production depends on a healthy and competitive U.S. industry. The principal types of mills that produce steel are integrated mills with basic oxygen furnaces (BOFs); mini-mills using electric arc furnaces (EAFs); re-roller/converter; and metal coater facilities. Basic oxygen furnaces convert raw materials into steel, and remain critical for continued innovation in steel technology. Covered in this report are five categories of steel products that are used for national security applications: flat, long, semi-finished, pipe and tube, and stainless.

5. The Department found that demand for steel in critical industries has increased since the Department's last investigation in 2001. The 2001 Report determined that there was 33.68 million tons of finished steel consumed in critical industries per year in the United States based on 1997 data.[7] The Department updated that analysis for this report using 2007 data (the latest available) and determined that domestic consumption in critical industries has increased significantly, with 54 million metric tons of steel now being consumed annually in critical industries.

B. Imports in Such Quantities as Are Presently Found Adversely Impact the Economic Welfare of the U.S. Steel Industry

1. The United States is the world's largest steel importer. In the first ten months of 2017 steel imports have increased at a double-digit rate over 2016, accounting for more than 30 percent of U.S. consumption. Notwithstanding numerous anti-dumping and countervailing duty orders, which are limited in scope, imports of most types of steel continue to increase.

2. Import penetration levels for flat, semi-finished, stainless, long, and pipe and tube products continue on an upward trend above 30 percent of domestic consumption.

3. Imports are nearly four times U.S. exports.

4. Imports are priced substantially lower than U.S. produced steel.

5. Excessive steel imports have adversely impacted the steel industry. Numerous U.S. steel mill closures, a substantial decline in employment, lost domestic sales and market share, and marginal annual net income for U.S.-based steel companies illustrate the decline of the U.S. steel industry.

C. Displacement of Domestic Steel by Excessive Quantities of Imports Has the Serious Effect of Weakening our Internal Economy

1. As steel imports have increased, U.S. steel production capacity has been stagnant and production has decreased.

2. Since 2000, foreign competition and the displacement of domestic steel by excessive imports have resulted in the closure of six basic oxygen furnace facilities and the idling of four more (which is more than a 50 percent reduction in the number of such facilities), a 35 percent decrease in employment in the steel industry, and caused the domestic steel industry as a whole to operate on average with negative net income since 2009.

3. The declining steel capacity utilization rate is not economically sustainable. Utilization rates of 80 percent or greater are necessary to sustain adequate profitability and continued capital investment, research and development, and workforce enhancement in the steel sector.

D. Global Excess Steel Capacity Is a Circumstance That Contributes to the Weakening of the Domestic Economy

1. In the steel sector, free markets globally are adversely affected by substantial chronic global excess steel production led by China. The world's nominal crude steelmaking capacity reached about 2.4 billion metric tons in 2016, an increase of 127 percent compared to the capacity level in 2000, while steel demand grew at a much smaller rate. In 2016 there was a 737 million metric ton global gap between steelmaking capacity and steel crude demand, which means there is unlikely to be any market-driven reduction in steel exports to the United States in the near future.[8]

2. While U.S. steel production capacity has remained flat since 2001, other steel producing nations have increased their production capacity, with China alone able to produce as much steel as the rest of the world combined. This overhang of excess capacity means that U.S. steel producers, for the foreseeable future, will face increasing competition from imported steel as other countries export more steel to the United States to bolster their own economic objectives and offset loss of markets to Chinese steel exports.

Conclusion

Based on these findings, the Secretary of Commerce concludes that the present quantities and circumstance of steel imports are ''weakening our internal economy'' and threaten to impair the national security as defined in Section 232. The Secretary considered the Department's narrower investigation of iron ore and semi- finished steel imports in 2001, which recommended no action be taken, and finds that several important factors—the broader scope of the investigation, the level of global excess capacity, the level of imports, the reduction in basic oxygen furnace facilities since 2001, and the potential impact of further plant closures on capacity needed in a national emergency, support recommending action under Section 232. In light of this conclusion, the Secretary has determined that the only effective means of removing the threat of impairment is to reduce imports to a level that should, in combination with good management, enable U.S. steel mills to operate at 80 percent or more of their rated production capacity.

Recommendation

Prior significant actions to address steel imports using quotas and/or tariffs were taken under various statutory authorities by President George W. Bush, President William J. Clinton (three times), President George H.W.

[5] *See, e.g.,* 15 U.S.C. 271(a)(1)(The future well-being of the United States economy depends on a strong manufacturing base. . . .''); 50 U.S.C. 4502(a)(''Congress finds that—(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services. . . (2)(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions0. . .''; and American Recovery and Reinvestment Act, Pub. L. 111–5, sec. 1605, 123 Stat. 303 (Feb. 17, 2009) (providing that none of the funds appropriated or made available by the act may be used for the construction, alteration, maintenance, or repair of a public building or public work unless the iron, steel, and manufactured goods are produced in the United States).

[6] See infra, section V(A)(3) and Appendix J.

[7] 2001 Report at 14. The 2001 Report is not clear whether it used short tons or metric tons. If short tons were used then the metric ton equivalent is 30.56 million metric tons.

[8] Source: Global Forum report; *http://www.bmwi.de/Redaktion/EN/Downloads/global-forum-on-steel-excess-capacity-report.pdf.*

Bush, President Ronald W. Reagan (three times), President James E. Carter (twice), and President Richard M. Nixon, all at lower levels of import penetration than the present level, which is greater than 30 percent.

Due to the threat, as defined in Section 232, to national security from steel imports, the Secretary recommends that the President take immediate action by adjusting the level of these imports through quotas or tariffs. The quotas or tariffs imposed should be sufficient, even after any exceptions (if granted), to enable U.S. steel producers to operate at an 80 percent or better average capacity utilization rate based on available capacity in 2017 (*see* Figure 1).

FIGURE 1—IMPORT LEVELS AND U.S. STEEL MILL CAPACITY UTILIZATION RATES *

	2011–2016 average	2017 annualized
Steel Market Snapshot (millions of metric tons):		
Total Demand for Steel in U.S. (production + imports-exports)	105.5	107.3
U.S. Annual Capacity	114.4	113.3
U.S. Annual Production (liquid)	84.6	81.9
Capacity Utilization Rate (percentage)	74.0	72.3
Imports and Exports (miliions of metric tons):		
Imports of Steel to U.S. (including semi-finished)	31.8	36.0
Exports of Steel from the U.S.	10.8	10.1
Percent Import Penetration	30.1	33.8
Production at Various Utilization Rates (millions of metric tons):		
Maximum Capacity	114.4	113.3
Production at 75% Capacity Utilization	85.8	85.0
Production att 80% Capacity Utilization	91.5	90.6
Production att 85% Capacity Utilization	97.2	96.3
Import Levels and Domestic Production Targets Based on 80% Capacity Utilization General Equilibrium (GTAP Model—Includes Reduction in Exports and Demand)		
Maximum Import Level (mmt)	22.7	
Estimated Import Penetration	22%	
Estimated Production (mmt)	90.6	
Alternative 1A: Qouta Applied to 2017 Import Levels	63%	
Alternative 1B: Tariff Rate Applied to All Imports	24%	

* Numbers may differ slightly due to rounding.

Sources: United States Department of Commerce, Bureau of the Census; American Iron And Steel Institue. Calculations based on Industry and trade data.

The Secretary recommends that the President impose a quota or tariff on all steel products covered in this investigation imported into the United States to remove the threatened impairment to national security.

Alternative 1—Global Quota or Tariff

1A. Global Quota

Impose quotas on all imported steel products at a specified percent of the 2017 import level, applied on a country and steel product basis.

According to the Global Trade Analysis Project (GTAP) Model,[9] produced by Purdue University, a 63 percent quota would be expected to reduce steel imports by about 37 percent (13.3 million metric tons) from 2017 levels. Based on imports from January to October, import levels for 2017 are projected to reach 36.0 million metric tons. This action would result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports).

1B. Global Tariff

Apply a tariff rate on all imported steel products, in addition to any antidumping or countervailing duty collections applicable to any imported steel product.

According to the Global Trade Analysis Project (GTAP) Model, produced by Purdue University, a 24 percent tariff on all steel imports would be expected to reduce imports by 37 percent (*i.e.,* a reduction of 13.3 million metric tons from 2017 levels of 36.0 million metric tons). This tariff rate would thus result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports).

Alternative 2—Tariffs on a Subset of Countries

Apply a tariff rate on all imported steel products from Brazil, South Korea, Russia, Turkey, India, Vietnam, China, Thailand, South Africa, Egypt, Malaysia and Costa Rica, in addition to any antidumping or countervailing duty collections applicable to any steel products from those countries. All other countries would be limited to 100 percent of their 2017 import level.

According to the Global Trade Analysis Project (GTAP) Model, produced by Purdue University, a 53 percent tariff on all steel imports from this subset of countries would be expected to reduce imports by 13.3 million metric tons from 2017 import levels from the targeted countries. This action would enable an increase in domestic production to achieve an 80 percent capacity utilization rate at 2017 demand levels (including exports). The countries identified are projected to account for less than 4 percent of U.S. steel exports in 2017.

Exemptions

In selecting an alternative, the President could determine that specific countries should be exempted from the proposed 63 percent quota or 24 percent tariff by granting those specific countries 100 percent of their prior imports in 2017, based on an overriding economic or security interest of the United States. The Secretary recommends that any such determination should be made at the

[9] The standard GTAP Model is a static multiregional, multisector, computable general equilibrium model, with perfect competition and constant returns to scale. The model is based on optimizing behavior by economic agents. The standard GTAP closure allows all prices and wages in the economy to adjust so as to ensure supply equals demand in all markets including the labor market. The estimates in this report were made using the GTAP 10 model which has a 2014 base.

outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of steel to the United States remain at or below the level needed to enable the domestic steel industry to operate as a whole at an 80 percent or greater capacity utilization rate. The limitation to 100 percent of each exempted country's 2017 imports is necessary to prevent exempted countries from producing additional steel for export to the United States or encouraging other countries to seek to trans-ship steel to the United States through the exempted countries.

It is possible to provide exemptions from either the quota or tariff and still meet the necessary objective of increasing U.S. steel capacity utilization to a financially viable target of 80 percent. However, to do so would require a reduction in the quota or increase in the tariff applied to the remaining countries to offset the effect of the exempted import tonnage.

Exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change. The

U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to increase U.S. steel capacity utilization to a financially viable target of 80 percent.

II. Legal Framework

I. Section 232 Requirements

Section 232 provides the Secretary with the authority to conduct investigations to determine the effect on the national security of the United States of imports of any article. It authorizes the Secretary to conduct an investigation if requested by the head of any department or agency, upon application of an interested party, or upon his own motion. *See* 19 U.S.C. 1862(b)(1)(A).

Section 232 directs the Secretary to submit to the President a report with recommendations for ''action or inaction under this section'' and requires the Secretary to advise the President if any article ''is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A).

Section 232(d) directs the Secretary and the President to, in light of the requirements of national security and without excluding other relevant factors, give consideration to the domestic production needed for projected national defense requirements and the capacity of the United States to meet national security requirements. *See* 19 U.S.C. 1862(d).

Section 232(d) also directs the Secretary and the President to ''recognize the close relation of the economic welfare of the Nation to our national security, and. . .take into consideration the impact of foreign competition on the economic welfare of individual domestic industries'' by examining whether any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports, or other factors, result in a ''weakening of our internal economy'' that may impair the national security. *See* 19 U.S.C. 1862(d).

Once an investigation has been initiated, Section 232 mandates that the Secretary provide notice to the Secretary of Defense that such an investigation has been initiated. Section 232 also requires the Secretary to do the following:

(1) ''Consult with the Secretary of Defense regarding the methodological and policy questions raised in [the] investigation;''

(2) ''Seek information and advice from, and consult with, appropriate officers of the United States;'' and

(3) ''If it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.'' [10] *See* 19 U.S.C. 1862(b)(2)(A)(i)-(iii).

As detailed in Parts III and V of this report, each of the legal requirements set forth above has been satisfied.

In conducting the investigation, Section 232 permits the Secretary to request that the Secretary of Defense provide an assessment of the defense requirements of the article that is the subject of the investigation. *See* 19 U.S.C. 1862(b)(2)(B).

Upon completion of a Section 232 investigation, the Secretary is required to submit a report to the President no later than 270 days after the date on which the investigation was initiated. *See* 19 U.S.C. 1862(b)(3)(A). The required report must:

(1) Set forth ''the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security;''

(2) Set forth, ''based on such findings, the recommendations of the Secretary for action or inaction under this section;'' and

(3) ''If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security . . . so advise the President.'' *See* 19 U.S.C. 1862(b)(3)(A).

All unclassified and non-proprietary portions of the report submitted by the Secretary to the President must be published.

Within 90 days after receiving a report in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall:

(1) ''Determine whether the President concurs with the finding of the Secretary;'' and

(2) ''If the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.'' *See* 19 U.S.C. 1862(c)(1)(A).

II. Discussion

While Section 232 does not contain a definition of ''national security'', both Section 232, and its implementing regulations at 15 CFR part 705, contain non- exclusive lists of factors that Commerce must consider in evaluating the effect of imports on the national

[10] Department regulations (i) set forth additional authority and specific procedures for such input from interested parties, see 15 CFR 705.7 and 705.8, and (ii) provide that the Secretary may vary or dispense with those procedures ''in emergency situations, or when in the judgment of the Department, national security interests require it.'' Id., § 705.9.

security. Congress in Section 232 explicitly determined that ''national security'' includes, but is not limited to, ''national defense'' requirements. *See* 19 U.S.C. 1862(d). The Department in 2001 determined that ''national defense'' includes both defense of the United States directly and the ''ability to project military capabilities globally.'' [11]

The Department also concluded in 2001 that ''in addition to the satisfaction of national defense requirements, the term ''national security'' can be interpreted more broadly to include the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements that are critical to the minimum operations of the economy and government.'' The Department called these ''critical industries.'' [12] This report once again uses these reasonable interpretations of ''national defense'' and ''national security.'' However, this report uses the more recent 16 critical infrastructure sectors identified in Presidential Policy Directive 21 [13] instead of the 28 critical industry sectors used by the Bureau of Export Administration in the 2001 Report.[14]

Section 232 directs the Secretary to determine whether imports of any article are being made ''in such quantities or under such circumstances'' that those imports ''threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A). The statutory construction makes clear that either the quantities or the circumstances, standing alone, may be sufficient to support an affirmative finding. They may also be considered together, particularly where the circumstances act to prolong or magnify the impact of the quantities being imported.

The statute does not define a threshold for when ''such quantities'' of imports are sufficient to threaten to impair the national security, nor does it define the ''circumstances'' that might qualify.

Likewise, the statute does not require a finding that the quantities or circumstances are impairing the national security. Instead, the threshold question under Section 232 is whether those quantities or circumstances ''threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A). This formulation strongly suggests that Congress expected an affirmative finding under Section 232 would occur before there is actual impairment of the national security.[15]

Section 232(d) contains a considerable list of factors for the Secretary to consider in determining if imports ''threaten to impair the national security'' [16] of the United States, and this list is mirrored in the implementing regulations. *See* 19 U.S.C. 1862(d) and 15 CFR 705.4. Congress was careful to note twice in Section 232(d) that the list they provided, while mandatory, is not exclusive.[17] Congress' illustrative list is focused on the ability of the United States to maintain the domestic capacity to provide the articles in question as needed to maintain the national security of the United States.[18] Congress broke the list of factors into two equal parts using two separate sentences. The first sentence focuses directly on ''national defense'' requirements, thus making clear that ''national defense'' is a subset of the broader term ''national security.'' The second sentence focuses on the broader economy, and expressly directs that the Secretary and the President ''shall recognize the close relation of the economic welfare of the Nation to our national security.'' [19] *See* 19 U.S.C. 1862(d).

Two of the factors listed in the second sentence of Section 232(d) are most relevant in this investigation. Both are directed at how ''such quantities'' of imports threaten to impair national security. *See* 19 U.S.C. 1862(b)(3)(A). In administering Section 232, the Secretary and the President are required to ''take into consideration the impact of foreign competition on the economic welfare of individual domestic industries'' and any ''serious effects resulting from the displacement of any domestic products by excessive imports'' in ''determining whether such weakening of our internal economy may impair the national security.'' *See* 19 U.S.C. 1862(d). Since the 2001 investigation, foreign competition and the displacement of domestic steel by excessive imports have resulted in the closure of six basic oxygen furnace facilities and the idling of four more (which is more than a 50 percent reduction in the number of such facilities), a 35 percent decrease in employment in the steel industry, and caused the domestic steel industry as a whole to operate on average with negative net income since 2009.

Another factor, not on the list, that the Secretary finds to be a relevant is the presence of massive excess capacity for producing steel. This excess capacity results in steel imports occurring ''under such circumstances'' that they threaten to impair the national security. *See* 19 U.S.C. 1862(b)(3)(A). The circumstance of excess global steel production capacity is a factor because, while U.S. production capacity has remained flat since 2001, other steel producing nations have increased their production capacity, with China alone able to produce as much as the rest of the world combined. This overhang of global excess capacity means that U.S. steel producers, for the foreseeable future, will continue to lose market share to imported steel as other countries export more steel to the United States to bolster their own economic objectives and offset loss of markets to Chinese steel exports.

It is these three factors—displacement of domestic steel by excessive imports and the consequent adverse impact on the economic welfare of the domestic steel industry, along with global excess

[11] Department of Commerce, Bureau of Export Administration; The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security; Oct. 2001 (''2001 Report'').

[12] *Id.*

[13] Presidential Policy Directive 21; Critical Infrastructure Security and Resilience; February 12, 2013 (''PPD–21'').

[14] See Op. Cit. at 16.

[15] The 2001 Report used the phrase ''Fundamentally threaten to impair'' when discussing how imports may threaten to impair national security. *See* 2001 Report at 7 and 37. Because the term ''fundamentally'' is not included in the statutory text and could be perceived as establishing a higher threshold, the Secretary expressly does not use the qualifier in this report. The statutory threshold in Section 232(b)(3)(A) is unambiguously ''threaten to impair'' and the Secretary adopts that threshold without qualification. 19 U.S.C. 1862(b)(3)(A). The statute also uses the formulation ''may impair'' in Section 232(d). *Id.* at 1862(d).

[16] 19 U.S.C. 1862(b)(3)(A).

[17] See 19 U.S.C. 1862(d) (''the Secretary and the President shall, in light of the requirements of national security and without excluding other relevant factors. . .'' and ''serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors. . .'').

[18] This reading is supported by Congressional findings in other statutes. See, *e.g.,* 15 U.S.C. 271(a)(1)(''The future well-being of the United States economy depends on a strong manufacturing base. . .'') and 50 U.S.C. 4502(a)(''Congress finds that—(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services. . . (2)(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions. . . (3). . . the national defense preparedness effort of the United States Government requires—(C) the development of domestic productive capacity to meet—(ii) unique technological requirements. . . (7) much of the industrial capacity that is relied upon by the United States Government for military production and other national defense purposes is deeply and directly influenced by—(A) the overall competitiveness of the industrial economy of the United States- and (B) the ability of industries in the United States, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve competitiveness with respect to military and civilian production- and (8) the inability of industries in the United States, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair the ability to sustain the Armed Forces of the United States in combat for longer than a short period.'').

[19] Accord 50 U.S.C. 4502(a).

capacity in steel—that the Secretary has concluded create a persistent threat of further plant closures that could leave the United States unable in a national emergency to produce sufficient steel to meet national defense and critical industry needs. The Secretary finds this ''weakening of our internal economy may impair the national security'' as defined in Section 232. *See* 19 U.S.C. 1862(d).

The Secretary also considered whether the source of the imports affects the analysis under Section 232. In the 2001 Report, ''the Department found that iron ore and semi-finished steel are imported from reliable foreign sources'' and concluded that ''even if the United States were dependent on imports of iron ore and semi- finished steel, imports would not threaten to impair national security.'' 2001 Report at 27. However, because Congress in Section 232 chose to explicitly direct the Secretary to consider whether the ''impact of foreign competition'' and ''the displacement of any domestic products by excessive imports'' are ''weakening our internal economy'' but made no reference to an assessment of the sources of imports, it appears likely that Congress recognized adverse impacts might be caused by imports from allies or other reliable sources.[20] As a result, the fact that some or all of the imports causing the harm are from reliable sources does not compel a finding that those imports do not threaten to impair national security.[21]

After careful examination of the facts in this investigation, the Secretary has concluded that excessive imports of steel in the present circumstances do threaten to impair national security under Section 232. Several important factors—the broader scope of the investigation,[22] the level of global excess capacity, the level of imports, the reduction in basic oxygen furnace facilities since 2001, and the potential impact of further plant closures on capacity needed in a national emergency—support a recommendation different from the one adopted in the 2001 Report.

III. Investigation Process

A. Initiation of Investigation

On April 19, 2017, U.S. Secretary of Commerce Wilbur Ross initiated an investigation to determine the effect of imported steel on national security under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

Pursuant to Section 232(b)(1)(B), the Department notified the U.S. Department of Defense with an April 19, 2017 letter from Secretary Ross to Secretary James Mattis.[23]

On April 20, 2017, President Donald Trump signed a Presidential Memorandum directing Secretary Ross to proceed expeditiously in conducting his investigation and submit a report on his findings to the President.[24]

On April 21, 2017, the Department published in the **Federal Register** a notice about the initiation of this investigation to determine the effect of imports of steel on the national security. The notice also announced the opening of the public comment period as well as a public hearing to be held on May 24, 2017.[25]

B. Public Hearing

The Department held a public hearing to elicit further information concerning this investigation in Washington, DC, on May 24, 2017. The Department heard testimony from 37 witnesses at the hearing. A full list of witnesses and copies of their testimony are included in Appendices E and F.

C. Public Comments

On April 21, 2017, the Department invited interested parties to submit written comments, opinions, data, information, or advice relevant to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR 705.4) as they affect the requirements of national security, including the following:

(a) Quantity of the articles subject to the investigation and other circumstances related to the importation of such articles; (b) Domestic production capacity needed for these articles to meet projected national defense requirements; (c) The capacity of domestic industries to meet projected national defense requirements; (d) Existing and anticipated availability of human resources, products, raw materials, production equipment, facilities, and other supplies and services essential to the national defense; (e) Growth requirements of domestic industries needed to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth; (f) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security; (g) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; (h) Relevant factors that are causing or will cause a weakening of our national economy; and (i) Any other relevant factors. *See* **Federal Register**, Vol. 82, No. 79, 19205-19207.

The public comment period ended on May 31, 2017. The Department received 201 written public comment submissions concerning this investigation. All public comments were carefully reviewed and factored into the investigation process. For a listing of all public comments, *see* Appendix G.

D. Interagency Consultation

In addition to the required notification provided by the April 19, 2017 letter from Secretary Ross to Secretary Mattis, Department staff carried out the consultations required under Section 232(b)(2).[26] Staff consulted with their counterparts in the Department of Defense regarding any methodological and policy questions that arose during the investigation.

[20] When Congress adopted Section 232(d) in 1962 the immediately preceding section was Section 231, 19 U.S.C. 1861, which required the President, as soon as practicable, to suspend most-favored-nation tariff treatment for imports from communist countries. Given the bipolar nature of the world at the time, the absence of a distinction between communist and non-communist countries in Section 232 suggests that Congress expected Section 232 would be applied to imports from all countries—including allies and other ''reliable'' sources.

[21] To the extent that the 2001 Report or other prior Department reports under Section 232 can be read to conclude that imports from reliable sources cannot impair the national security when the Secretary finds those imports are causing ''substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports'', the Secretary expressly rejects such a reading.

[22] This investigation examines the import of a broad range of steel products—flat, long, pipe and tube, semi- finished, and stainless—whereas the 2001 Report addressed only semi-finished steel products and iron ore, which is not part of this investigation. As the 2001 Report noted, at the time semi-finished imports accounted for ''a small percentage (approximately 7 percent) of total U.S. semi-finished steel consumption.'' 2001 Report at 31. The 2001 Report also stated that ''whether imports have harmed or threaten to harm U.S. producers writ large is beyond the scope of the Department's inquiry, and need not be resolved here.'' *Id.* at 37. This investigation is focused on the larger inquiry that the 2001 Report expressly did not reach.

[23] 19 U.S.C. 1862(b)(1)(B). See Appendix A. Section 232 Investigation Notification Letter to Secretary of Defense James Mattis (April 19, 2017) ; Department of Defense Response to Notification (May 8, 2017)

[24] See Appendix B: Presidential Memorandum for the Secretary of Commerce—Steel Imports and Threats to National Security (April 20, 2017)

[25] See Appendices C and D for **Federal Register** Notice **Federal Register**, Vol. 82, No. 79, 19205–19207 and See **Federal Register**, Vol. 82, No. 98, 23529–23530.

[26] 19 U.S.C. 1862(b)(2)

Discussions were held with the U.S. Army Materiel Command, the Defense Logistics Agency, the U.S. Navy/Naval Air Systems Command, and the Under Secretary of Defense for Acquisitions & Logistics, Manufacturing and Industrial Base Policy.

Discussions were also held with ''appropriate officers of the United States,'' including the Department of State, Department of the Treasury, Department of the Interior/U.S. Geological Survey, the Department of Homeland Security/U.S. Customs and Border Protection, the International Trade Commission, and the Office of the United States Trade Representative.[27]

IV. Product Scope of the Investigation [28] [29]

For this report, the product scope covers steel mill products (''steel'') which are defined at the Harmonized System (''HS'') 6-digit level as: 720610 through 721650, 721699 through 730110, 730210, 730240 through 730290, and 730410 through 730690, including any subsequent revisions to these HS codes. The following discontinued HS codes have been included for purposes of reporting historical data (prior to 2007): 722520, 722693, 722694, 722910, 730410, 730421, 730610, 730620, and 730660.

These steel products are all produced by U.S. steel companies and support various applications across the defense, critical infrastructure, and commercial sectors. Generally, these products fall into one of the following five product categories (including but not limited to):

(1) Carbon and Alloy Flat Product (Flat Products): Produced by rolling semi- finished steel through varying sets of rolls. Includes sheets, strips, and plates.

Flat products are covered under the following 6-digit HS codes: 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720851, 720852, 720853, 720854, 720890, 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721011, 721012, 721020, 721030, 721041, 721049, 721050, 721061, 721069, 721070, 721090, 721113, 721114, 721119, 721123, 721129, 721190, 721210, 721220, 721230, 721240, 721250, 721260, 722511, 722519, 722530, 722540, 722550, 722591, 722592, 722599, 722611, 722619, 722691, 722692, 722693, 722694, 722699

(2) Carbon and Alloy Long Products (Long Products): Steel products that fall outside the flat products category. Includes bars, rails, rods, and beams.

Long products are covered under the following 6-digit HS codes: 721310, 721320, 721391, 721399, 721410, 721420, 721430, 721491, 721499, 721510, 721550,721590, 721610, 721621, 721622, 721631, 721632, 721633, 721640, 721650, 721699, 721710, 721720, 721730, 721790, 722520, 722620,722710, 722720, 722790, 722810, 722820, 722830, 722840, 722850, 722860, 722870, 722880, 722910,722920, 722990, 730110, 730210, 730240, 730290

(3) Carbon and Alloy Pipe and Tube Products (Pipe and Tube Products): Either seamless or welded pipe and tube products. Some of these products may include stainless as well as alloy other than stainless.

Pipe and Tube products are covered under the following 6-digit HS codes: 730410, 730419, 730421, 730423, 730429, 730431, 730439, 730451, 730459, 730490, 730511, 730512, 730519, 730520, 730531, 730539, 730590, 730610, 730619, 730620, 730629, 730630, 730650, 730660, 730661, 730669, 730690

(4) Carbon and Alloy Semi-finished Products (Semi-finished Products): The initial, intermediate solid forms of molten steel, to be re-heated and further forged, rolled, shaped, or otherwise worked into finished steel products. Includes blooms, billets, slabs, ingots, and steel for castings.

Semi-finished products are covered under the following 6-digit HS codes: 720610, 720690, 720711, 720712, 720719, 720720, 722410, 722490

(5) Stainless Products: Steel products, in flat-rolled, long, pipe and tube, and semi-finished forms, containing at minimum 10.5 percent chromium and, by weight, 1.2 percent or less of carbon, offering better corrosion resistance than other steel.

Stainless steel products are covered under the following 6-digit HS codes: 721810, 721891, 721899, 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 721931, 721932, 721933, 721934, 721935, 721990, 722011, 722012, 722020, 722090, 722100, 722211, 722219, 722220, 722230, 722240, 722300, 730411, 730422, 730424, 730441, 730449, 730611, 730621, 730640

V. Findings

A. Steel is Important to U.S. National Security

As discussed in Part II, ''national security'' under Section 232 includes both (1) national defense, and (2) critical infrastructure needs.

1. Steel is Needed for National Defense Requirements

Steel articles are critical to the nation's overall defense objectives.[30] The U.S. Department of Defense (DoD) has a large and ongoing need for a range of steel products that are used in fabricating weapons and related systems for the nation's defense.[31] DoD requirements—which currently require about three percent of U.S. steel production—are met by steel companies that also support the requirements for critical infrastructure and commercial industries.

The free market system in the United States requires commercially viable steel producers to meet defense needs. No company could afford to construct and operate a modern steel mill solely to supply defense needs because those needs are too diverse. In order to supply those diverse national defense needs, U.S. steel mills must attract sufficient commercial (*i.e.,* non-defense) business. The commercial revenue supports construction, operation, and maintenance of production capacity as well as the upgrades, research and development required to continue to supply defense needs in the future. *See* Appendix H for examples.

2. Steel is Required for U.S. Critical Infrastructure

Steel also is needed to satisfy requirements for ''those industries that the U.S. Government has determined are critical to minimum operations of the economy and government.'' [32] In the 2001 Report the Department identified 28 ''critical industries.'' [33] The Critical Infrastructure Assurance Office that identified the ''critical industries'' is no longer in existence, so for this investigation the Department instead relied on the industries identified by the U.S. Government in the 2013 Presidential Policy Directive 21 (PPD–21).[34] The Secretary believes that the range of industries identified in PPD–21 is comparable to the range of critical industries analyzed in the 2001 Report.

Pursuant to PPD–21, there are 16 designated critical infrastructure sectors in the United States, many of which use

[27] *Id.*

[28] The scope includes steel products.

[29] Note that import data for steel products includes what are believed to be very small amounts of iron as well as steel, both of which are included in the HS codes covered in the scope.

[30] *Accord,* 2001 Report at 1, 12.

[31] AISI 2017 public policy agenda, available from *http://www/steel/org/~/media/Files/AISI/Reports/AISI–2017-Public-Policy-Agenda/pdf?la=en.*

[32] 2001 Report at 14. See also, 2001 Report at 16, Table 2, for a listing of the 28 critical industries.

[33] *Id.*

[34] PPD–21 can be viewed at *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

high volumes of steel (*see* Appendix I).[35] The 16 sectors include chemical production, communications, dams, energy, food production, nuclear reactors, transportation systems, water, and waste water systems.

Increased quantities of steel will be needed for various critical infrastructure applications in the coming years. The American Society of Civil Engineers estimates that the United States needs to invest $4.5 trillion in infrastructure by 2025, and a substantial portion of these projects require steel content.[36]

3. Domestic Steel Production Is Essential for National Security Applications

Domestic steel production is essential for national security. Congress, in Section 232(d), directed the Secretary of Commerce and the President to consider domestic production and the economic welfare of the United States in determining whether imports threaten to impair national security.

In the case of steel, the history of U.S. Government actions to ensure the continued viability of the U.S. steel industry demonstrates that, across decades and Administrations, there has been consensus that domestic steel production is vital to national security.

Prior significant actions under various statutory authorities to address steel imports using quotas or tariffs were taken by President George W. Bush, President William J. Clinton (three times), President George H. W. Bush, President Ronald W. Reagan (three times), President James E. Carter (twice), and President Richard M. Nixon, all at lower levels of import penetration than at present. In the 1970s, action was taken to limit import penetration to approximately 19 percent. In the 1980s, import penetration had reached 21 percent and the U.S. Government enacted correcting measures. In the 1990s and 2000s import penetration again reached up to 23 percent, which prompted the U.S. Government to take additional actions.[37] In 2016, import penetration averaged 30 percent and for the first nine months of 2017 imports have consistently averaged over 30 percent of U.S. domestic demand.

4. Domestic Steel Production Depends on a Healthy and Competitive U.S. Industry

U.S. steel producers would be unable to survive purely on defense or critical infrastructure steel needs. In the steel industry, it is commercial and industrial customer sales that generate the relatively steady production needed for manufacturing efficiency, and the revenue volume needed to sustain the business. Sales for critical infrastructure and defense applications are often less predictable, cyclical, and limited in volume.

Steel manufacturers operating in the United States, however, have seen their commercial and industrial business steadily eroded by a growing influx of lower- priced imported product from countries where steel manufacturing often is subsidized, directly or indirectly. The Department of Commerce currently has 164 antidumping and countervailing duty determinations in effect, and has 20 additional cases under investigation, to address specific cases. *See* Appendix K.

5. Steel Consumed in Critical Industries

In this investigation, the issue before the Department is whether steel imports ''threaten to impair'' national security. *See* 19 U.S.C. 1862. As discussed in Part II, the Secretary has determined that in the present case the relevant factors are the ''serious effects resulting from the displacement of . . . domestic [steel] products by excessive imports'' and the ''impact of foreign competition on the economic welfare of individual domestic [steel] industries'' that, when combined with the circumstance of massive global excess capacity, causes a ''weakening of our internal economy'' that ''may impair the national security.'' [38]

In a free market system, the ability of the domestic steel industry to continue meeting national security needs depends on the continued capability of the U.S. steel industry to compete fairly in the commercial marketplace and maintain a financially viable domestic manufacturing capability. This includes the need to have an adequately skilled workforce for manufacturing as well as to conduct research and development for future products.[39] A continued loss of viable commercial production capabilities and related skilled workforce will jeopardize the U.S. steel industry's ability to meet the full spectrum of national security requirements.

The Department in 2001 determined that the ''critical industries'' sector, which is analogous to the more robust critical infrastructure sectors identified pursuant to PPD–21, would require ''no more than 33.68 million tons of finished steel per year,'' [40] based on 30.88 percent of domestic consumption being used in industries related to critical infrastructure. The Department has now updated the ''critical industries'' calculation from the 2001 Report [41] using Census Bureau steel usage figures from 2007, which are the latest available. *See* Appendix I for more detailed information on steel needs for critical infrastructure.

The updated analysis in Appendix I shows that 49.1 percent of domestic steel consumption in 2007 was used in critical industries. Domestic production in 2007 was 110 million metric tons. The 49.1 percent of domestic consumption used in critical industries equals 54 million metric tons, compared to 30.56 million metric tons (or 33.68 million short tons) used in critical industries in 1997. Thus in 10 years the demand for steel in critical industries increased by 63 percent.

B. Imports in Such Quantities as Are Presently Found Adversely Impact the Economic Welfare of the U.S. Steel Industry

In the steel sector, foreign competition is characterized by substantial and sustained global overcapacity and production in excess of foreign domestic demand.

1. Imports of Steel Products Continue to Increase

The United States is the world's largest steel importer. The top 20 sources of U.S. imports of steel products accounted for approximately 91 percent of the roughly 36 million metric tons of steel the United States is expected to import in 2017 (*see* Figure 2).

Total U.S. imports rose from 25.9 million metric tons in 2011, peaking at 40.2 million metric tons in 2014 at the height of the shale hydrocarbon drilling

[35] Department of Homeland Security, ''Critical Infrastructure Sectors,'' *https://www.dhs.gov/critical-infrastructure-sectors#*

[36] 2017 Infrastructure Report Card, American Society of Civil Engineers, *https://www/infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card/pdf*

[37] See Appendix J for additional detail on U.S. Government actions on steel in the past.

[38] 19 U.S.C. 1862(d).

[39] See 50 U.S.C. 4502(a)(''Congress finds that— . . . (7) much of the industrial capacity that is relied upon by the United States Government for military production and other national defense purposes is deeply and directly influenced by—(A) the overall competitiveness of the industrial economy of the United States- and the ability of industries in the United States, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve competitiveness with respect to military and civilian production. . .'').

[40] 2001 Report at 14. The report is not clear whether it is referring to short tons or metric tons. While not crucial to the analysis, if the figure is in short tons then the equivalent amount in metric tons would be 30.56 million metric tons.

[41] 2001 Report at 16 (Table 2).

boom. For 2017 (first ten months) imports are increasing at a double-digit rate over 2016, pushing finished steel imports consistently over 30 percent of U.S. consumption.

Figure 2. Top U.S. Imports of All Steel Products

Imports for Domestic Consumption, Quantity In Metric Tons, Ranked By 2017

2017 Rank	Country	2011	2017 (Annualized)	% Change 2011 2017 (Annualized)
	World	25,994,621	35,927,141	38%
1	Canada	5,539,448	5,800,008	5%
2	Brazil	2,820,927	4,678,530	66%
3	South Korea	2,572,981	3,653,934	42%
4	Mexico	2,625,104	3,249,292	24%
5	Russia	1,269,717	3,123,691	146%
6	Turkey	665,303	2,249,456	238%
7	Japan	1,824,393	1,781,147	-2%
8	Germany	978,230	1,370,669	40%
9	Taiwan	588,036	1,251,767	113%
10	India	735,802	854,026	16%
11	China	1,132,292	784,393	-31%
12	Vietnam	120,134	727,643	506%
13	Netherlands	517,773	589,930	14%
14	Italy	276,809	515,459	86%
15	Thailand	72,183	417,389	478%
16	Spain	195,907	403,091	106%
17	United Kingdom	400,244	354,389	-11%
18	South Africa	123,001	350,425	185%
19	Sweden	267,685	299,170	12%
20	United Arab Emirates	63,316	290,221	358%
	Top 20 Total	22,789,285	32,744,630	44%

Source: United States Department of Commerce, Bureau of the Census, Foreign Trade Division, IHS Global Trade Atlas Database: Revised Statistics for 2011 - 2017. 2017 data is annualized based on YTD 2017 through October.

As shown in Appendix K, antidumping and countervailing duty actions can address specific instances of unfairly traded steel products. However, given the large number of countries from which the United States imports steel and the myriad of different products involved, it could take years to identify and investigate every instance of unfairly traded steel, or attempts to transship or evade remedial duties.

Moreover, U.S. industry has already spent hundreds of millions of dollars in recent years on AD/CVD cases, with seemingly no end in sight to their outlays. Smaller steel manufacturers are financially unable to afford these type of cases, or are hesitant to file cases in light of possible market entry retaliation in foreign markets for finished steel products.[42]

2. High Import Penetration

In contrast to the situation in the 2001 Report, where imports of semi-finished steel represented approximately 7 percent of domestic consumption,[43] imports of finished steel products (*i.e.* not including semi-finished steel) currently represent over 25 percent of U.S. consumption (*see* Figure 3).[44] If imports of semi-finished products are included, the import penetration level has been above 30 percent for the first

[42] Congress has specifically expressed concern about the need to maintain small suppliers and the potential adverse impact on military readiness caused by the loss of small suppliers. See 50 U.S.C. 4502(a)(8).

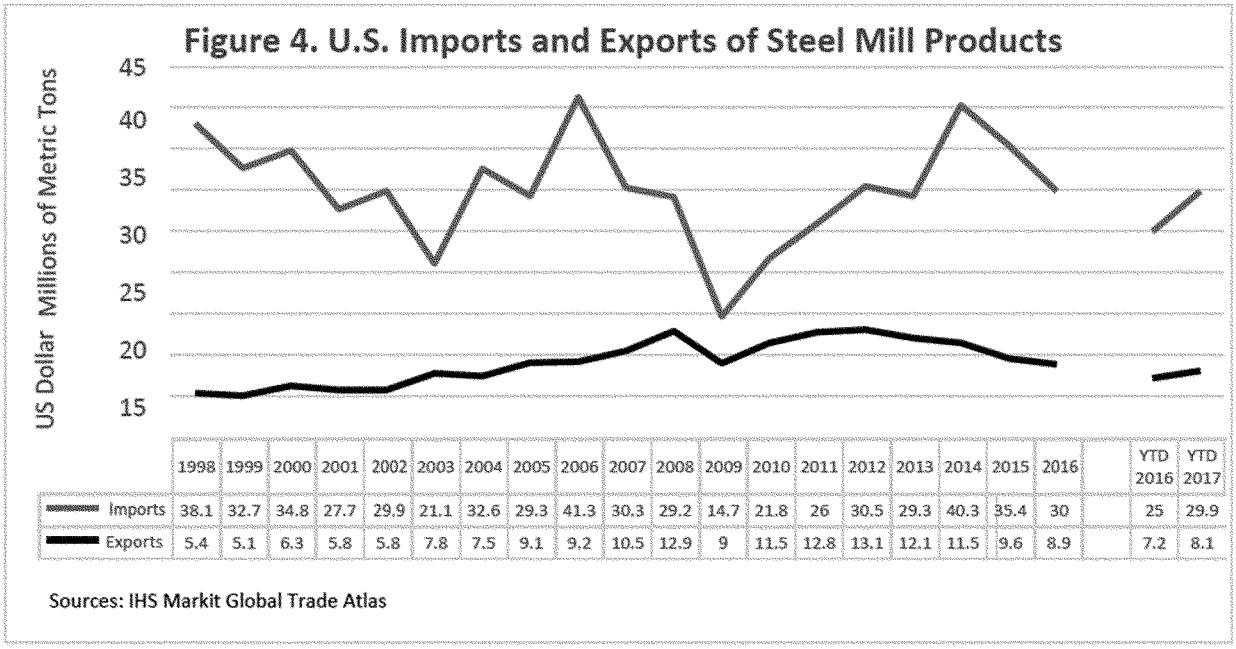
[43] 2001 Report at 31.

[44] AISI's statistical yearbook reports that about 8 percent of U.S. shipments are made of imported substrate.

ten months of 2017. Import penetration of steel pipe and tube was 74 percent in 2016 and further increased in 2017.

3. High Import to Export Ratio

U.S. imports of steel products, which displace demand for domestic steel and lower production at U.S. plants, reached nearly four times the level of exports of U.S. steel products in 2016 (*see* Figure 4). The expansion of steel production capacity outside of the United States in the last decade (Asia, the Middle East, and South America), much of it subsidized by national governments, continues to depress world steel prices while making it increasingly difficult for U.S. companies to export their steel products. While U.S. steel producers saw a mild increase in steel exports from 2005 to 2013, more recently sales to foreign customers have been declining. Exports fell to nine million metric tons in 2016 from a 20-year high of 12 million metric tons annually from 2011 to 2013. Most U.S. steel exports are auto industry related and are sent to Canada (50 percent by weight in 2016) and Mexico (39 percent by weight in 2016). Flat products represent the majority of these exports—57 percent of U.S. steel exports for Canada and 64 percent of steel exports for Mexico.

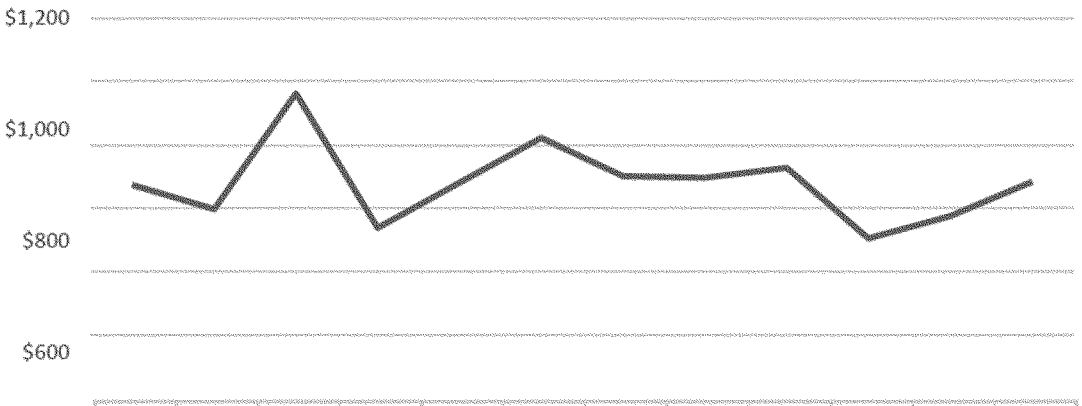


The same is true in the line pipe sector. The United States exports a minimal amount of line pipe. Exports of line pipe reached a recent peak of 525 thousand metric tons in 2013 before declining significantly. Exports totaled just 60 thousand metric tons in 2016, a decrease of 89 percent from 2013, and were less than one-twentieth of the size of line pipe imports. Canada represents the largest destination for U.S. line pipe exports, with 39 percent of 2016 exports going to Canada, followed by Mexico with 13 percent.

4. Steel Prices

Hot-rolled coil prices are a benchmark price indicator for a common type of steel (*see* Figure 5). Hot rolled coil is considered a ''benchmark'' because it is a commodity product with a fairly common definition globally.

Figure 5. Hot Rolled- USA Domestic Hot Rolled Coil (FOB Midwest Mill) $/mt

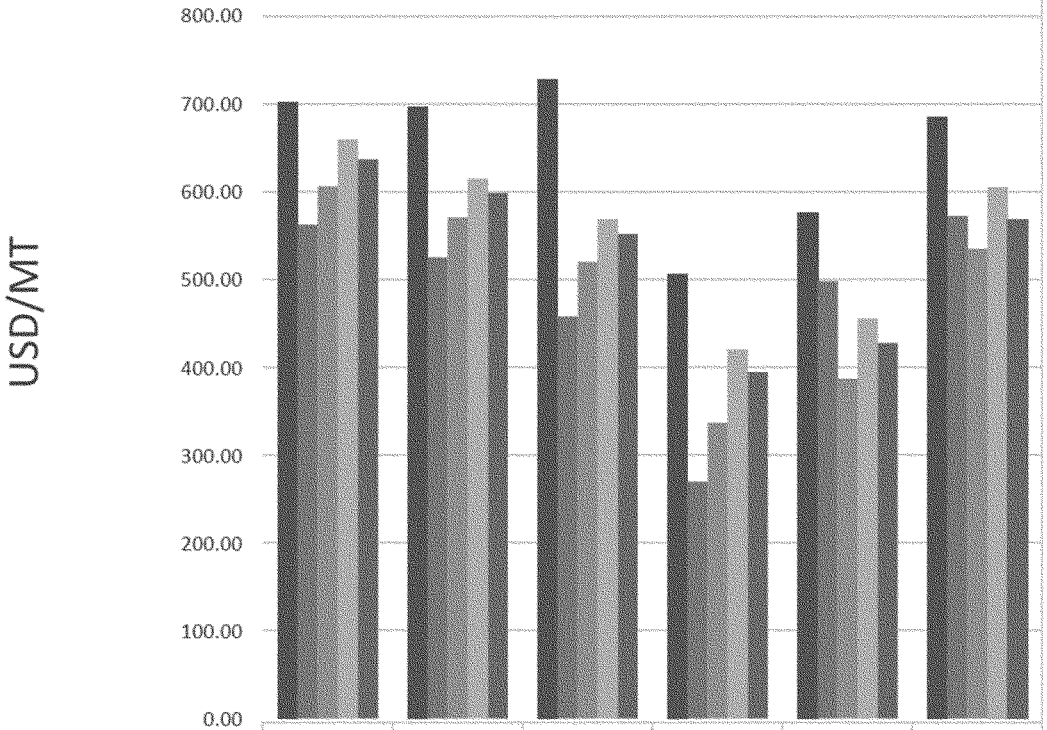


	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
US HRC	674.27	597.22	962.51	538.89	680.56	822.62	701.84	696.20	727.78	505.65	575.68	684.11

Source: Platts (accessed from Bloomberg Financial) 2017 reflects the price through December (as of December 21, 2017.

U.S. prices for hot-rolled steel coil have been higher than in other countries since 2010. U.S. domestic benchmark prices for this product class dipped especially low in 2015 at $505.65/metric ton before recovering in 2016 to $575.68/metric ton. In 2016, the price of freight-on-board stowed China port steel hot-rolled coil was 14 percent lower than U.S. domestic hot-rolled coil. In the case of ASEAN nations, import prices for hot-rolled coil were 33 percent lower and North Europe domestic hot-rolled coil was 21 percent lower. Each region saw a price decline in 2015 (*see* Figure 6). U.S. prices remained higher than other regions' prices for this commodity level product throughout the period. Such higher prices are attributable to higher taxes, healthcare, environmental standards, and other regulatory expenses. Moreover, lower prices in steel producing regions backed by state-subsidized enterprises adds pressure on U.S. competitors to export their steel products to the U.S. Again in 2016, all categories of steel in all countries continued to experience pressure to lower prices compared to what could be charged in 2012.

Figure 6. Regional Comparison of Hot Rolled Coil Bench Mark Prices (USD/MT)



	2012	2013	2014	2015	2016	2017*
USA Domestic Hot Rolled Coil	701.84	696.20	727.78	505.65	575.68	684.11
Steel Hot Rolled Coil (FOB Stowed China Port)	562.50	525.00	457.50	269.50	497.50	572.00
Asean Import Hot Rolled Coil	605.66	570.43	519.89	336.55	386.81	534.75
North Europe Domestic Hot Rolled Coil	659.54	614.41	568.41	420.19	455.29	604.90
South Europe Domestic Steel Rebar	636.59	598.34	551.66	394.11	427.68	568.53

Source: Bloomberg, Platts, Antaike. 2017 prices are through December 20, 2017.

In 2015, steel prices fell globally. As the OECD noted, the combined effect of weakening global steel demand, including in the United States, growing exports in many economies, and decreases in steelmaking costs led to a very sharp decline in steel prices in 2015. Notwithstanding these effects, prices for steel in the U.S. remained substantially higher than in any other area. However, relative to prices between 2010 and 2013, prices are still relatively depressed.

Global excess steel production weakens the pricing power of U.S. steel producers. U.S. steel producers' costs are higher than the costs for producers in other regions due to higher taxes, healthcare, environmental, and other regulatory expenses. Higher U.S. steel prices incentivize importing lower-cost foreign steel. Moreover, excess production and lower prices in regions proximate to state subsidized enterprises displace purchases from market based steel exporters and add pressure on those market based suppliers to export to the U.S. The effect of global excess steel production on U.S. steel prices and import levels is discussed in greater detail in Appendix L.

5. Steel Mill Closures

U.S. steel mill closures continue eroding overall U.S. steel mill capacity and employment. Many U.S. steel mills have been driven out of business due to declining steel prices, global overcapacity, and unfairly traded steel. Since 2000, the United States has lost over 25 percent of its basic oxygen furnace facilities with the closure of six facilities: RG Steel in Sparrows Point, Maryland; RG Steel in Steubenville, Ohio; RG Steel in Warren, Ohio; ArcelorMittal in East Chicago, Indiana; ArcelorMittal in Weirton, West Virginia; and U.S. Steel in Fairfield, Alabama.

In addition, four electric arc furnace steel facilities have closed: Evraz in Claymont, Delaware; ArcelorMittal in Georgetown, South Carolina; Gerdau in Sand Springs, Oklahoma; and Republic Steel in Lorain, Ohio. Most recently, ArcelorMittal has announced the closure of its plate rolling mill in Conshohocken, Pennsylvania, because of sagging commercial sales attributed to surging imports of low-cost steel product and flat defense demand.[45]

The closures of these facilities have had a significant impact on the U.S. industrial workforce and local economies. RG Steel suffered three closures: Sparrows Point, Maryland; Steubenville, Ohio; and Warren, Ohio. After filing for bankruptcy in 2012, more than 2,000 employees were displaced in Maryland alone and another 2,000 in the Midwest. The

[45] Cowden, M. ''Arcelor Mittal to Shut PA Plate Mill,'' American Metal market, September 18, 2017.

company cited weak demand in the steel industry as well as lack of financing as key contributors to the closure.[46]

Closures of smaller steel mills have had equally devastating impacts on employment. Gerdau Sand Springs in Oklahoma lost 300 employees after closing in 2009 because of a long-term drop in demand for steel.[47] Sand Springs was the last remaining steel plant in Oklahoma and had been in production since the 1920s.

In 2013, at least 345 employees were laid off in response to the closure of the Claymont steel mill in Delaware. The Governor of Delaware, Jack Markell, attributed the financial difficulties of the facility to ''subdued market demand and the high volume of imports.'' [48]

Similar difficulties were cited by the ArcelorMittal's Georgetown, South Carolina facility and U.S. Steel's location in Fairfield, Alabama, both of which closed in 2015. Layoffs for these two corporations totaled 226 and more than 1,100 employees, respectively. Both companies attributed the layoffs to financial losses and ultimately, to facility closures due to the rise in competition from inexpensive imports.[49]

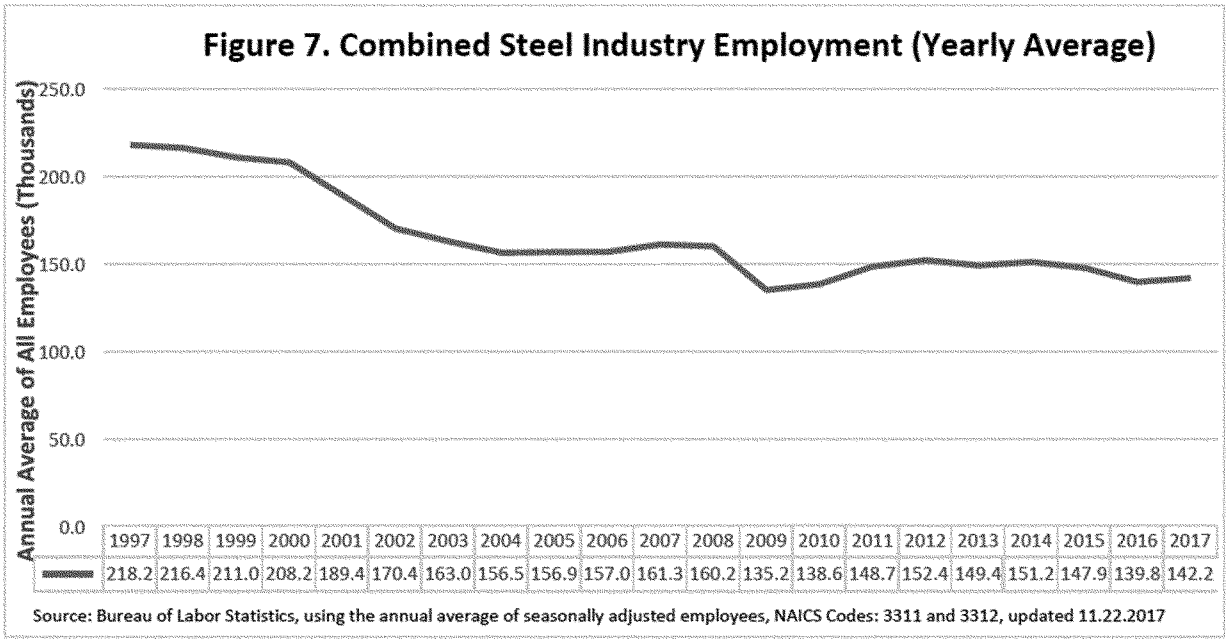
Even temporary idling of steel plants threatens the U.S. steel industry as there are significant financial costs with re-opening a steel mill. Multiple U.S. facilities remain idled: there are four idled basic oxygen furnace facilities, two each in Kentucky and Illinois, representing almost one third of the remaining basic oxygen furnace facilities in United States.[50] In addition, there are idled pipe and tube mills in Texas, Ohio, and Alabama. Once production is halted at these facilities it is not always possible to bring back the highly skilled workforce needed to operate them. When steel mill restarts do occur, additional costs are often incurred for specialized worker training and production ramp-up.

In addition, when a steel mill closes at a given location, the workers find other occupations, move to other steel mills, or remain indefinitely unemployed. After a significant period of unemployment, much of the specialized skill required by steel mill workers is forgotten. Furthermore, it is typically not easy to find and recruit displaced workers who may live hundreds or thousands of miles away.

6. Declining Employment Trend Since 1998

U.S. steel industry employment has declined 35 percent (216,400 in 1998 to 139,800 in January 2016—December 2016), including 14,100 lost jobs between 2015 and 2016. While employment numbers increased slightly in certain years, the trend is dramatically downward (*see* Figure 7). Layoffs defer formal plant closings but are an indication of financial distress. Layoffs in the last two years have been particularly acute in steel producers with pipe and tubular facilities. In addition to layoffs, there are permanent closures and bankruptcies in the industry.[51]

The loss of skilled workers is especially detrimental to the long-term health and competitiveness of the industry. The unstable and declining employment outlook for the industry also dissuades younger workers from wanting to participate in the future U.S. steel industry. The inability to rapidly add skilled workers to the industry negatively affects current manufacturing capabilities. This is especially problematic in the event of a major production surge or mobilization.



[46] Business Journal, ''Unforeseen Conditions Closes Warren Steel Holdings,'' January 12, 2016, *http://businessjournaldaily.com/utilities-cut-to-warren-steel-holdings/;* Baltimore Brew, ''Six reasons why the Sparrows Point steel mill collapsed,'' May 25, 2012, *https://baltimorebrew.com/2012/05/25/six-reasons-why-the-sparrows-point-steel-mill-collapsed/.*

[47] News on 6, ''Sand Springs Steel Plant May Close,'' June 9, 2009, *http://www.newson6.com/story/10500785/sand-springs-steel-plant-may-close.*

[48] Business Insider, ''Shutdown of Russian Steel Mill in Delaware Could Send a Message About US Trade,'' October 17, 2013, *http://www.businessinsider.com/evraz-closes-claymont-steel-2013-10.*

[49] AL.com, ''U.S. Steel lays off 200 more workers in Fairfield,'' March 18, 2016, *http://www.al.com/business/index/ssf/2016/03/us_steel_lays_off_200_more_wor/html.*

[50] See Figure 13.

[51] See infra, section V(C)(1).

7. Trade Actions—Antidumping and Countervailing Duties

The number of U.S. antidumping and countervailing duty measures in effect illustrates the scope of the problem confronting the U.S. steel industry. In 1998, at the height of that periods steel crisis, there were just over 100 antidumping and countervailing duty cases against finished steel products.[52] Today there are 164 antidumping and countervailing duty orders in effect for steel, with another 20 steel investigations currently ongoing and another waiting to take effect through publication in the **Federal Register** (*see* Appendix K for a full listing of Steel Antidumping and Countervailing Duty Orders in Effect). This represents a 60 percent increase in cases since the last time the Department investigated steel in 2001.

8. Loss of Domestic Opportunities to Bidders Using Imported Steel

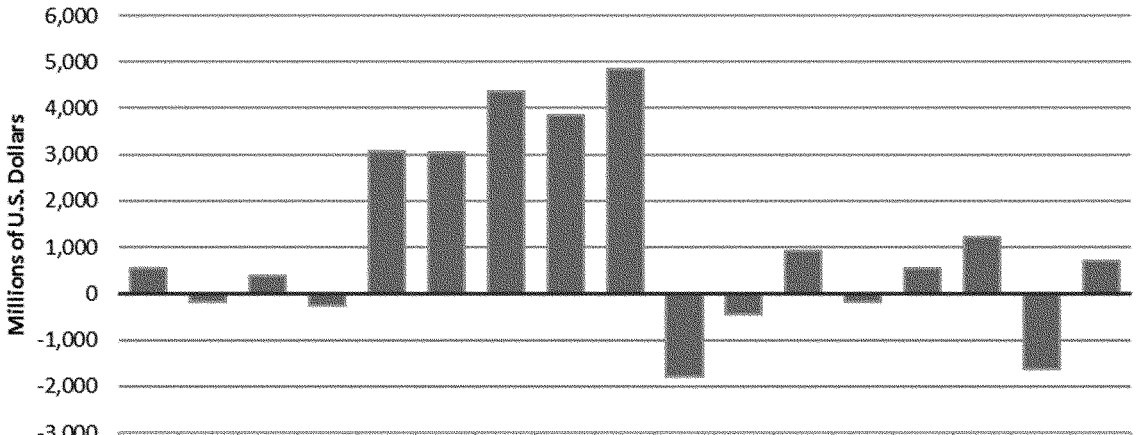
Despite efforts to level the playing field through AD/CVD orders, there are numerous examples of U.S. steel producers being unable to fairly compete with foreign suppliers, including the lack of ability to bid on some critical U.S. infrastructure projects. Due to unfair competition, particularly from foreign state-owned enterprises, U.S. steel producers have lost out on U.S. business opportunities. Some examples include Chinese companies providing steel for the eastern span of the San Francisco-Oakland Bay Bridge as well as the Alexander Hamilton Bridge over the Harlem River in New York.[53]

The Alliance for American Manufacturing's statement before the Congressional Steel Caucus (March 2017) identified three other recent infrastructure projects in New York that have used or will use heavily subsidized or possibly dumped foreign steel: the Verrazano-Narrows Bridge, LaGuardia Airport, and the Holland Tunnel. Two major U.S. cities—Boston and Chicago—have contracted with Chinese companies to build new subway cars, primarily constructed with imported steel, for their respective transportation systems.[54]

9. Financial Distress

Rising levels of imports of steel continue to weaken the U.S. steel industry's financial health. Years of running on low-profit margins or at a loss have weakened an industry that continues to face an ever-increasing wave of steel imports. The U.S. industry, as a whole, has operated on average with negative net income from 2009- 2016. Net income for U.S.-owned steel companies has averaged only $162 million annually since 2010, challenging the financial viability of this vital industry (*see* Figure 8).

Figure 8. U.S. Steel Industry Net Annual Income



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Net Income	555	-178	380	-261	3060	3057	4368	3857	4856	-1803	-458	927	-188	549	1230	-1636	713

Source: Company websites.
*Includes financials of AK Steel, Carpenter Technology, Commercial Metals Company, Nucor, Steel Dynamics, and U.S. Steel.

The Stern School of Business at New York University calculates that U.S. steel industry participants in the last five years experienced negative net income of 17.8 percent. Compounded growth in revenue for the past five years in the steel industry has been a negative 7 percent.[55] The loss of revenue has caused U.S. steel manufacturers, both large and small, to defer or eliminate production facility capital investments and funding for research and development. Even though there was a slight uptick in net income for the first quarter in 2017 over the fourth quarter of 2016 margins remain poor compared to historic levels.

Not only have earnings before interest, taxes, depreciation, and amortization (EBITDA) been shallow for steel producers in the United States, many of them are burdened with high levels of debt, as much as 11.9 times of earnings for one major producer (*see*

[52] Global Steel Trade. Structural Problems and Future Solutions; Department of Commerce; July, 2000.

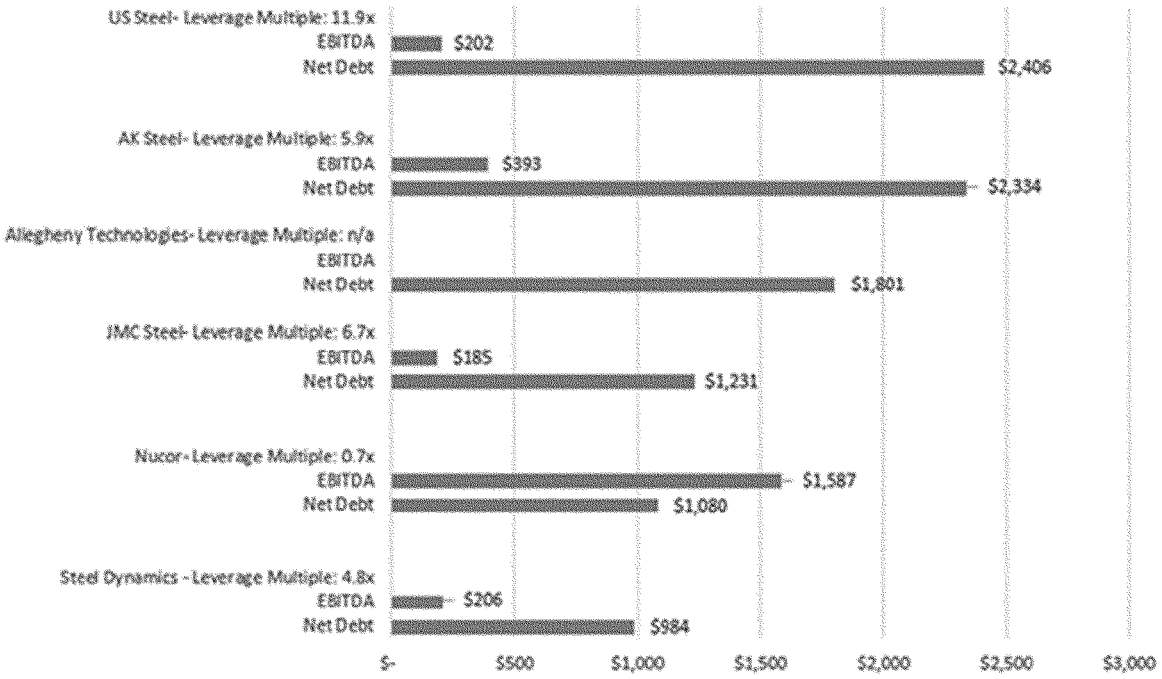
[53] 53 New York Times, ''Bridge Comes to San Francisco With a Made-in-China Label,'' June 25, 2011, *http://www.nytimes.com/2011/06/26/business/global/26bridge.html.*

[54] Reuters, ''China's CRRC lands $1.3 billion China rail car project,'' March 10, 2016, *http://www.reuters.com/article/us-crrc-usa-idUSKCN0WC17I.*

[55] ''Historical (Compounded Annual) Growth Rates by Sector,'' Aswath Damodaran, New York University Stern School of Business, January 2017. (see *http://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/histg.html*)

Figure 9).[56] While some companies are starting to pay down debt, others have not been able to do so primarily because of slack demand for domestically produced steel in the face of competition from imported products. Absent increases in steel production volume and pricing, one leading law firm specializing in insolvency, White & Case, observes that some steelmakers in the United States may soon have to renegotiate loan agreements to extend maturities; those that are not able to may have to consider Chapter 11 bankruptcy.[57]

Figure 9. U.S. Steel Industry Leverage Analysis (FY 2015)



Source: Debtwire, Bloomberg, NYSE, White & Case LLP
*EBITDA unavailable; debt is estimated

Note: Nucor has only electric arc furnaces (EAF). EAFs can be quickly stopped (or used for fewer shifts) and then restarted more easily than blast furnaces, where the furnace must be kept hot. This attribute makes Nucor slightly more flexible to adapt their production to demand and likely more profitable than large BOF producers. Nucor's key end-markets include nonresidential construction and energy.

JMC Steel is now part of Zekelman Industries

No capital intensive industry can survive with such poor margins over the longer term. The extensive leverage in the industry shown in Figure 9 adds to the likelihood of further closures if the present high level of imports continues to force U.S. steel mills to operate well below profitable capacity utilization rates.

10. Capital Expenditures

The ability of U.S. manufacturers of iron and steel products to fund capital expenditures for new production plants as well as facility modernization and advanced manufacturing equipment has been limited by falling revenue and reduced profits. As shown in Figure 10, annual capital expenditures for companies making iron and steel ingot, bars, rods, plate and other semi-finished products wavered from $5.7 billion to $5.1 billion for 2010–2012, before ramping to $7.1 billion in 2013.

[56] Nucor operates mini-mills that use electric arc furnaces to produce high demand steel products primarily with recycled steel scrap. From a financial perspective, this business model allows Nucor to be highly price competitive, but the company produces a narrower range of flat steel products than integrated steel mills. The mini-mills can weather bad economic times because they have lower energy costs and can regulate production more easily. Basic oxygen furnace plants have higher fixed operating costs because they directly convert iron ore and other raw materials along with scrap into steel using more energy-intensive processes.

[57] ''Losing Strength. U.S. Steel Industry Analysis,'' Scott Griesman, White & Case, April 16, 2016 (*see https://www.whitecase.com/publications/article/losing-strength-us-steel-industry-analysis*).

Figure 10. Annual Capital Expenditures

	Iron, Steel, and Ferroalloys Steel NAICS Codes 3311 and 3312 Combined	Millions of Current Dollars					
	Annual Capital Expenditures Survey	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
A.	Structures [New & Used Structures Combined]	1,026	1,322	1,564	1,157	724	580
B.	Equipment [New & Used Equipment Combined]	4,634	4,572	3,592	5,954	3,139	2,531
C.	Total Capital Expenditures	5,661	5,894	5,157	7,111	3,863	3,110
D.	(Unweighted) Payroll of Reporters / Total Payroll of Firms Classified in Industry group	86%	84%	80%	61%	86%	84%

Source: U.S. Census Bureau, Annual Capital Expenditures Survey, www.census.gov/programs-surveys/aces.html

Confronted with receding orders for products and declines in income in 2013, iron and steel companies operating production facilities in the United States started curtailing capital investments. Total capital spending dropped to $3.87 billion in 2014 and slid further to $3.11 billion in 2015—32 percent below 2010 levels of $5.66 billion.

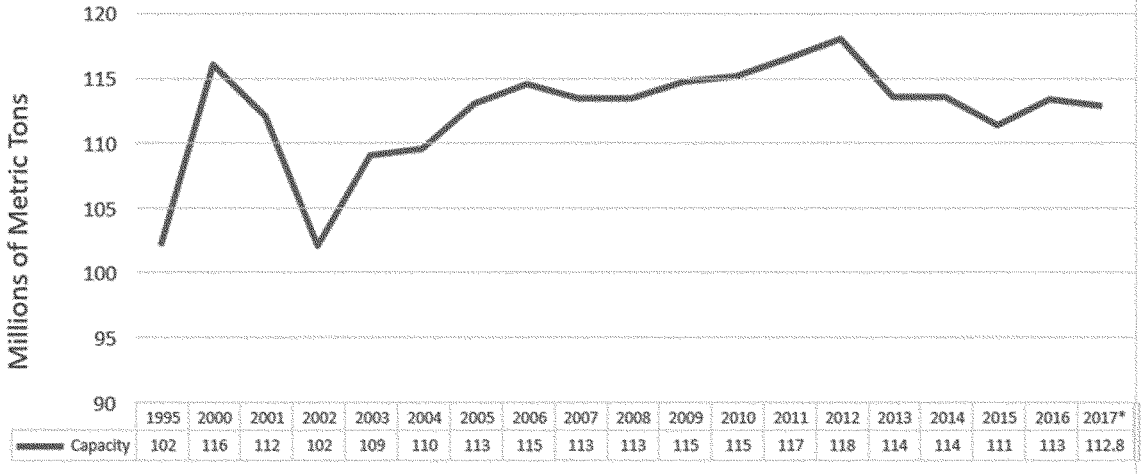
The decline in capital expenditures reflected similar drops in net sales, which plummeted from $129.6 billion in 2014 to $102 billion in 2015. Income after taxes for U.S. iron and steel manufacturers fell from $2.48 billion in the same two-year period to a massive loss of $3.5 billion in 2015.

C. Displacement of Domestic Steel by Excessive Quantities of Imports Has the Serious Effect of Weakening Our Internal Economy

1. Domestic Steel Production Capacity is Stagnant and Concentrated

According to the OECD, U.S. steel production capacity has remained stagnant at an average of approximately 114.3 million metric tons for more than a decade from 2006–2016 (*see* Figure 11). For 2016, the rated maximum capacity was 113 million metric tons for existing basic oxygen furnace and electric arc furnace facilities.

Figure 11. U.S. Annual Steel Production Capacity



Source: Organization for Economic Cooperation and Development (OECD), 2017 capacity is a forecast

[TEXT REDACTED][58]

[TEXT REDACTED] [58]

The present situation with respect to basic oxygen furnace production is significantly worse than the situation assessed by the Department in the 2001 Report. As shown in Figure 13 below, the number of basic oxygen furnace facilities and units has declined precipitously since 1995. In 2000, there were 105 companies that produced raw steel at 144 locations,[59] while today there are only 38 companies producing steel at 93 locations, a 64 percent and 36 percent reduction, respectively.

Most importantly, in 2000 thirteen companies ''operated integrated steel mills, with an average of 35 blast furnaces in continuous operation during the year'' [60] while today there are only three companies operating 13 basic oxygen furnaces. These are 77 percent and 60 percent reductions, respectively. As a result, today only 26 percent of domestic steel is produced from raw materials in the United States, as compared to 53 percent in 2000.

As noted earlier, since 2000 there has been over a 25 percent reduction in the number of basic oxygen furnaces operating in the United States, and 33 percent of the remaining basic oxygen furnaces are currently idled. In the Secretary's view, a further reduction in basic oxygen furnace capacity, which is especially important to the ability of domestic industry to meet national security needs, is inevitable if the present imports continue or increase.

[TEXT REDACTED] This would be a serious ''weakening of our internal economy'' and place the United States in a position where it is unable to be certain it could meet demands for national defense and critical industries in a national emergency.[61]

Figure 13. Basic Oxygen and Electric Arc Facilities and Units Located in the United States, 1975 - 2016

Year	Basic Oxygen Furnace Facilities	Basic Oxygen Furnace Units	Electric Arc Furnace Facilities	Electric Arc Furnace Units
1975	38	90	--	--
1980	33	78	--	--
1985	27	66	--	--
1990	24	61	127	246
1995	22*	56*	116	218
2000	19*	50*	122	174
2005	17	46	115*	169*
2010	16	44	108	164
2015	13	31	98	154
2016	13	31	98	154

Source: U.S. Department of Commerce/BIS, American Iron and Steel Institute, Association for Iron & Steel Technology, Steel Manufacturers Association, August 2017. *Estimated.

Basic Oxygen Furnace: Basic Oxygen Furnaces (BOF) are the dominant steelmaking technology globally, accounting for 74% of the world's total output of crude steel in 2016. BOF share of production in the U.S. was 33% in 2016 and has been slowly declining, due primarily to the advent of the "Greenfield" electric arc furnace (EAF) flat-rolled mills. The primary raw materials for the BOF are liquid hot metal (iron) from the blast furnace and steel scrap. [1] These are charged into the BOF vessel. Oxygen (>99.5% pure) is "blown" into the BOF at supersonic velocities. It oxidizes the carbon and silicon contained in the hot metal, liberating great quantities of heat, which melts the scrap. Source: Steel.org.

Electric Arc Furnace: The Electric Arc Furnace (EAF) operates as a batch melting process, producing batches of molten steel known "heats". The EAF process uses steel scrap and iron units, melting them using electricity to make new steel. EAF output accounted for 66% of U.S. steel production in 2016. Source: Steel.org.

[1] The Blast Furnace chemically reduces and physically converts iron oxides into liquid iron called "hot metal". The blast furnace is a huge steel stack lined with refractory brick, where iron ore, coke, and limestone are dumped into the top, and preheated air is blown into the bottom. The raw materials require six to eight hours to descend to the bottom of the furnace, where they become the final product of liquid slag and liquid iron. Source: Steel.org.

In contrast to the situation in the United States, the leading global producers of steel (Brazil, South Korea, Japan, Russia, Germany, and especially China) primarily rely on basic oxygen furnace capacity rather than electric arc furnace capacity (*see* Figure 14). Each of these economic competitors to the United States possess critical research, development and production capabilities that the United States is in danger of losing if imports continue to force U.S. steel producers to operate at uneconomic capacity utilization levels.

[58] [TEXT REDACTED]

[59] 2001 Report at 21.

[60] Id.

[61] See infra, sections C4 and C5, for a further discussion of the inability to meet surge requirements in an emergency.

A further reduction in domestic basic oxygen furnace capacity would put the United States at serious risk of becoming dependent on foreign steel to support its critical industries and defense needs. Allowing this decline to continue represents a ''weakening of our internal economy that may impair national security'' which the Congress has directed the Secretary to advise the President of under the Section 232. *See* 19 U.S.C. 1862(d).

Figure 14. The Top 20 Countries Exporting to the U.S. – BOF vs. EAF Capacity

Rank	Top Import Sources in 2016 in Tonnage Terms	2015 BOF Share	2015 EAF Share	2015 Other Share	Approx. Country s Average Capacity Utilization in 2016 (OECD)
	World	74.20%	25.20%	0.50%	67%
1	Canada	53.80%	46.20%		62%
2	Brazil	78.20%	20.20%		57%
3	South Korea	69.60%	30.40%		80%
4	Mexico	29.70%	70.30%		75%
5	Turkey	35.00%	65.00%		65%
6	Japan	77.10%	22.90%		80%
7	Russia	66.30%	30.50%	3.10%	76%
8	Germany	70.40%	29.60%		72% (EU 28)
9	Taiwan	62.30%	37.70%		75%
10	Vietnam	25.00%	59.90%	15.20%	32%
11	China	93.90%	6.10%		69%
12	Netherlands	98.60%	1.50%		72% (EU 28)
13	Italy	21.30%	78.20%		72% (EU 28)
14	United Kingdom	83.00%	17.00%		72% (EU 28)
15	France	65.60%	34.40%		72% (EU 28)
16	India	42.90%	57.10%		75%
17	Australia	77.60%	22.40%		63%
18	Spain	31.70%	68.30%		72% (EU 28)
19	Sweden	66.10%	33.90%		72% (EU 28)
20	South Africa	56.50%	43.50%		58.5%

Source: World Steel- Production Share Figures for 2015, US Census Bureau (Accessed Via HIS) – Import Growth Rates, OECD 2017 Q2 Market Assessment – Approximate Capacity Utilization

This is not a hypothetical situation. The Department of Defense already finds itself without domestic suppliers for some particular types of steel used in defense products, including tire rod steel used in military vehicles and trucks.[62] While the United States has many allies that produce steel, relying on foreign owned facilities located outside the United States introduces significant risk and potential delay for the development of new steel technologies and production of needed steel products, particularly in times of emergency. The Secretary notes that the authority for the Department of Defense to place its order ahead of commercial orders on a mandatory basis does not extend to foreign-owned facilities outside the United States.[63]

In the case of critical infrastructure, the United States is down to only one remaining producer of electrical steel in the United States (AK Steel—which is highly leveraged). Electrical steel is necessary for power distribution transformers for all types of energy—including solar, nuclear, wind, coal, and natural gas—across the country. If domestic electrical steel production, as well as transformer and generator production, is not maintained in the U.S., the U.S. will become entirely dependent on foreign producers to supply these critical materials and products.[64] Without an assured domestic supply of these products, the United States cannot be certain that it can effectively respond to large power disruptions affecting civilian populations, critical infrastructure, and U.S. defense industrial production capabilities in a timely manner.

2. Production Is Well Below Demand

Demand for steel products in the United States (*see* Figure 15), increased from 100.1 million metric tons in 2011 to 117.5 million metric tons in 2014, then declined to 99.8 million metric tons in 2016. Demand in 2017 is projected to rebound to 107.7 million metric tons. During the 2011 to 2016 period, U.S. production of steel products dropped from 86.4 million metric tons in 2011 to 78.6 million metric tons in 2016, with a four percent increase expected in 2017.

For the six-year period, U.S. domestic steel production supplied only 70

[62] Letter from Defense Logistics Agency, Columbus, OH to BIS/OTE, August 1, 2017.

[63] *See* Defense Priorities and Allocations System Program (DPAS), *www.dcma.mil/DPAS*

[64] United States Congress, Congressional Steel Caucus. Statement of Roger Newport, CEO, AK Steel Corporation (on behalf of the American Iron and Steel Institute). March 29, 2017.

percent of the average demand, even though available U.S. domestic steel production capacity during that period could have, on average, supplied up to 100 percent of demand (U.S. steel producers would be running at 92 percent capacity utilization for this period) with approximately 13 million metric tons of additional capacity remaining.

Figure 15. U.S. Steel Market Snapshot (millions of metric tons)

	2011	2012	2013	2014	2015	2016	2017 YTD	*2017 Annualized*
Total Demand for Steel in U.S. (Production + Imports - Exports)	100.1	106.6	104.6	117.5	104.9	99.8	80.7	*107.3*
U.S. Annual Capacity	116.5	118.0	113.5	113.5	111.3	113.3	---	---
U.S. Annual Production (Liquid)	86.4	88.7	86.9	88.2	78.8	78.6	61.5	*81.9*

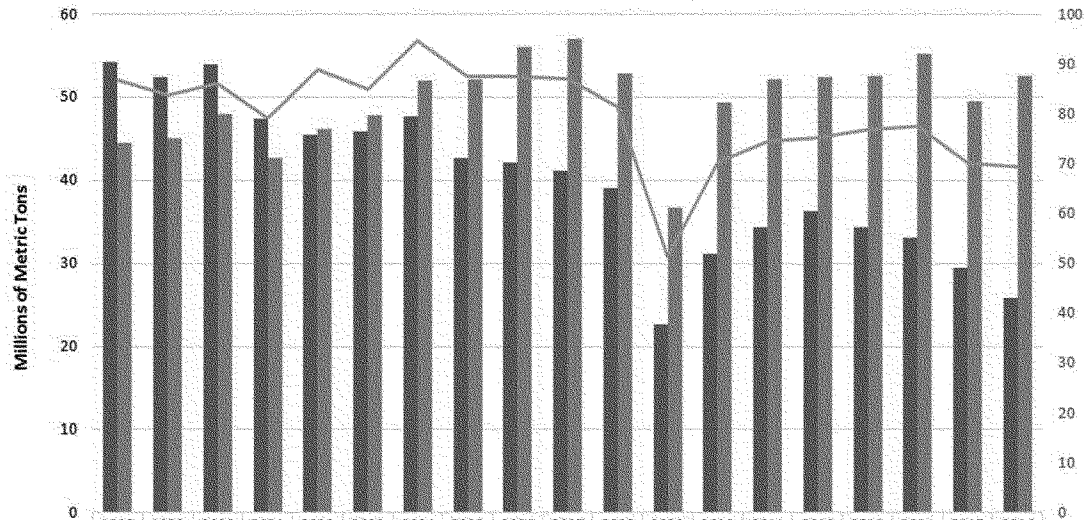
Sources: United States Department of Commerce, Bureau of the Census. American Iron and Steel Institute. Calculations based on industry and trade data.

3. Utilization Rates Are Well Below Economically Viable Levels

Overall, steel mill production capacity utilization has declined from 87 percent in 1998, to 81.4 percent in 2008, to 69.4 percent in 2016 (*see* Figure 16). For the most recent six-year period (2011- 2016), the average utilization rate was 74 percent.

Industry analysts note that utilization of 80 percent or more is typically necessary for sustained profitability, among other factors.[65] For most capital and energy-intensive U.S. steel producers, capacity levels of 80 percent or higher are required to maintain facilities, carry out periodic modernization, service company debt, and fund research and development.

Figure 16. U.S. Crude Steel Production by Furnace Type and Capacity Utilization



	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Basic Oxygen	54.2	52.3	54.0	47.4	45.4	45.9	47.7	42.7	42.1	41.1	39.1	22.7	31.1	34.3	36.3	34.3	33.0	29.4	25.9
Electric Arc Furnace	44.5	45.1	47.9	42.7	46.1	47.8	52.0	52.2	56.1	57.0	52.8	36.7	49.4	52.1	52.4	52.6	55.2	49.4	52.6
Capacity Utilization (%)	86.8	83.8	86.1	79.2	88.8	84.9	94.6	87.5	87.5	87	81.4	51.2	70.4	74.4	75.2	76.7	77.5	70.1	69.4

Source: American Iron and Steel Institute

When steel factory utilization falls, costs per unit of steel product rises, reducing profit margins and product pricing flexibility. Higher capacity utilization usually results in lower per-unit product costs and higher overall profit.[66] Over 80 percent is a healthy capacity utilization rate and a rate at

[65] Market Realist, ''Why steel investors are mindful of capacity utilization rates,'' October 2, 2014, *http://marketrealist.com/2014/10/investors-mindful-capacity-utilization-rate/.* See also *http://marketrealist.com/2015/09/upstream-exposure-impact-steel-companies.*

[66] Houston Chronical, ''Capacity Utilization and Effects on Product and Profit,'' *http://smallbusiness.chron.com/capacity-utilization-effects-product-profit-67046/html;* steel industry sources.

which most companies would be profitable.

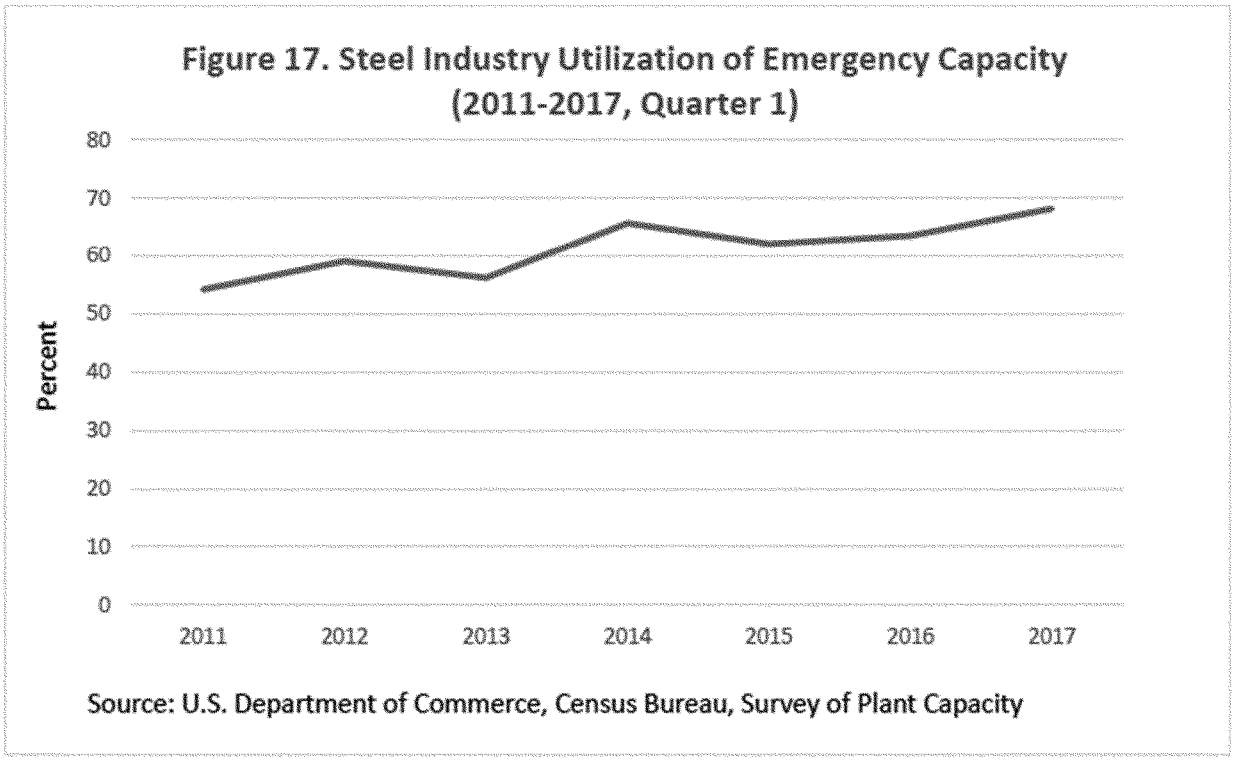
The U.S. steel industry uses 80 percent as a benchmark for minimum operational efficiency. Moreover, the steel industry is capable of reaching and sustaining 80 percent capacity utilization or higher. During the 2002–2008 period, U.S. steel companies operated at an average 87.4 percent level.[67]

These industry assessments are consistent with a 1983 report on ''Critical Materials Requirements in the U.S. Steel Industry'' in which the Department explained that ''[c]apability utilization or capacity use, which in effect describes the efficiency of an industry's use of capital, is a prime determinant of profitability. Domestic steel producers were operating at about 55 percent capability for the first half of 1982. The comparable rate for the first half of 1981 was 85 percent. This current rate is probably well below a breakeven point for most producers, whereas 1981 was profitable for nearly all producers.'' [68]

4. Declining Steel Production Facilities Limits Capacity Available for a National Emergency

The number of steel production facilities located in the U.S. continues to decline. As shown earlier in Figure 13, from 1975 to 2016 the number of basic oxygen furnace facilities decreased from 38 to 13. Similarly, from 1990 to 2016, the number of electric arc furnace facilities decreased from 127 to 98.

Due to this decline in facilities, domestic steel producers have a shrinking ability to meet national security production requirements in a national emergency. The U.S. Department of Commerce, Census Bureau regularly surveys plant capacity, and has found that steel producers are quickly shedding production capacity that could be used in a national emergency. The Census Bureau defines national emergency production as the ''greatest level of production an establishment can expect to sustain for one year or more under national emergency conditions.'' [69] From 2011 to 2017, steel producers increased the utilization of the surge capacity they would have during a national emergency from 54.2 percent to 68.2 percent (*see* Figure 17). As steel producers use more of this emergency capacity, there is an increasingly limited ability to ramp up steel production to meet national security needs during a national emergency.



The ability to increase steel production during a national emergency continues to diminish as the number of steel production facilities continues to decline. If the U.S. requires a similar increase in steel production as it did during previous national emergencies, domestic steel production capacity may be insufficient to satisfy national security needs. If a national emergency were to occur at present utilization levels, domestic steel producers would be able to increase production by 146 percent.

For comparison, from 1938 through 1946 the U.S. increased the production of pig iron and ferro-alloys by 217 percent and increased the production of steel ingots and castings by 210 percent to meet the demands of fighting a global war.[70] From 1960 through 1973, during the Vietnam era, the U.S. increased steel

[67] *http://marketrealist.com/2015/09/upstream-exposure-impact-steel-companies.html* (''It's important to note how changes in capacity utilization rates impact a company's earnings. For example, we see a big jump in earnings when utilization rates improve from 80 percent to 85 percent. However, incremental benefits are lower when utilization rates increase from 90 percent to 95 percent.'').

[68] Department of Commerce, ''Critical Materials Requirements in the U.S. Steel Industry'', March 1983, at 16–17.

[69] U.S. Dept. of Commerce, Census Bureau, Survey of Plant Capacity. 2011–2017.

[70] U.S. Dept. of Commerce, Census Bureau, Survey of Plant Capacity. 2011–2017.

production by 152 percent.[71] Should the U.S. once again experience a conflict on the scale of the Vietnam War, steel production capacity may be slightly insufficient to meet national security needs. But if the U.S. were to experience a conflict requiring the production increase seen during the Second World War, the existing domestic steel production capacity would be unable to meet national security requirements.

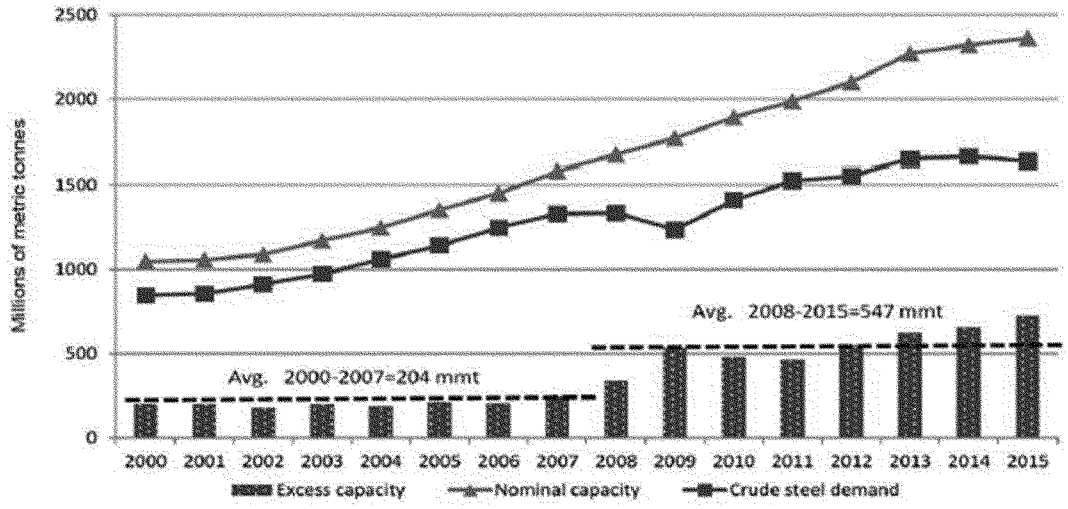
Increasing steel production capacity once a large-scale national emergency has arisen would take a significant amount of time. According to the American Iron and Steel Institute, the replacement of a basic oxygen furnace facility takes more than a year to complete. Therefore, the lack of spare domestic steel production capacity and the possible inability to sufficiently increase production during a national emergency may impair the national security of the United States.

D. Global Excess Steel Capacity Is a Circumstance that Contributes to the Weakening of the Domestic Economy

1. Free Markets Globally are Adversely Affected by Substantial Chronic Global Excess Steel Production Led by China

Numerous studies, reports, and investigations have documented the global excess steel capacity, with China having the largest installed capability (*see* Figure 18).[72] [73] [74] OECD analyses show that the world's nominal crude steelmaking capacity reached about 2.4 billion metric tons in 2016, an increase of 127 percent compared to the 2000 level. Most of the capacity expansion was planned for construction and manufacturing activities, and to help build the infrastructure necessary for economic development—most in non-OECD countries. Furthermore, the OECD reports that while steel capacity increased at a steady rate, world steel demand contracted sharply in the aftermath of the global economic and financial crisis of 2008. Global demand for steel recovered slowly in the years following 2008. However, since 2013, global steel demand has flattened thereby widening the capacity/demand gap. By 2015, the gap reached over 700 million metric tons.

Figure 18. Nominal Steel Capacity Exceeded Demand in 2015



Note: Steel demand in 2015 is an estimate by the OECD, calculated using the same percentage change from 2014 as forecast by the World Steel Association for finished steel in October 2015.

Source: OECD for capacity and the World Steel Association for demand.

The vast size of the capacity/demand gap means that steel demand alone cannot increase enough to balance the global overcapacity problem, which is particularly prevalent in China. Chinese excess capacity, estimated at more than 300 million metric tons, dwarfs total U.S. production capacity (*see* Figure 19).[75]

The effect of global overcapacity and excess steel production on U.S. steel prices and import levels is discussed in greater detail in Appendix L. While U.S. steel production capacity has remained flat since 2001, other steel producing nations have increased their production capacity, with China alone able to produce as much steel as the rest of the world combined.

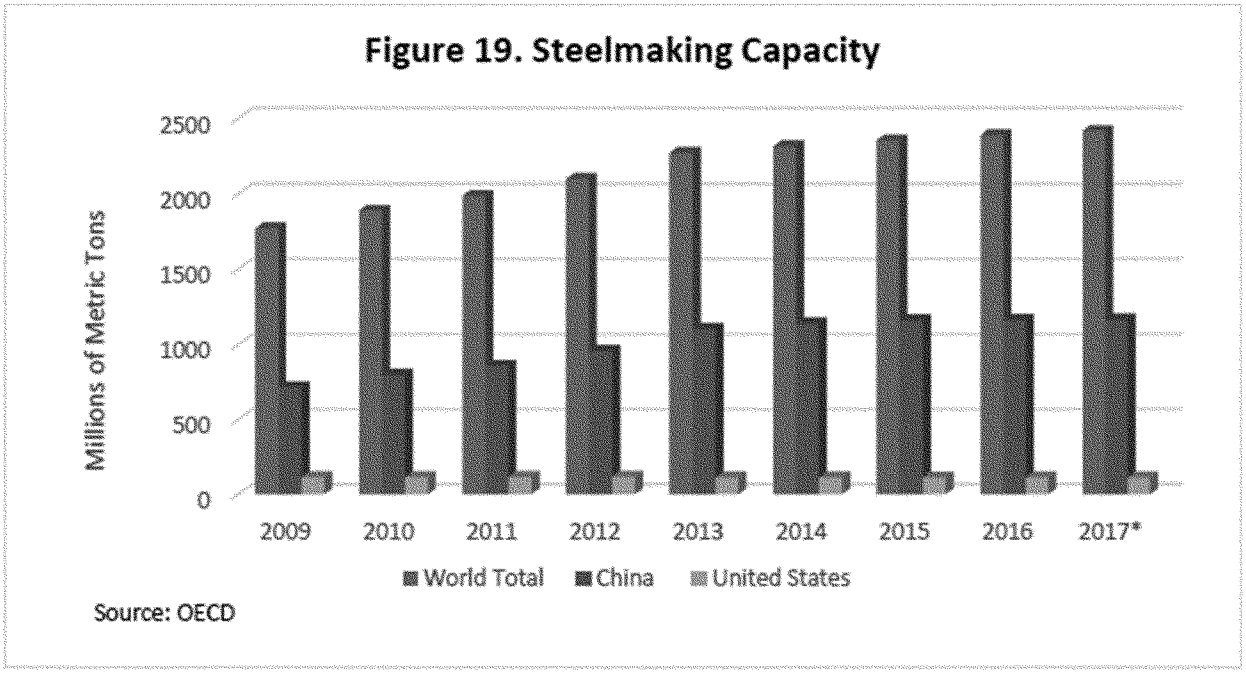
[71] U.S. Dept. of Commerce, Census Bureau. Statistical Abstract of the United States, 1978. Page 830.

[72] Brun, L. (2016). Overcapacity in Steel, China's Role in a Global Problem. Washington, DC. Alliance for American Manufacturing. *http://aamweb.s3.amazonaws.com/uploads/resources/OvercapacityReport2016_R3.pdf.*

[73] Price, A., Weld, C., El-Sabaawi, L., & Teslik, A. (2016). Capacity Runs Riot. Washington, DC. Wiley Rein LLP.

[74] OECD Reports. (2016). *http://www.oecd.org/industry/ind/82nd-session-of-the-steel-committee.htm.*

[75] OECD, ''High Level Meeting. Excess Capacity and Structural Adjustment in the Stee Sector,'' April 2016, *http://www.oecd.org/sti/ind/Background%20document%20No%202_FINAL_Meeting.pdf.*



Several countries (India, Iran, and Indonesia) in addition to China continue to add production capacity despite slack global demand. According to the OECD Steel Committee Chair's statement from March 2017, ''New data suggest that nearly 40 million metric tons of gross capacity additions are currently underway and could come on stream during the three-year period of 2017–19, while an additional 53.6 million metric tons of capacity additions are in the planning stages for possible start- up during the same time period.'' [76] This additional global steel capacity coming online represents over 80 percent of existing U.S. steelmaking production capacity, demonstrating that the import challenge to U.S. industry is continuing to grow.

2. Increasing Global Excess Steel Capacity Will Further Weaken the Internal Economy as U.S. Steel Producers Will Face Increasing Import Competition

These additions to worldwide steelmaking capacity will only exacerbate the situation because they will further lower global operating utilization rates, including in the United States. Growth in foreign government-subsidized steel production is progressively weakening the financial health of the U.S. steel industry as other steel producing countries export more steel to the U.S. to in part to offset the loss of regional markets to Chinese steel (*see* Appendix L).

The U.S. share of global production continues to steadily decline. In the year 2000, when President Clinton signed into a law a statute granting China permanent normal trade relations status,[77] the U.S. share of global steel production stood at 12 percent.[78] Since that point in time, the U.S. share of global steel production continued an inexorable decline as other countries, and especially China, began to increase production. The U.S. share of global steel production fell to 8 percent in 2005,[79] 5 percent in 2009,[80] and 4.8 percent in 2015.[81] In contrast, China commanded a 49.7 percent share of global steel production in 2015.[82]

If even half of the planned additional global capacity identified by the OECD Steel Committee is built, and the related new production finds its way into the U.S., it will drive the operating rate of U.S. steel mills to less than 50 percent of capacity. This will cause a substantial and unsustainable negative cash situation that will ultimately result in multiple corporate bankruptcies due to heavy debt loads and related declines in steel production capacity and employment levels.

VI. Conclusion

The Secretary has determined that the displacement of domestic steel by excessive imports and the consequent adverse impact of those quantities of steel imports on the economic welfare of the domestic steel industry, along with the circumstance of global excess capacity in steel, are ''weakening our internal economy'' and therefore ''threaten to impair'' the national security as defined in Section 232.

The continued rising levels of imports of foreign steel threaten to impair the national security by placing the U.S. steel industry at substantial risk of displacing the basic oxygen furnace and other steelmaking capacity, and the related supply chain needed to produce steel for critical infrastructure and national defense.

In considering ''the impact of foreign competition on the economic welfare of individual domestic [steel] industries'' and other factors Congress expressly outlined in Section 232, the Secretary has determined that the continued decline and concentration in steel production capacity is ''weakening of our internal economy and may impair national security.'' *See* 19 U.S.C. 1862(d).

[76] OECD, ''82nd Session of the OECD Steel Committee—Chair's Statement,'' March 2017, *http://www.oecd.org/sti/ind/82-oecd-steel-chair-statement.htm.*

[77] Public Law 106–286. An act to authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China. October 10, 2000. *https://www.gpo.gov/fdsys/pkg/PLAW-106publ286.*

[78] U.S. Dept. of Commerce, Census Bureau. Statistical Abstract of the United States, 2012. Page 574.

[79] *Id.*

[80] *Id.*

[81] Steel Statistical Yearbook, 2016. World Steel Association. *https://www.worldsteel.org/en/dam/jcr.37ad1117-fefc-4df3-b84f-6295478ae460/Steel+Statistical+Yearbook+2016.pdf.*

[82] Steel Statistical Yearbook, 2017. World Steel Association. *https://www.worldsteel.org/en/dam/jcr.3e275c73-6f11-4e7f-a5d8-23d9bc5c508f/Steel+Statistical+Yearbook+2017.pdf.*

Global excess steel capacity is a circumstance that contributes to the ''weakening of our internal economy'' that ''threaten[s] to impair'' the national security as defined in Section 232. Free markets globally are adversely affected by substantial chronic global excess steel production led by China. While U.S. steel production capacity has remained flat since 2001, other steel producing nations have increased their production capacity, with China alone able to produce as much steel as the rest of the world combined. This overhang of excess capacity means that U.S. steel producers, for the foreseeable future, will face increasing competition from imported steel as other countries export more steel to the United States to bolster their own economic objectives.

Since defense and critical infrastructure requirements alone are not sufficient to support a robust steel industry, U.S. steel producers must be financially viable and competitive in the commercial market to be available to produce the needed steel output in a timely and cost efficient manner. In fact, it is the ability to quickly shift production capacity used for commercial products to defense and critical infrastructure production that provides the United States a surge capability that is vital to national security, especially in an unexpected or extended conflict or national emergency. It is that capability which is now at serious risk; as imports continue to take business away from domestic producers, these producers are in danger of falling below minimum viable scale and are at risk of having to exit the market and substantially close down production capacity, often permanently.

Steel producers in the United States are facing widespread harm from mounting imports. Growing global steel capacity, flat or declining world demand, the openness of the U.S. steel market, and the price differential between U.S. market prices and global market prices (often caused by foreign government steel intervention) ensures that the U.S. will remain an attractive market for foreign steel absent quotas or tariffs. Excessive imports of steel, now consistently above 30 percent of domestic demand, have displaced domestic steel production, the related skilled workforce, and threaten the ability of this critical industry to maintain economic viability.

A U.S. steel industry that is not financially viable to invest in the latest technologies, facilities, and long-term research and development, nor retain skilled workers while attracting a next-generation workforce, will be unable to meet the current and projected needs of the U.S. military and critical infrastructure sectors. Moreover, the market environment for U.S. steel producers has deteriorated dramatically since the 2001 Report, when the Department concluded that imports of iron ore and semi-finished steel do not ''fundamentally threaten'' the ability of U.S. industry to meet national security needs.[83]

The Department's investigation indicates that the domestic steel industry has declined to a point where further closures and consolidation of basic oxygen furnace facilities represents a ''weakening of our internal economy'' as defined in Section 232. The more than 50 percent reduction in the number of basic oxygen furnace facilities—either through closures or idling of facilities due to import competition—increases the chance of further closures that place the United States at serious risk of being unable to increase production to the levels needed in past national emergencies. The displacement of domestic product by excessive imports is having the serious effect of causing the domestic industry to operate at unsustainable levels, reducing employment, diminishing research and development, inhibiting capital expenditures, and causing a loss of vital skills and know-how. The present capacity operating rates for those remaining plants continue to be below those needed for financial sustainability. These conditions have been further exacerbated by the 22 percent surge in imports thus far in 2017 compared with 2016. Imports are now consistently above 30 percent of U.S. domestic demand.

It is evident that the U.S. steel industry is being substantially impacted by the current levels of imported steel. The displacement of domestic steel by imports has the serious effect of placing the United States at risk of being unable meet national security requirements. The Secretary has determined that the ''displacement of domestic [steel] products by excessive imports'' of steel is having the ''serious effect'' of causing the ''weakening of our internal economy.'' *See* 19 U.S.C. 1862(d). Therefore, the Secretary recommends that the President take corrective action pursuant to the authority granted by Section 232. *See* 19 U.S.C. 1862(c).

[83] 2001 Report at 28—37. As noted, supra note 16, the 2001 Report added the qualifier ''fundamentally'' which is not found in the statutory text. The Secretary in this report uses the statutory standard of ''threatens to impair'' without such qualification.

VII. Recommendation

Prior significant actions to address steel imports (quotas and/or tariffs) were taken under various statutory authorities by President George W. Bush, President William J. Clinton (three times), President George H. W. Bush, President Ronald W. Reagan (three times), President James E. Carter (twice), and President Richard M. Nixon, all at lower levels of import penetration than the present level, which is above 30 percent.

Due to the threat of steel imports to the national security, as defined in Section 232, the Secretary recommends that the President take immediate action by adjusting the level of imports through quotas or tariffs on steel imported into the United States, as well as direct additional actions to keep the U.S. steel industry financially viable and able to meet U.S. national security needs. The quota or tariff imposed should be sufficient, after accounting for any exclusions, to enable the U.S. steel producers to be able to operate at about an 80 percent or better of the industry's capacity utilization rate based on available capacity in 2017.

In 2016, U.S. steel production was 78.6 million metric tons and U.S. capacity was 113.3 million metric tons, which represents a 69.4 percent capacity utilization rate. If current import trends for 2017 continue, continued imports without any action are projected to be 36.0 million metric tons, an increase over 2016 of 6.0 million metric tons. Even with U.S. demand projected to increase to 107.3 from 99.8 million metric tons, increased imports mean U.S. capacity utilization is forecast to rise only to 72.3 percent, a non-financially viable and unsustainable level of operation.

By reducing import penetration rates to approximately 21 percent, U.S. industry would be able to operate at 80 percent of their capacity utilization. Achieving this level of capacity utilization based on the projected 2017 import levels will require reducing imports from 36 million metric tons to about 23 million metric tons. If a reduction in imports can be combined with an increase in domestic steel demand, as can be reasonably expected rising economic growth rates combined with the increased military spending and infrastructure proposals that the Trump Administration has planned, then U.S. steel mills can be expected to reach a capacity utilization level of 80 percent or greater. This increase in U.S. capacity utilization will enable U.S. steel mills to increase operations significantly in the short-term and

improve the financial viability of the industry over the long-term.

Recommendation To Ensure Sustainable Capacity Utilization and Financial Health

Impose a Quota or Tariff on all steel products covered in this investigation imported into the United States to remove the threatened impairment to national security. The Secretary recommends adjusting the level of imports through a quota or tariff on steel imported into the United States.

Alternative 1—Global Quota or Tariff

1A. Global Quota

Impose quotas on all imported steel products at a specified percent of the 2017 import level, applied on a country and steel product basis.

According to the Global Trade Analysis Project (GTAP) Model, produced by Purdue University, a 63 percent quota would be expected to reduce steel imports by 37 percent (13.3 million metric tons) from 2017 levels. Based on imports from January to October, import levels for 2017 are projected to reach 36.0 million metric tons. The quotas, adjusted as necessary, would result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports). Application of an annual quota will reduce the impact of the surge in steel imports that has occurred since the beginning of 2017.

1B. Global Tariff

Apply a tariff rate on all imported steel products, in addition to any antidumping or countervailing duty collections applicable to any imported steel product.

Similar to what is anticipated under a quota, according to the Global Trade Analysis Project (GTAP) Model, produced by Purdue University, a 24 percent tariff on all steel imports would be expected to reduce imports by 37 percent (*i.e.,* a reduction of 13.3 million metric tons from 2017 levels of 36.0 million metric tons).[84] This tariff rate would thus result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports).[85]

Alternative 2—Tariffs on a Subset of Countries

Apply a tariff rate on all imported steel products from Brazil, South Korea, Russia, Turkey, India, Vietnam, China, Thailand, South Africa, Egypt, Malaysia and Costa Rica, in addition to any antidumping or countervailing duty collections applicable to any steel products from those countries. All other countries would be limited to 100 percent of their 2017 import level.

According to the Global Trade Analysis Project (GTAP) Model, produced by Purdue University, a 53 percent tariff on all steel imports from this subset of countries would be expected to reduce imports by 13.3 million metric tons from 2017 import levels from the targeted countries. This action would enable an increase in domestic production to achieve an 80 percent capacity utilization rate at 2017 demand levels (including exports). The countries identified are projected to account for less than 4 percent of U.S. steel exports in 2017.

Exemptions

In selecting an alternative, the President could determine that specific countries should be exempted from the proposed 63 percent quota or 24 percent tariff by granting those specific countries 100 percent of their prior imports in 2017, based on an overriding economic or security interest of the United States. The Secretary recommends that any such determination should be made at the outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of steel to the United States remain at or below the level needed to enable the domestic steel industry to operate as a whole at an 80 percent or greater capacity utilization rate. The limitation to 100 percent of each exempted country's 2017 imports is necessary to prevent exempted countries from producing additional steel for export to the United States or encouraging other countries to seek to trans-ship steel to the United States through the exempted countries.

It is possible to provide exemptions from either the quota or tariff and still meet the necessary objective of increasing U.S. steel capacity utilization to a financially viable target of 80 percent. However, to do so would require a reduction in the quota or increase in the tariff applied to the remaining countries to offset the effect of the exempted import tonnage.

Exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) Lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change. The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to increase U.S. steel capacity utilization to a financially viable target of 80 percent.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–14359 Filed 7–2–20; 8:45 am]

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[84] Due to general equilibrium effects, the overall import level would need to decrease by more than the corresponding increase in domestic production to offset the negative effects of price or exchange rate changes on export demand.

[85] The elasticity factor is an estimate, not a certainty. A variation of 0.1 in the elasticity factor would change the tonnage reduction by about 375,000 tons. For example, imports would fall by an additional 375,000 tons under a demand elasticity of −1.7 instead of −1.6 and a 25 percent tariff.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–825]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam

(Vietnam) by CS Wind Group [1] are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation January 1, 2019 through June 30, 2019.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua A. DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2019, the Wind Tower Trade Coalition (the petitioner) filed the antidumping duty Petition on wind towers from Vietnam.[2] The petitioner explained in the Petition it's belief that CS Wind Vietnam Co., Ltd. (CS Wind) is the sole Vietnamese wind tower producer and exporter that is not subject to the *Existing Wind Towers Order* wind towers from Vietnam.[3] The petitioner noted that: ''The U.S. International Trade Commission found that there were no imports of wind towers from Vietnamese firms other than CS Wind from 2012- June 2018. Therefore, we believe that all exports to the United States from Vietnam are produced by CS Wind and thus subject to this antidumping duty investigation.'' [4]

On August 5, 2019, Commerce published the Initiation Notice in this investigation of wind towers from Vietnam.[5] In the Initiation Notice, we stated that this investigation applies to CS Wind and again noted that petitioner identified CS Wind as ''the only Vietnamese wind tower producer that is not currently subject to the existing AD order on wind towers from Vietnam.'' [6] On February 14, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV by CS Wind of wind towers from Vietnam.[7]

On February 27, 2020, Commerce postponed the deadline for the final determination until June 29, 2020.[8] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[9]

Clarification of the Respondent's Name

In the *Preliminary Determination,* consistent with the information provided by the petitioners in the Petition, we stated that CS Wind is the only producer and exporter of wind towers in Vietnam not currently subject to the *Existing Wind Towers Order* from Vietnam.[10] However, the Petition also explained that it intended for the investigation to apply to the producer/exporter combination excluded from the *Existing Wind Towers Order.*[11] The companies excluded from the *Existing Wind Towers Order* are in fact the CS Wind Group, consisting of CS Wind and its owner, CS Wind Corporation, which were determined to be affiliated in that proceeding.[12] In addition, information on the record indicates that CS Wind was formerly known as CS Wind Tower Co., Ltd.[13] and Commerce received a communication from U.S. Customs and Border Protection (CBP), requesting information as to whether the entity ''CS Wind Tower Co., Ltd.'' is the same company as the mandatory respondent CS Wind Vietnam Co., Ltd. ''CS Wind Tower Co., Ltd.'' [14] On the basis of this record information, we conclude that CS Wind Vietnam Co., Ltd. and CS Wind Tower Co., Ltd. are the same entity and will convey that understanding to CBP upon the issuance of this final determination.

Because nothing on the record indicates that the status of the entities in the CS Wind Group have changed, and as indicated in the Petition, *Initiation Notice,* and the *Preliminary Determination,* this investigation is intended to cover the producer and exporter combination excluded from the *Existing Wind Towers Order,* for purposes of the final determination, Commerce clarifies that this investigation covers wind towers produced and exported by the CS Wind Group, which includes CS Wind Vietnam Co., Ltd., otherwise known as CS Wind Tower Co., Ltd. (collectively, CS Wind) and its affiliated owner, CS Wind Corporation.[15]

Scope of the Investigation

The product covered by this investigation is wind towers from Vietnam. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

Commerce did not receive any scope comments and has not updated the scope of the investigation since the *Preliminary Determination.*

Verification

Because the mandatory respondent in this investigation did not provide necessary information requested by Commerce, we did not conduct verification.

[1] CS Wind Vietnam Co., Ltd. (also known as CS Wind Tower Co., Ltd.) and CS Wind Corporation (collectively, CS Wind Group) are the two entities that are directly involved in the production, export, and sale of subject merchandise. As explained in the Clarification of the Respondent's Name section *infra,* in this final determination we clarify that this investigation covers the CS Wind Group.

[2] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping Duties on Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated July 9, 2019 (Petition), Volume V of the Petition at 1.

[3] *Id.* (citing *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 11150 (February 15, 2013) (*Existing Wind Towers Order*),

[4] *Id.* (citing *Utility Scale Wind Towers from China and Vietnam,* Inv. Nos. 701–TA–486 and 731–TA–1195–1196, USITC Pub. 4888 (Apr. 2019) (Review) at IV–1).

[5] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 37992 (August 5, 2019) (Initiation Notice).

[6] *Id.,* 84 FR at 37997.

[7] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value and Preliminary Affirmative Determination of Critical Circumstances,* 85 FR 8565 (February 14, 2020), and accompanying Preliminary Decision Memorandum (*Preliminary Determination*).

[8] *See Utility Scale Wind Towers From the Socialist Republic of Vietnam: Postponement of Final Determination of Sales at Less-Than-Fair-Value Investigation,* 85 FR 11341(February 27, 2020).

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See Preliminary Determination* at 1 (citing *Existing Wind Towers Order;* and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation,* 82 FR 15493 (March 29, 2017) (*Amended Final Determination*)).

[11] *See* Volume V of the Petition at 1

[12] *Id.*

[13] *See* CS Wind's Letter, ''CS Wind's Section A Questionnaire Response in the Antidumping Duty Investigation of Utility Scale Wind Towers From the Socialist Republic of Vietnam (A–552–825),'' dated September 6, 2019, at 26.

[14] *See* Commerce's Memo, ''U.S. Customs and Border Protection Question,'' dated June 18, 2020.

[15] *See Existing Wind Towers Order; Amended Final Determination. See also* Commerce's Memorandum, ''CS Wind Entities,'' dated concurrently with this memorandum (Final Analysis Memo).

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Commerce has made no changes to the *Preliminary Determination.* As stated in the *Preliminary Determination,* we found that the application of facts available with an adverse inference with respect to the examined respondent was warranted, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).[16]

Analysis of Comments Received

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

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did exist with respect to imports of wind towers from Vietnam because the factors under section 773(e)(1)(A) of the Act were met. Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do exist with respect to imports of wind towers from Vietnam. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter and producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) [17]
CS Wind Vietnam Co., Ltd. a/k/a CS Wind Tower Co., Ltd.[18] and CS Wind Corporation [19] (collectively, the CS Wind Group)	65.96	63.80

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, because we continue to find that critical circumstances exist, we will direct CBP to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 16, 2019, which is 90 days prior to the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

This investigation covers a single producer and exporter combination that is excluded from the *Existing Wind Towers Order* covering the same merchandise from Vietnam (A–552–814). Pursuant to section 735(c)(1) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: The cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have found export subsidies for certain respondents. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Vietnam no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject

[16] *See Preliminary Determination* at 3–10.

[17] In the companion countervailing duty (CVD) investigation, Commerce calculated a 2.16 percent export subsidy rate for CS Wind Vietnam Co., Ltd. *See* unpublished **Federal Register** notice titled ''Utility Scale Wind Towers from the Socialist Republic from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,'' dated concurrently with this notice, and accompanying Issues and Decision Memorandum.

[18] CS Wind Tower Co., Ltd. is a former name for CS Wind Vietnam Co., Ltd; *see also* Final Analysis Memo.

[19] In the *Preliminary Determination,* we stated that CS Wind is the only producer and exporter of wind towers in Vietnam not currently subject to the existing antidumping duty order on wind towers from Vietnam. *See Preliminary Determination* at 1 (citing *Existing Wind Towers Order*); and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation,* 82 FR 15493 (March 29, 2017)). Commerce clarifies that this investigation covers wind towers excluded from the *Existing Wind Towers Order* (*i.e.,* wind towers produced and exported by the CS Wind Group, which includes both CS Wind and CS Wind Corporation). For further information, *see* the Clarification of the Respondent's Name section, *supra,* Issues and Decision Memorandum, and Final Analysis Memo.

merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an 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 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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14531 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–826]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2020, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of utility scale wind towers from Vietnam.[1] On February 11, 2020, Commerce published its *Preliminary Determination of Critical Circumstances* in which we found that no critical circumstances exist for CS Wind or for all other producers or exporters for imports of wind towers from Vietnam.[2]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this this notice.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2018 through December 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is utility scale wind towers from Vietnam. For a complete

[1] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 68104 (December 13, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances,* 85 FR 7724 (February 11, 2020) (*Preliminary Determination of Critical Circumstances*).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

description of the scope of this investigation, *see* Appendix I.

Scope Comments

As stated in the *Preliminary Determination,* no interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.[4] Accordingly, the scope of the investigation remains the same as it appeared in the *Initiation Notice. See* Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

Verification

As provided in section 782(i) of the Act, in February 2020, we conducted verification of the information reported by the mandatory respondent, CS Wind Vietnam Co. Ltd. (CS Wind), for use in Commerce's final determination. We used standard verification procedures, including examination of relevant accounting records, and original source documents provided by CS Wind.[6]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties and the results of verification, we made certain changes to the subsidy rate calculations for CS Wind. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206, Commerce preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Vietnam because section 703(e)(1)(B) of the Act was not met (*i.e.,* U.S. imports did not increase by 15 percent from the base to the comparison period).[7] Our final determination remains unchanged. Accordingly, pursuant to section 705(a)(2) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Vietnam. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

We continue to assign the countervailable subsidy rate calculated for CS Wind as the all-others rate applicable to all exporters and/or producers not individually examined.[8]

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for CS Wind. We determine the total estimated net countervailable subsidy rate to be:

Producer/exporter	Subsidy rate
CS Wind Vietnam Co., Ltd. (a.k.a. CS Wind Tower Co., Ltd.)[9]	2.84
All Others	2.84

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise, as described in the scope of the investigation section, that were entered or withdrawn from warehouse, for consumption, on or after December 13, 2019, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we will instruct CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020 but to continue the suspension of liquidation of all entries from December 13, 2019 through April 10, 2020.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Vietnam no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the

[4] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* Commerce Letter, ''Countervailing Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated March 18, 2020.

[7] *See Preliminary Determination of Critical Circumstances.*

[8] *See Preliminary Determination.*

[9] *See* Issues and Decision Memorandum at Section III for additional information.

destruction 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 subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 11150 (February 15, 2013).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14528 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–833]

Utility Scale Wind Towers From Indonesia: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2018 through June 30, 2019.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Benjamin Luberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860 or (202) 482–2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of wind towers from Indonesia, in which we also postponed the final determination until June 29, 2020.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

[1] *See Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 8558 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in February and March 2020, we conducted verification of the sales and cost information submitted by PT Kenertec Power System (Kenertec) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Kenertec.[3]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Kenertec is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Kenertec, as referenced in the ''Final Determination'' section below.

Final Negative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Indonesia because neither of the factors under section 773(e)(1)(A) of the Act were met. Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Indonesia. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) [4]
PT Kenertec Power System	8.53	8.50
All Others	8.53	8.50

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after February 14, 2020, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In the CVD investigation, we have found export subsidies for all producers and exporters of subject merchandise. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Indonesia no later than 45 days after

[3] For discussion of our verification findings, *see* the following memoranda: Memorandum, ''Verification of the Sales Response of PT Kenertec Power System in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,'' dated March 30, 2020; and Memorandum, ''Verification of the Cost Response of PT. Kenertec Power System in the Less-than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,'' dated April 1, 2020. *See also* Memorandum, ''Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from Indonesia: Early Conclusion of Verifications,'' dated March 27, 2020.

[4] In the companion countervailing duty (CVD) investigation, Commerce calculated a 0.03 percent export subsidy rate for Kenertec and for all other producers and exporters under the program ''Exemption from Import Income Tax Withholding for Companies in Bonded Zones.'' *See* unpublished **Federal Register** notice, ''Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination,'' dated concurrently with this notice, and accompanying Issues and Decision Memorandum. Because we determined the LTFV all-others rate based on Kenertec's estimated weighted-average dumping margin, the export subsidy offset for all other producers and exporters is the lesser of the export subsidy rate for Kenertec, the only individually investigated company in the CVD investigation, and the export subsidy rate for all other producers and exporters in the CVD final determination (*i.e.,* 0.03 percent).

this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an 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 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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14532 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee; Request for Information

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Renewal of the Renewable Energy and Energy Efficiency Advisory Committee and Solicitation of Nominations for Membership.

SUMMARY: Pursuant to provisions of the Federal Advisory Committee Act, 5 U.S.C. App., the Department of Commerce announces the renewal of the Renewable Energy and Energy Efficiency Advisory Committee (the Committee). The Committee shall advise the Secretary of Commerce regarding the development and administration of programs and policies to expand the competitiveness of U.S. exports of renewable energy and energy efficiency goods and services. The Committee's work on energy efficiency will focus on technologies, services, and platforms that provide system-level energy efficiency to electricity generation, transmission, and distribution. These include smart grid technologies and services, as well as equipment and systems that increase the resiliency of power infrastructure such as energy storage. For the purposes of this Committee, covered goods and services will not include vehicles, feedstock for biofuels, or energy efficiency as it relates to consumer goods. Non-fossil fuels that are considered renewable fuels (*e.g.,* liquid biofuels and pellets) are included. This notice also requests nominations for membership.

DATES: Applications or nominations for members must be received on or before 5:00 p.m. Eastern Daylight Time (EDT) on Friday July 31, 2020.

ADDRESSES: Applications or nominations may be emailed to *Cora.Dickson@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Cora Dickson, Designated Federal Officer, Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy & Environmental Industries, U.S. Department of Commerce; phone 202–482–6083; email *Cora.Dickson@trade.gov.* Interested parties can also view Committee documents on the REEEAC website at *http://trade.gov/reeeac.*

SUPPLEMENTARY INFORMATION: The Committee shall consist of

approximately 35 members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. The Secretary of Commerce invites nominations to the Committee of qualified individuals who will represent U.S. companies, U.S. trade associations, and U.S. private sector organizations with activities focused on the export competitiveness of U.S. renewable energy and energy efficiency goods and services. Members shall reflect the diversity of this sector, including in terms of entity or organization size, geographic location, and subsector representation. The Committee shall also represent the diversity of company or organizational roles in the development of renewable energy and energy efficiency projects, including, for example, project developers, technology integrators, financial institutions, and manufacturers.

Members serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates. Members serve in a representative capacity presenting the views and interests of a U.S. entity or U.S. organization, as well as their particular subsector; they are, therefore, not Special Government Employees.

Members of the Committee must not be registered as foreign agents under the Foreign Agents Registration Act. No member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). Members of the Committee will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in applying or nominating someone else to become a member of the Committee, please provide the following information:

(1) Sponsor letter on the company's, trade association's or organization's letterhead containing the name, title, and relevant contact information (including phone, fax, and email address) of the individual who is applying or being nominated;

(2) An affirmative statement that the nominee will be able to meet the expected time commitments of Committee work. Committee work includes (1) attending in-person committee meetings roughly four times per year (lasting one day each), (2) undertaking additional work outside of full committee meetings including subcommittee conference calls or meetings as needed, and (3) frequently drafting, preparing, or commenting on proposed recommendations to be evaluated at Committee meetings;

(3) Short biography of nominee, including credentials;

(4) Brief description of the company, trade association, or organization to be represented and its business activities, company size (number of employees and annual sales), and export markets served;

(5) An affirmative statement that the nominee meets all Committee eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information.

See the **ADDRESSES** and **DATES** captions above for how and the deadline to submit nominations.

Nominees selected for appointment to the Committee will be notified by mail.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries, International Trade Administration.

ATTACHMENT 2: Current REEEAC Charter

UNITED STATES DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION
RENEWABLE ENERGY AND ENERGY EFFICIENCY ADVISORY COMMITTEE

CHARTER

1. Committee's Official Designation. Renewable Energy and Energy Efficiency Advisory Committee.

2. Authority. The Secretary of Commerce (the Secretary) renews the Renewable Energy and Energy Efficiency Advisory Committee (the Committee) pursuant to duties imposed by 15 U.S.C. 1512 upon the Department, in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

3. Objectives and Scope of Activities. The Committee shall advise the Secretary regarding the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. The Committee's work on energy efficiency will focus on technologies, services, and platforms that provide system-level energy efficiency to electricity generation, transmission, and distribution. These include smart grid technologies and services, as well as equipment and systems that increase the resiliency of power infrastructure such as energy storage. For the purposes of this Committee, covered goods and services will not include vehicles, feedstock for biofuels, or energy efficiency as it relates to consumer goods. Non-fossil fuels that are considered renewable fuels (e.g., liquid biofuels and pellets) are included.

4. Description of Duties. The Committee functions solely as an advisory body in accordance with the provisions of FACA, as amended, (5 U.S.C. App.), and applicable Department of Commerce policies. In connection with the objectives and scope stated above, the Committee shall provide advice and recommendations to the Secretary on matters concerning:

a. the competitiveness of the U.S. renewable energy and energy efficiency industries as it relates to their ability to export products, services, and technologies;
b. trade policy development and negotiations impacting the competitiveness of U.S. renewable energy and energy efficiency exports;
c. U.S. Government policies and programs that directly impact the competitiveness of renewable energy and energy efficiency exports;
d. priority export markets for the renewable energy and energy efficiency industries, both in the short- and long-term;
e. policies and practices of foreign governments that impact the export of U.S. renewable energy and energy efficiency goods and services; and

f. U.S. Government policies and programs that support the development of new markets for U.S. exports of renewable energy and energy efficiency products and services to countries with high potential, but which currently lack effective policy and market mechanisms necessary to create demand for renewable energy and energy efficiency products and services.

5. Agency or Official to Whom the Committee Reports. The Committee shall report to the Secretary on all its activities and recommendations.

6. Support. The International Trade Administration, Industry & Analysis, Office of Energy and Environmental Industries shall provide support for the Committee and shall maintain all files mandated by FACA and the Department of Commerce's policies on advisory committee management.

7. Estimated Annual Operating Costs and Staff Years. The estimated annual operating cost of the Committee is approximately $39,315, which includes 0.40 person years of staff support. Members of the Committee will not be compensated for their services or reimbursed for their travel expenses.

8. Designated Federal Officer. The Assistant Secretary for Industry & Analysis shall designate a Designated Federal Officer (DFO) and, as appropriate, may designate a Secondary DFO from among the employees of the Office of Energy and Environmental Industries. The DFO, or Secondary DFO, will approve or call all of the advisory committee and subcommittee meetings, prepare and approve all meeting agendas, attend all committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Secretary.

9. Estimated Number and Frequency of Meetings. The Committee shall, to the extent practicable, meet approximately four times a year. Additional meetings may be called at the discretion of the Secretary or his designee.

10. Duration. Continuing.

11. Termination. This charter shall terminate two years from the date of its filing with the appropriate U.S. Senate and House of Representatives Oversight Committees unless terminated earlier or renewed by proper authority.

12. Membership and Designation. The Committee shall consist of approximately 35 members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. companies, U.S. trade associations, and U.S. private sector organizations with activities focused on the export competitiveness of U.S. renewable energy and energy efficiency goods and services. Members shall reflect the diversity of this sector, including in terms of entity or organization size, geographic location, and subsector represented. The Committee shall also represent the diversity of company or organizational roles in the development of renewable energy and energy

efficiency projects, including, for example, project developers, technology integrators, financial institutions, and manufacturers.

The Secretary shall seek to appoint to the Committee at least one individual representing each of the following:

a. a U.S. renewable energy company involved in international trade;
b. a U.S. energy efficiency company involved in international trade;
c. a U.S. small business in the renewable energy or energy efficiency industry that is involved in international trade;
d. a U.S. trade association in the renewable energy or energy efficiency sector;
e. a U.S. private sector organization involved with international investment or financing activities concerning the international trade of renewable energy and energy efficiency products and services;
f. a U.S. company or organization involved with business activities concerning the development of renewable energy and energy efficiency projects in international markets;
g. a U.S. smart grid company or organization with technology or services that improve the reliability, efficiency, and/or security of the electric grid and that is involved in international trade; and
h. a U.S. energy storage company or organization with technology or services that improve the reliability and environmental sustainability of the electricity grid and that is involved in international trade.

Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates. Members, all of whom come from the private sector, shall serve in a representative capacity presenting the views and interests of a U.S. entity or U.S. organization, as well as their particular subsector; they are, therefore, not Special Government Employees.

Members of the Committee must not be registered as foreign agents under the Foreign Agents Registration Act. No member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities).

The DFO shall designate the Committee Chair and Vice Chair in consultation with the members. The Chair and Vice Chair will serve in those positions at the pleasure of the Secretary.

Members shall not reference or otherwise utilize their membership on the Committee in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the Committee, the International Trade Administration, or the Department of Commerce.

13. **Subcommittees.** The Department, through the Designated Federal Officer, may establish subcommittees or working groups as may be necessary, and consistent with FACA, the FACA implementing regulations, and applicable Department of Commerce policies.

Such subcommittees or working groups may not function independently of the chartered Committee and must report their recommendations and advice to the Committee for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the Committee nor can they report directly to the Secretary or his/her designee. Subcommittees or working groups may include participants other than Committee members.

14. **Recordkeeping.** The records of the Committee, formally and informally established subcommittees, or other subgroups of the Committee, shall be handled in accordance with General Records Schedule 6.2, or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

THOMAS GILMAN

Digitally signed by THOMAS GILMAN
Date: 2020.06.05 08:55:51 -04'00'

Chief Financial Officer and
Assistant Secretary for Administration

Filing Date

[FR Doc. 2020–14418 Filed 7–2–20; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–867]

Utility Scale Wind Towers From Canada: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2018 through June 30, 2019.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of wind towers from Canada, in which we also postponed the final determination until June 29, 2020.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

Scope of the Investigation

The product covered by this investigation is wind towers from Canada. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Analysis of Comments Received

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

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce normally verifies information relied upon in making its final determination; however, we were unable to conduct verification in this investigation.[3] Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use ''facts otherwise available'' in reaching the applicable determination. Accordingly, we have relied on facts available in making our final determination.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made certain changes to the margin calculation for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Marmen Inc., Marmen Énergie Inc., and Marmen Energy Co. (collectively, the Marmen Group) is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for the Marmen Group, as referenced in the ''Final Determination'' section below.

Final Negative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Canada because section 773(e)(1)(B) of the Act was not met (*i.e.,* U.S. imports did not increase by 15 percent from the base to the comparison period). Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Canada. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) [4]
Marmen Inc./Marmen Energie Inc	4.94	4.94

[1] *See Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 8562 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Investigation of Utility Scale Wind Towers from Canada—Cancellation of Verification,'' dated April 10, 2020.

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) [4]
All Others	4.94	4.94

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after February 14, 2020, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have not found export subsidies for any respondents. Therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Canada no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an 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 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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS)

[4] In the companion countervailing duty (CVD) investigation, Commerce calculated a 0.00 percent export subsidy rate for the Marmen Group and for all other producers and exporters. *See* unpublished **Federal Register** notice titled ''Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances,'' dated concurrently with this notice, and accompanying Issues and Decision Memorandum. As the final cash deposit rate for estimated antidumping duties for all other exporters and producers is based on the Marmen Group's final rate, we further find that no export subsidy adjustment is warranted to the all-others' estimated weighted-average dumping margin.

under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14530 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–834]

Utility Scale Wind Towers From Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Indonesia. The period of investigation is January 1, 2018 through December 31, 2018.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Wood or Melissa Kinter, 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) 482–1959 or (202) 482–1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2019, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of utility scale wind tower from Indonesia.[1]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.[2] 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[4] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification and Use of Facts Otherwise Available

Commerce normally verifies information relied upon in making its final determination, as provided in section 782(i) of the Act. In March 2020, we conducted verification of the information submitted by the Government of Indonesia and the mandatory respondent, PT Kenertec Power System (Kenertec), for use in Commerce's final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[6] For the reasons discussed in the Issues and Decision Memorandum, we concluded verification early.

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information has cannot be verified in accordance with

[1] *See Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 68109 (December 13, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Indonesia,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations,* 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] For discussion of our verification findings, *see* the following memoranda: Memorandum, ''Verification of the Questionnaire Responses of the Government of Indonesia,'' dated April 1, 2020 and Memorandum, ''Verification of PT Kenertec Power System's Questionnaire Responses,'' dated March 30, 2020; *see also* Memorandum, ''Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from Indonesia: Early Conclusion of Verifications,'' dated March 27, 2020.

section 782(i) of the Act, Commerce may use ''facts otherwise available'' on the record in reaching the applicable determination. Accordingly, where Commerce was unable to verify certain information due to the early conclusion of verification, we have relied on the information submitted on the record that we used in making the *Preliminary Determination,* as facts otherwise available in making our final determination.

Further, pursuant to section 776(a)(1) of the Act, where necessary information is not available on the record, Commerce may rely on facts otherwise available on the record in reaching the applicable determination. Accordingly, in certain circumstances in this final determination where necessary information is missing from the record, we have relied on the information submitted to the record as facts otherwise available, pursuant to section 776(a)(1) of the Act.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties and our verification findings, we made certain changes to the subsidy rate calculations for Kenertec. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1)(B) of the Act, Commerce preliminarily determined that critical circumstances existed for all imports of utility scale wind towers from Indonesia.[7] For this final determination, we continue to find that critical circumstances exist with respect to all imports of wind towers from Indonesia. For a full description of the methodology and results of our analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, we continue to assign the countervailable subsidy rate calculated for Kenertec as the all-others rate applicable to all exporters and/or producers not individually examined.[8]

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Kenertec. We determine that the following total estimated net countervailable subsidy rates exist:

Producer/exporter	Percent *Ad Valorem*
PT Kenertec Power System	5.90
All Others	5.90

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B), (d)(2), and (e)(2)(A) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 14, 2019, which is 90 days prior to the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020, but continue the suspension of liquidation of all entries from September 14, 2019 through April 10, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Indonesia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components

[7] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances,* 85 FR 7724 (February 11, 2020).

[8] *See Preliminary Determination.*

(*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14529 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–902]

Utility Scale Wind Towers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2018 through June 30, 2019.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Adam Simons or David Goldberger, 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) 482–6172 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of wind towers from Korea, in which we also postponed the final determination until June 29, 2020.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[2]

Scope of the Investigation

The product covered by this investigation is wind towers from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Analysis of Comments Received

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

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act) in February 2020, we conducted verification of the cost information submitted by Dongkuk S&C Co., Ltd. (Dongkuk) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Dongkuk.[3] Commerce did not conduct a sales verification.[4]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at

[1] *See Utility Scale Wind Towers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 85 FR 8560 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] For discussion of our verification findings, *see* Memorandum, ''Verification of Cost Response of Dongkuk S&C Co., Ltd. in the Antidumping Duty Investigation of Utility Wind Towers from Republic of Korea,'' dated April 17, 2020.

[4] *See* Memorandum, ''Antidumping Duty Investigations of Utility Scale Wind Towers from the Republic of Korea: Postponing Sales Verification of Dongkuk S&C Co., Ltd.,'' dated

Continued

verification, we made certain changes to the margin calculations for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Dongkuk, the only individually examined exporter/producer in this investigation. Because the only individually calculated margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Dongkuk is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Affirmative Determination of Critical Circumstances

For the *Preliminary Determination,* in accordance with 733(e) of the Act and 19 CFR 351.206, Commerce found that critical circumstances exist with respect to imports of wind towers from Korea. Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act and 19 CFR 351.206, we continue to find that critical circumstances exist for Dongkuk and companies covered by the ''all others'' rate. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	5.41
All Others	5.41

February 19, 2020 (referencing postponing the sales verification due to the coronavirus outbreak in Korea); *see also* Memorandum, ''Antidumping Duty Investigations of Utility Scale Wind Towers from the Republic of Korea: Early Conclusion of Verification,'' dated March 27, 2020 (referencing cancelling the sales verification).

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

For this final determination, for entries made by Dongkuk and the companies covered by the all-others rate, in accordance with section 735(c)(4)(A) of the Act, because we continue to find that critical circumstances exist, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after November 16, 2019, which is 90 days prior to the date of publication of the preliminary determination of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Korea no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an 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 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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several

wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14438 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–868]

Utility Scale Wind Towers From Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Canada.

DATES: Applicable July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Moses Song, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–7885, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2019, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from Canada.[1]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2018 through December 31, 2018.

Scope of the Investigation

The products covered by this investigation are wind towers from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, and the concurrent AD and CVD investigations of wind towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam, Commerce did not receive scope comments from interested parties. Accordingly, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.*[3] Additionally, because we received no scope comments from interested parties for this final determination, we made no changes to the scope of these investigations from that published in the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology

[1] *See Utility Scale Wind Towers from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 84 FR 68126 (December 13, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decisions Memorandum for the Final Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decisions Memorandum).

[3] *See Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures,* 85 FR 8563 (February 14, 2020).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in February 2020, we conducted verification of the information submitted by the mandatory respondent, Marmen Inc. and Marmen Énergie Inc., and cross-owned affiliate Gestion Marmen (collectively, Marmen), for use in Commerce's final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[5] As explained in the Issues and decision Memorandum, we did not conduct verification of the responses of the Government of Canada, Government of Quebec, or the Government of Ontario.[6]

Changes Since the *Preliminary Determination*

Based on our review and analysis of the comments received from parties and our verification findings, we made certain changes to the subsidy rate calculations for Marmen. For a discussion of these changes, *See* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

On February 11, Commerce published a preliminary negative determination of critical circumstances with respect to imports of wind towers from Canada.[7] In *Preliminary Determinations of Critical Circumstances,* Commerce determined, pursuant to section 703(e)(1) of the Act, that based on information provided in the critical circumstances allegation, critical circumstances did not exist with respect to imports of wind towers from Canada. We received no comments regarding the preliminary negative determination of critical circumstances in this investigation. For this final determination, we continue to find that critical circumstances do not exist with respect to imports of wind towers from Canada. For a full description of the methodology and results of Commerce's analysis, *see Preliminary Determinations of Critical Circumstances* and the accompanying proprietary Critical Circumstances Calculation Memorandum.[8]

All-Others Rate

We continue to assign the countervailable subsidy rate calculated for Marmen as the all-others rate applicable to all exporters and/or producers not individually examined.[9]

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Marmen. We determine the total estimated net countervailable subsidy rate to be:

Producer/exporter	Subsidy rate (percent)
Marmen Inc., MarmenÉnergie Inc., and Gestion Marmen Inc.[10]	1.18
All Others	1.18

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, that were entered or withdrawn from warehouse for consumption on or after December 13, 2019, which is the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020, but to continue the suspension of liquidation of all entries from December 13, 2019 through April 10, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Canada no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of 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 subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

[5] *See* Memorandum, ''Verification of the Questionnaire Responses of Marmen Inc., Marmen Énergie Inc., and Gestion Marmen,'' dated April 16, 2020.

[6] *See* Issues and Decision Memorandum at 3 and Comment 1.

[7] *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances,* 28 FR 7724 (February 11, 2020) (*Preliminary Determinations of Critical Circumstances*).

[8] *See* Memorandum, ''Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Utility-Wind Towers from Canada,'' dated February 4, 2020 (Critical Circumstances Calculation Memorandum).

[9] *See Preliminary Determination.*

[10] As discussed in the *Preliminary Determination,* Commerce found the following companies to be cross-owned with Marmen Inc.: MarmenÉnergie, Inc. and Gestion Marmen Inc. No party commented on this finding in the case briefs.

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by these investigations consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See* Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 78 FR 11150 (February 15, 2013).

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II—List of Topics Discussed in the Final Decision Memorandum

[FR Doc. 2020–14439 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results, Notice of Amended Final Results

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

SUMMARY: On May 26, 2020, the Court of International Trade (CIT) sustained the final remand results pertaining to the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) covering the period August 1, 2013 through July 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results and notice of amended final results of the administrative review and that Commerce is amending the amended final results with respect to the dumping margins assigned to Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation USA, and the non-selected respondent companies ILJIN, ILJIN Electric Co., Ltd., and LSIS Co., Ltd.

DATES: Applicable June 5, 2020.

FOR FURTHER INFORMATION CONTACT: John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2016, Commerce issued the *Final Results*.[1] In the *Final Results,* Commerce assigned dumping margins of 9.40 percent and 4.07 percent to Hyosung Corporation (Hyosung) and Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai, USA (Hyundai USA) (collectively, Hyundai), respectively.[2] Upon consideration of various ministerial error allegations, Commerce issued the *Amended Final Results* on May 5, 2016, and calculated a weighted-average margin of 7.89 percent for Hyosung, and margins of 5.98 percent for ILJIN, ILJIN Electric, and LSIS.[3] Hyosung and Hyundai are Korean producers/exporters of LPTs and were mandatory respondents in the underlying administrative review, while ILJIN, ILJIN Electric, and LSIS are Korean producers/exporters of LPTs which were not selected for review.

On October 10, 2017, the CIT remanded various aspects of the *Final Results* and *Amended Final Results* to Commerce.[4] Specifically, the CIT instructed Commerce to clarify the

[1] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 14087 (March 16, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

[2] Commerce also assessed margins of 6.74 percent on ILJIN Electric Co., Ltd. (ILJIN Electric), ILJIN, and LSIS Co., Ltd. (LSIS), based on the margins calculated for Hyosung and Hyundai. *See Final Results.*

[3] *See Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 27088 (May 5, 2016) (*Amended Final Results*)

[4] *See ABB INC.* v. *United States,* Slip Op. 17–138 (CIT, October 10, 2017) (*Remand Order*)

treatment of the respondents' U.S. commissions based on record evidence, as well as re-examine whether to cap Hyundai's service-related revenues based on associated expenses.

Pursuant to the *Remand Order,* Commerce issued its Final Redetermination, which addressed the CIT's holdings and revised the weighted-average dumping margins for Hyosung and Hyundai to 8.74 percent and 25.51 percent, respectively.[5]

On November 13, 2018, the CIT sustained Commerce's Final Redetermination with respect to commissions, but remanded the issue of service-related revenues to Commerce a second time.[6] Hyosung moved for partial final judgement on issues affecting its entries. On August 29, 2019, the CIT issued the partial final judgement with regard to issues which affected Hyosung.[7] Commerce issued a Timken Notice with respect to Hyosung on October 11, 2019, which established Hyosung's final dumping margin at 8.74 percent.[8]

Pursuant to the second *Remand Order,* Commerce again reconsidered its treatment of service-related revenues with respect to Hyundai and did not cap revenue for transactions for which substantial evidence did not support a finding that the services were separately negotiable with third parties.[9] Commerce also did not apply its capping methodology to the delayed delivery charges associated with two transactions, and instead made circumstance of sale (COS) adjustments to normal value for those delayed delivery charges.[10]

On February 19, 2020, the CIT sustained Commerce's Second Remand Results with respect to the revised capping of certain of Hyundai's transactions, but remanded the issue of the COS adjustment.[11] Pursuant to this third *Remand Order,* Commerce reconsidered its treatment of the COS adjustments.[12] Commerce calculated a weighted-average dumping margin for Hyundai of 16.13 percent for the period of review.[13] On May 26, 2020, the CIT sustained the Third Remand Results.[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades* [16], the United States Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's May 26, 2020, judgment sustaining Commerce's Third Remand Results with respect to COS adjustments constitutes a final decision of the CIT that is not in harmony with the *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Amended Final Results* with respect to the dumping margins calculated for Hyundai and the non-selected respondent companies ILJIN, ILJIN Electric, and LSIS. Based on the Third Remand Results, as affirmed by the CIT, the revised dumping margins for Hyundai and ILJIN, ILJIN Electric, and LSIS from August 1, 2013 through July 31, 2014, are as follows:

Producer/exporter	Weighted-average margin (percent)
Hyundai Heavy Industries Co., Ltd	16.13
ILJIN Electric Co., Ltd	[17] 12.44
ILJIN	12.44
LSIS Co., Ltd	12.44

In the event that the CIT's rulings are not appealed or, if appealed, are upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins listed above.

Cash Deposit Requirements

Since the *Amended Final Results,* the Department has established a new cash deposit rate for Hyundai and the non-selected companies.[18] Therefore, this Final Redetermination, and as affirmed by the CIT, does not change the later-established cash deposit rates for Hyundai, ILJIN, ILJIN Electric, and LSIS.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14435 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Memorandum, ''Final Results of Redetermination Pursuant to Court Remand *ABB INC* v. *United States* Court No. 16–00054, Slip-Op. 17–138 (CIT October 10, 2017),'' dated February 7, 2018 (Final Redetermination) available at *http://enforcement.trade.gov/remands/17-138.pdf.*

[6] *See ABB, INC.* v. *United States,* Court No. 16–00054, Slip Op. 18–156 (CIT 2018).

[7] *See, ABB, INC.* v. *United States,* Court No. 16–00054 (CIT August 29, 2019).

[8] *See Large Power Transformers From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results, Notice of Amended Final Results,* 84 FR 54843 (October 11, 2019)

[9] *See* Memorandum, ''Final Results of Redetermination Pursuant to Court Remand: *ABB INC* v. *United States,* Consol. Court No. 16–00054, Slip Op. 18–156 (CIT November 13, 2018)'' dated April 26, 2019, (Second Remand Results).

[10] *Id.*

[11] *See ABB, INC.* v. *United States,* Court No. 16–00054, Slip Op. 20–21 (CIT 2020).

[12] *See* Memorandum, ''Final Results of Redetermination Pursuant to Court Remand: *ABB INC* v. *United States,* Consol. Court No. 16–00054, Slip Op. 20–21 (CIT February 19, 2020)'' dated April 14, 2020, (Third Remand Results).

[13] *Id.*

[14] *See ABB Inc. v United States and Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation USA,* Court No. 16–00054, Slip Op. 20–72 (CIT 2020).

[15] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

[16] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

[17] In the Final Results, we explained that ''As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2013, through July 31, 2014, to calculate a weighted average percentage margin for the non-selected companies (*i.e.,* ILJIN, ILJIN Electric, and LSIS) in this review, the rate applied to the non-selected companies is a simple-average percentage margin calculated based on the margins calculated for Hyosung and Hyundai.'' *See Final Results* at 14088, n.11. As noted above, the revised margin for Hyosung is now 8.74 percent and the revised margin for Hyundai is 16.13 percent. The simple average of these two numbers is 12.44 percent.

[18] *See, e.g., Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Duty Administrative Review; 2016–2017,* 84 FR 16461 (April 19, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920, C–570–921]

Lightweight Thermal Paper From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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) and countervailing duty (CVD) orders on lightweight thermal paper (LWTP) 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 6, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane at (202) 482–5449 (AD) and Dusten Hom or Mary Kolberg at (202) 482–5075 or (202) 482–1785, respectively (CVD); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449.

SUPPLEMENTARY INFORMATION:

Background

On, November 24, 2008 Commerce published the AD and CVD orders on LWTP from China.[1] On October 1, 2013, Commerce initiated the first five-year (sunset) review of the *Orders* on LWTP from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce determined that revocation of the *Orders* on LWTP from China would likely lead to a continuation or recurrence of dumping and countervailable 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.[3] The ITC determined, pursuant to section 751(c) of the Act, that revocation of the *Orders* on LWTP from China would lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4] Accordingly, the continuation of the *Orders* was published on January 30, 2015, at the conclusion of the first five-year (sunset) reviews.[5]

On December 2, 2019, Commerce published the notice of initiation of the second sunset reviews of the *Orders* on LWTP from China, pursuant to section 751(c)(2) of the Act.[6] Also on December 2, 2019, the ITC instituted its five-year review of the *Orders*.[7] Commerce conducted these sunset reviews on an expedited (120-day) basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because it received complete, timely, and adequate responses from Appvion Operations, Inc. and Kanzaki Specialty Papers Inc. (collectively, domestic interested parties).[8] Commerce did not receive-substantive responses from respondent interested parties.

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies.[9] Commerce also notified the ITC of the magnitude of the dumping margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[10] On June 29, 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 a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[11]

Scope of the Orders

The products covered by these orders include certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of ± 4.0 g/m2) or less; irrespective of dimensions;[12] with or without a base coat[13] on one or both sides; with thermal active coating(s)[14] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[15] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (HTSUS)

[1] *See Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008); *see also Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 70958 (November 24, 2008) (collectively, *Orders*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 60253 (October 1, 2013).

[3] *See Lightweight Thermal Paper from the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order,* 79 FR 9879 (February 21, 2014); *see also Lightweight Thermal Paper from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 79 FR 10477 (February 25, 2014).

[4] *See Lightweight Thermal Paper from China And Germany; Determination,* 80 FR 3252 (January 22, 2015).

[5] *See Lightweight Thermal Paper from the People's Republic of China and Germany: Continuation of the Antidumping and Countervailing Duty Orders on the People's Republic of China, Revocation of the Antidumping Duty Order on Germany,* 80 FR 5083 (January 30, 2015).

[6] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019).

[7] *See Lightweight Thermal Paper From China; Institution of Five-Year Reviews,* 84 FR 66012 (December 2, 2019).

[8] Commerce received a complete substantive response for the review from the domestic producers within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). *See* Domestic Interested Parties' Letter, ''Five-Year (Sunset) Review of Antidumping Order on Lightweight Thermal Paper from the People's Republic of China: Domestic Industry Substantive Response,'' dated December 23, 2019; *see also* Domestic Interested Parties' Letter, ''Five-Year (''Sunset'') Review of Countervailing Duty Order on Lightweight Thermal Paper from the People's Republic of China: Domestic Industry Substantive Response,'' dated December 23, 2019.

[9] *See Lightweight Thermal Paper from the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order,* 85 FR 16328 (March 23, 2020); *see also Lightweight Thermal Paper from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order,* 85 FR 16059 (March 20, 2020).

[10] *See Lightweight Thermal Paper from the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order,* 85 FR 16328 (March 23, 2020) and accompanying Issues and Decision Memorandum (IDM); *see also Lightweight Thermal Paper from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order,* 85 FR 16059 (March 20, 2020) and accompanying IDM.

[11] *See Lightweight Thermal Paper from China; Determination,* 85 FR 38922 (June 29, 2020).

[12] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[13] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[14] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[15] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, 4823.40.00, 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050.[16,17] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these 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 recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders* on LWTP from China.

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 and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification of Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

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[16] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

[17] As of January 1, 2009, the ITC deleted HTSUS subheadings 4811.90.8040 and 4811.90.9090 and added HTSUS subheadings 4811.90.8030, 4811.90.8050, 4811.90.9030, and 4811.90.9050 to the HTSUS (2009). *See* Harmonized Tariff Schedule of the United States (2009), available at *ww.usitc.gov.* These HTSUS subheadings were added to the scope of the order in lightweight thermal paper's LTFV investigation.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA252]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of Two Liquefied Natural Gas Terminals, Texas

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

ACTION: Notice; issuance of incidental harassment authorizations.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), NMFS has hereby issued an incidental harassment authorization (IHA) to Rio Grande LNG LLC (Rio Grande) and, separately, Annova LNG Common Infrastructure (Annova), authorizing the take of small numbers of marine mammals incidental to the construction of two liquefied natural gas (LNG) terminals in the Brownsville Ship Channel (BSC), Texas.

DATES: The Rio Grande IHA is effective July 1, 2020 through June 31, 2021. The Annova IHA is effective March 1, 2021 through February 28, 2022.

ADDRESSES: Electronic copies of the application, IHAs, and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 20, 2019, NMFS received a request from Rio Grande for an IHA to take marine mammals incidental to pile driving associated with the construction of a LNG terminal in the BSC. Rio Grande submitted a revised application on November 21, 2019 that was deemed adequate and complete on December 19, 2019. Rio Grande's request is for take of a small number of three species of marine mammals, by Level B harassment only. Neither Rio Grande nor NMFS expects serious injury or mortality to result from these activities and NMFS has not authorized it.

Separately, on June 27, 2019, NMFS received a request from Annova for an IHA to take marine mammals incidental to pile driving associated with the construction of a LNG terminal in the BSC. Annova submitted a revised application on February 28, 2020 that was deemed adequate and complete on March 2, 2020. Annova's request is for take of a small number of three species of marine mammals, by Level B harassment only. Neither Annova nor NMFS expects serious injury or mortality to result from this activity and NMFS has not authorized it.

Description of Specified Activity

Overview

Rio Grande and Annova are each planning to construct an LNG terminal in the BSC, Texas. The purpose of each project is to construct and operate an LNG terminal for purposes of international export. The LNG terminals would be located across from each other on opposite banks of the BSC. Both projects require pile driving and

removal. Rio Grande will install 12 42–48-inch (in) piles and remove 5 small timber piles over 8 days. Annova will install and remove 16 24-in temporary piles and install 4 96 impermanent breasting dolphin piles over 16 days. Due to the nature of the activities and potential presence of dolphins in the BSC, both applicants have requested authorization to take marine mammals incidental to pile driving and removal and NMFS has issued such authorization.

Dates and Duration

Rio Grande's IHA is effective July 1, 2020 through June 30, 2021. Pile driving would be limited to daylight hours; however, other project-related activities may occur at any time. Pile driving and removal would occur for no more than 8 days.

Annova's IHA is effective March 1, 2021 through February 28, 2022. Pile driving would be limited to daylight hours; however, other project-related activities may occur at any time. Pile driving and removal would occur for no more than 16 days.

Specific Geographic Region

The projects would be constructed with the BSC which is located in the southernmost portion of the Lower Laguna Madre system. We provided a complete description of Laguna Madre and the BSC in our notice of proposed IHA. Please see that notice for details of the specific geographic region and maps.

Detailed Description of Specific Activity

Rio Grande

Rio Grande plans to construct a natural gas liquefaction facility and liquefied natural gas (LNG) export terminal (Terminal) in Cameron County, Texas, along the north embankment of the Brownsville Ship Channel (BSC) (Figure 1). The purpose of the project is to develop, own, operate, and maintain a natural gas pipeline system to access natural gas from the Agua Dulce Hub and an LNG export facility in south Texas to export 24.5 million metric tons (27 million U.S. tons) per annum of natural gas that provides an additional source of firm, long-term, and competitively priced LNG to the global market.

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Figure 1 -- Rio Grande LNG Terminal Location

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The terminal would be located on approximately 3.04 square kilometers (km^2) (750.4 acres) of a 3.98-km2 (984.2-acre) parcel of land along the northern shore of the BSC in Cameron County, Texas, approximately 16 km (9.8 statute mi) east of Brownsville and about 3.5 km (2.2 mi) west of Port Isabel (see Figure 1). The Terminal, which is currently expected to begin operations in late 2023, would have a minimum 20-year life span (which could be extended to a 50-year life span). It would receive natural gas via a proposed Pipeline System, which would connect the Terminal to the existing infrastructure near the natural gas Agua Dulce hub interconnection in Nueces County. All pipeline work is conducted on land and there are no potential impacts on marine mammals from this work; therefore, pipeline work will not be discussed further.

The terminal site includes the following major facilities: Six liquefaction trains; four full-containment LNG storage tanks; docking facilities for two LNG vessels, turning basin, and material offloading facility (MOF); LNG truck loading facilities with four loading bays; and Pipeline System's Compressor Station 3, a metering site, and the interconnection to the Pipeline System. In-water pile driving associated with construction of the LNG Loading and Vessel Berthing Area, turning basin, MOF, and Tug Berth have the potential to harass marine mammals. Rio Grande would also remove existing navigation markers. We describe these construction activities below.

LNG Loading and Vessel Berthing Area

Two LNG vessel loading berths would be constructed along the south-central boundary of the Terminal to accommodate simultaneous loading of two LNG vessels (see Figure 2). The berths would be recessed into the Terminal property so that loading LNG vessels, separated by 76 m (250 ft), would not encroach on the navigable channel boundaries of the BSC. Construction of the loading berths would require dredging to a depth of up to −14 m (43 ft plus 2 ft allowable overdepth) mean lower low water (MLLW) (−13-m [43 ft] plus −0.6 m [2 ft] of allowable overdepth). No pile driving in-water is associated with this part of the project.

Turning Basin

A 457.2-m (1,500-foot) diameter turning basin would be constructed to the east of the LNG vessel loading berths to accommodate turning maneuvers of the LNG vessels calling on the Terminal. LNG vessels would be escorted into the BSC and turning basin via tug boats, rotated in the turning basin, and then placed adjacent to a loading berth with the bow facing downstream (*i.e.,* eastward). The turning basin would be partially recessed into the terminal site, but the area of the turning basin would encroach on the navigable channel of the BSC such that channel transit would be temporarily precluded until the LNG vessels were moored at the berth. As with the loading berths, the turning basin would be dredged to a depth of up to −13.1 m (−43 ft plus 2 ft allowable overdepth). The navigable channel is maintained at −12.8 m (−42 ft) MLLW and would be deepened to −15.8 m (−52 ft) plus 0.6 m (2 ft) allowable overdepth and an additional 0.6 m (2 ft) for advanced maintenance dredging. An in-water Private Aid to Navigation (PATON) consisting of two steel 48-in pipe piles would be installed just outside of the footprint of the turning basin.

MOF and Tug Basin

Rio Grande would construct a MOF along the western extent of the Terminal site, adjacent to the BSC. The MOF would primarily be used during construction for marine delivery of bulk materials and larger or prefabricated equipment as an alternative to road transportation; however, it would be maintained for the life of the terminal for periodic delivery of bulk materials. The MOF, which would require a dredged depth of up to −7.6 m (−25 ft) MLLW plus 0.6 m (2 ft) advanced maintenance allowance, would be constructed of a steel sheet pile bulkhead on land. Fencing would be placed around the MOF to control access and separate it from the adjacent wetlands on the west side of the terminal site; access would be through the western LNG terminal entrance. The MOF would be capable of berthing two barges simultaneously. Rio Grande anticipates that 880 barges would deliver materials to the MOF during the first 5 years of construction, although deliveries would continue as needed for the remainder of construction and into operations. Bulk materials delivered to the MOF would include the crushed sand or stone necessary for concrete fabrication. Ten 42-in piles would be installed in-water at the tug berth to support construction.

Removal of Existing Navigation Aids

Rio Grande plans to relocate one of the USCG fixed navigation aids in the BSC waterway. Pile driving would include in-water removal of five 12-in-diameter timber piles at the existing navigation aid location using a vibratory hammer. A double bubble curtain would be deployed during all vibratory hammer operations to reduce noise generated by the hammer. The new navigation aid would be installed on land near the shoreline. All five piles would be removed on the same day at a rate of one pile removed every 20 minutes.

In total, Rio Grande would install 12 piles associated with the marine facilities and remove five existing 12-in timber, navigation piles. (Table 1).

TABLE 1—IN-WATER PILE DRIVING AND REMOVAL ACTIVITIES FOR RIO GRANDE

Area	Pile size/type	Method	Source level (dB) [1]			Piles per day	Duration (days)	Total piles
			SEL	RMS	Peak			
PATON at the LNG Berth.	48-in (steel) [2]	Vibratory	161.2	161.2	n/a	1	2	2
		Impact	179.7	191.6	205.5			
Removal of USCG Navigation Aid.	12-in (timber)	Vibratory	[3] 145.0	[3] 145.0	n/a	[5] 5	[5] 1	5
Tug Berth	42-in (steel) [4]	Vibratory	161.2	161.2	n/a	2	5	10
		Impact	179.7	191.6	205.5			

[1] Source levels presented here account for use of a bubble curtain; therefore, they represent a 7decible (dB) reduction from unattenuated source levels.

[2] 48-in pile source levels (SL) represent a −7 dB reduction from median values presented in Austin *et al.* (168.2 dB rms measured at 10 m (vibratory) and, for impact driving pile IP5, estimated SL of 198.6 dB rms at 10 m and 186.7 dB SEL and 212.5 dB peak measured at 11 m.

[3] The 145 dB SL represents a −7dB reduction from 152 dB; 152 dB represents the highest root mean square (RMS) value measured at 16 m during removal of timber piles at Port Townsend (Laughlin, 2011).

[4] Rio Grande conservatively applied 48-in pile IP5 source levels measured at the Port of Alaska (Austin *et al.* 2016) to 42-in pile source level estimate.

[5] Rio Grande's application indicates pile removal of the five 12-in timber piles would occur at a rate of one pile per day for five days. The applicant later clarified this was a mistake in interpreting the engineer's intent and that all five piles would be removed on the same day.

Rock Armoring at the MOF

East of the MOF, channel embankments and the top slope of the shoreline (to a depth of −0.6 m [−2 ft] MLLW) would be graded to a 1:3 slope, stabilized with bedding stone overlain by geotextile fabric, and then covered with riprap (*i.e.,* rock armoring) (see Section 1.3.2 in Rio Grande's application for further discussion of dredging activities). In the marine berths and turning basin, where vessel activity could erode the underwater channel slopes, the shoreline would be dredged to a 1:3 slope and stabilized with riprap to a depth of −13.1 m (−43 ft) MLLW. The rock armoring would extend to the top of the slope at elevation +1.8 m (+6 ft) North American Vertical Datum of 1988 and would tie in to the MOF bulkhead. The installation of rock armor does not generate in-water noise levels to the extent harassment is anticipated; therefore, this activity will not be discussed further.

Dredging

Rio Grande would dredge the berthing areas and turning basin to a depth of −13.1 m (−43 ft) MLLW, with a −0.6 m (−2 foot) allowable over-dredge. The sides of the berthing areas and turning basin would be contoured at a 1:3 slope. The MOF would be excavated and dredged to a depth of −7.6 m (−25 ft) MLLW plus 0.6 m (2 ft) advanced maintenance allowance), to allow barges and shallow-draft vessels to directly offload bulk materials at the Terminal site. Rio Grande would install rock armoring to provide scour protection from propeller wash on the slope parallel to the shoreline. About 476,317.7 m^3 (623,000 cubic yards (yd^3)) of material would be excavated along the shoreline and outside the federally maintained BSC by land-based equipment for the construction of the berthing areas, turning basin, and MOF. This material would be directly placed at the Terminal site for fill. An additional 29,817.6 m^3 (39,000 yd^3) of material would be dredged from the MOF using a mechanical dredge from the shoreline. Approximately 4.6 million m^3 (6.1 million yd^3) of material would be dredged from the berths and turning basin using water-based equipment. Material would be dredged using a hydraulic dredge and temporary pipeline and placed at a U.S. Army Corps of Engineers (USACE)-approved dredged-material-placement area. The placement area will be on the southern shoreline. Although the temporary dredge material pipeline will cross the BSC, it will be completely submerged and will rest on the bottom of the BSC while dredging activities take place. NMFS does not anticipate harassment to marine mammals from dredging nor is it likely the presence of the pipeline would be perceived as a barrier to dolphins. Therefore, harassment from dredging by Rio Grande is not anticipated nor is authorized, and this activity is not discussed further.

Annova

Annova plans to site, construct, and operate facilities necessary to liquefy and export natural gas along the south bank of the BSC (Figure 2). The purpose of the Project is to operate a mid-scale natural gas liquefaction facility along the South Texas Gulf Coast for exporting LNG to international markets via LNG carriers through United States and international waters. The terminal will include a new LNG export facility with a nameplate capacity of 6.0 million metric tons per annum (6.6 million U.S. tons) and a maximum output at optimal operating conditions of 6.95 million metric tons (7.66 million U.S. tons) per year of LNG for export. The project site is located on a 2.96 km^2 (731-acre) property adjacent to the BSC on land owned by the Brownsville Navigation District (BND). The property, located at approximate mile marker 8.2 on the south bank of the BSC, has direct access to the Gulf of Mexico via the Brazos Santiago Pass.

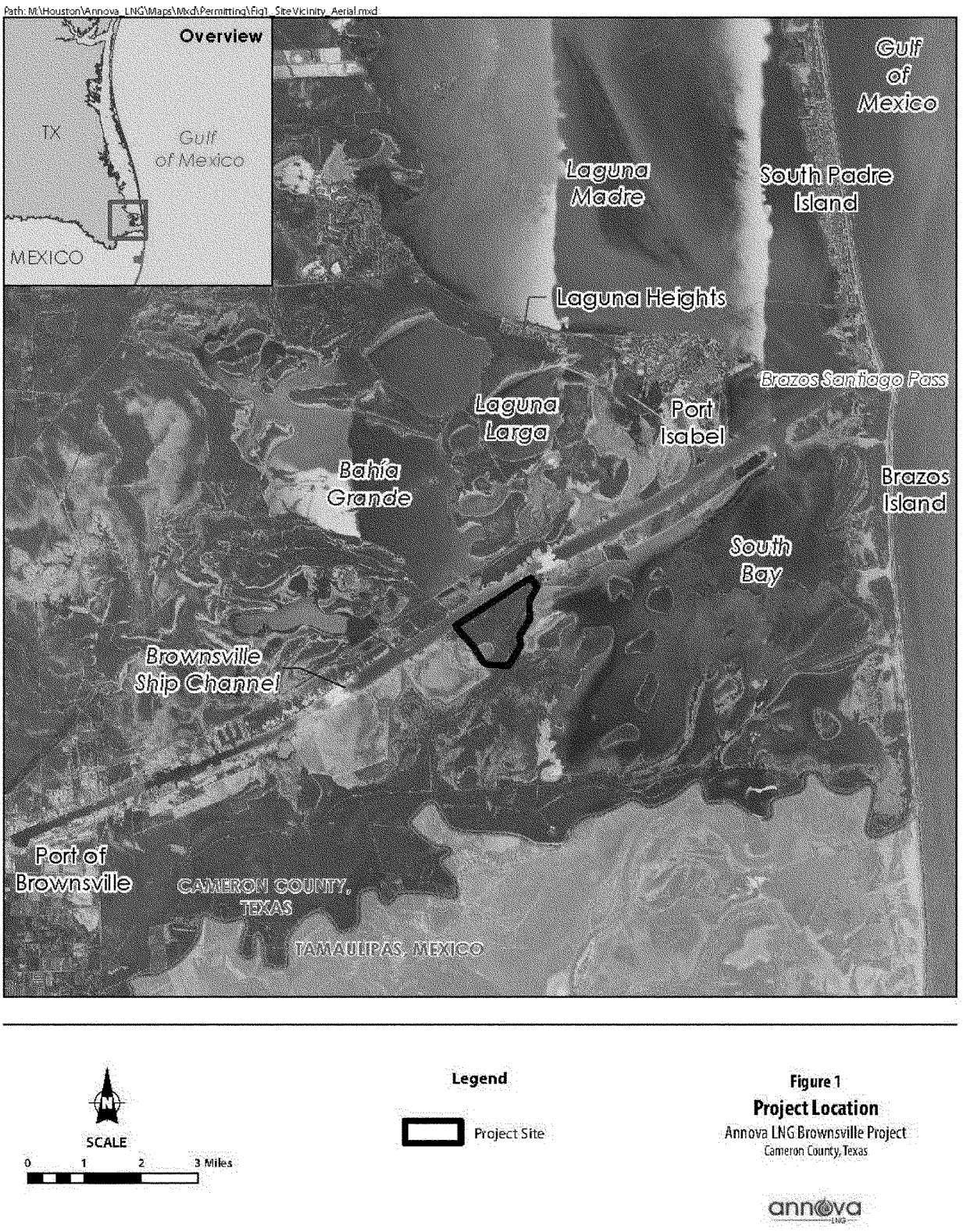

Figure 2 -- Annova Terminal Location

Natural gas will be delivered to the facility via a third-party intrastate pipeline. The natural gas delivered to the site via the feed gas pipeline will be treated, liquefied, and stored on-site in two single-containment LNG storage tanks, each with a net capacity of approximately 160,000 m^3 (42.3 million gallons). The LNG will be pumped from the storage tanks to the marine facilities, where it will be loaded onto LNG

carriers at the berthing dock using cryogenic piping.

The facilities for the Project include the following major components: Gas pretreatment facilities; liquefaction facilities (six liquefaction trains and six approximately 72,000-horsepower electric motor-driven compressors); two LNG storage tanks; boil-off gas handling system; flare system; marine facilities; control, administration, and support buildings; an access road; fencing and barrier wall; and utilities (power, water, and communication). Similar to Rio Grande, in-water work with the potential to cause harassment to marine mammals includes construction of the marine facilities.

The marine facilities will include a 457 m (1,500-ft) diameter turning basin and widened channel approach areas to the turning basin (see Figure 2). LNG carriers will dock on the loading platform at the south side of the turning basin. The marine facilities include the following components: Loading platform and berth for one LNG carrier, including turning basin and access areas along the BSC; cryogenic pipelines and vapor return lines; aids to navigation; MOF, mooring and breasting dolphins; and tug berth area.

The project involves installation and removal of 16 temporary 24-in diameter steel piles and installation of four 96-in diameter steel breasting dolphin piles (see Table 2). The 16 temporary steel piles will provide support during installation of the breasting dolphins (four temporary piles for each breasting dolphin). Each temporary pile will be installed using a vibratory and impact hammer. Installation of the temporary piles will occur in stages, initially with a vibratory hammer followed by an impact hammer. Once installation of the breasting dolphin piles is complete, all temporary piles will be removed using a vibratory hammer.

TABLE 2—IN-WATER PILE DRIVING AND REMOVAL ACTIVITIES FOR ANNOVA

Area	Pile size/type	Method	Source level (dB) [1]			Piles per day	Duration (days)	Total piles
			SEL	RMS	Peak			
Breasting Dolphin (temporary).	24-in (steel)	Vibratory [1]	165.0	165.0	n/a	4	[3] 8	16
		Impact [2]	171.0	187.0	200.0			
Breasting Dolphins (permanent).	96-in (steel)	Vibratory [1]	180.0	180.0	n/a	0.5	[4] 8	4
		Impact [2]	188.0	198.0	213.0			

[1] Vibratory driving and removal source levels do not account for use of a bubble curtain. Proxy source levels are from 24-in sheet piles and 72-in pipe piles. Source: Caltrans (2015), Table I.2–2.

[2] Source levels for impact driving are a −7fB reduction from the unattenuated source levels in Caltrans (2015) Table I.2.I. Unattenuated source levels are: 178 dB re 1 μPa^2-s at 10 m, 194 dB re 1 μPa at 10 m, and 207 dB re 1 μPa at 10 m for 24-in piles and 195 dB re 1 μPa^2-s at 10 m, 205 dB re 1 μPa at 10 m, and 220 dB re 1 μPa at 10 m for 96-in piles.

[3] Includes four days for installation and four days for removal.

[4] Four of the eight days include both vibratory and impact hammering; the remaining four days include impact hammering only.

Dredging

Annova will dredge the marine berth using a hydraulic cutter dredge. The berth will be dredged to the final design depth of −13.7 m (−45 ft) mean lower low water, plus 0.9 m (3 ft) for advance maintenance and over depth, with side slopes at a ratio of 3:1 where sheet piling is not used. Material removed by land-based excavation will be used for on-site fill where possible or placed on the Project site to support landscaping and final grading. Annova plans to use the existing Dredged Material Placement Area (DMPA) 5A or 5B, located just west of the Project site, to dispose of dredged material not used as fill on-site. Dredged material will be moved to the DMPA through an approximately 2.6 km (1.6-mi)-long, floating dredged material pipeline that will be temporarily anchored along the south shore of the BSC. The dredged material pipeline will be marked with navigation lights and reflective signs and monitored to ensure the safety of area traffic. Dredging for the marine berth is estimated to occur in two, 10-hour shifts, six days per week. Noise from dredging is not anticipated to harass marine mammals and the dredge material pipeline will not cross the BSC, avoiding potential impacts (*e.g.,* entrapment) to marine mammals. Therefore, dredging will not be discussed further.

The required mitigation, monitoring, and reporting measures for Rio Grande and Annova are described in detail later in this document (please see Mitigation and Monitoring and Reporting) and the IHAs which are posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations.*

Comments and Responses

A notice of NMFS' proposal to issue the IHAs was published in the **Federal Register** on May 8, 2020 (85 FR 27365). That notice described, in detail, Rio Grande and Annova's proposed activities, the marine mammal species that may be affected by the activities, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission) and a member of the public. Both letters may be accessed online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations.*

Comment 1: The Commission recommended that NMFS (1) have its experts in underwater acoustics and bioacoustics review and finalize as soon as possible, its recommended proxy source levels for impact pile driving of the various pile types and sizes, (2) compile and analyze the source level data for vibratory pile driving of the various pile types and sizes in the near term, and (3) ensure action proponents use consistent and appropriate proxy source levels in all future rulemakings and proposed IHAs.

Response: NMFS concurs with the Commission's recommendation and has prioritized these efforts.

Comment 2: If NMFS applies source level data from Austin et al. (2016), the Commission recommends that NMFS ensure that the sound level, as well as the distance at which the measurement was taken, is correct and consistent in all future rulemakings and proposed incidental harassment authorizations.

Response: The Commission recommends consistent source levels are applied; however, we do not agree this is necessary. The Commission compared source levels from the Port of Alaska (POA) Petroleum and Cement Terminal IHA and is concerned we did not apply identical source levels here. In their application, the POA averaged median source level values from two 48-in unattenuated piles (IP1 and IP5) during the POA Test Pile Program. The

Commission failed to recognize that Rio Grande actually applied the higher source level of the two unattenuated piles to both 42-in and 48-in piles. NMFS considered this approach conservative and acceptable; therefore, NMFS did not adjust the 42-in and 48-in source levels for Rio Grande. NMFS did, however, correct the SL distance measurement for SEL and peak levels to 11m, not 10m for the final IHA. The resulting change to the Level A harassment isopleth is negligible and (from 18.5 m to 20.3 m). There is no change to the Level B harassment isopleth as the RMS values in Austin et al (2016) are modeled at 10 m.

Comment 3: The Commission recommends that NMFS use the loudest [72-in pile proxy] source level of 180 dB re 1μPa_{rms} at 10 m [for the installation of 96-in piles] rather than the typical source level of 170 dB re 1 μPa_{rms} at 10 m from Table I.2–2 in Caltrans (2015).

Response: We have accepted the Commission's recommendation for this particular project but note future decisions regarding appropriate proxy levels will be considered on a case-by-case basis. As acknowledged by the Commission, this results in no change to the Level B harassment zones given the narrow channel. Application of the 180dB rms source level does slightly extend the calculated Level A harassment isopleth (from 1.2 m to 5.4 m) when considering the full 20 minutes of vibratory pile driving per day; however, the Level A harassment isopleth remains less than 20 m shutdown zone for this activity. Therefore, the recommendation does not result in any change to Annova's IHA.

Comment 4: The Commission again recommends that NMFS (1) refrain from using a 7-dB reduction factor and (2) consult with acousticians, including those at the University of Washington-Applied Physics Laboratory, regarding the appropriate source level reduction factor to use to minimize near-field (<100 m) and far-field (≤100 m) effects on marine mammals or use the data NMFS has compiled regarding source level reductions at 10 m for near-field effects and assume no source level reduction for far-field effects for all relevant rulemakings and proposed IHAs.

Response: NMFS disagrees with the Commission regarding this issue, and does not adopt the recommendation. NMFS has previously outlined our rationale for the bubble curtain source level reduction factor (*e.g.,* 84 FR 64833, November 25, 2019; 84 FR 28474, June 19, 2019) in response to a similar comment from the Commission. NMFS will additionally provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 5: The Commission recommends that NMFS revise its standard condition for ceasing in-water heavy machinery activities to include movement of the barge to the pile location and positioning of the pile on the substrate, as well as the other activity examples, in all draft and final incidental take authorizations involving pile driving and removal.

Response: The Commission's recommendation is not fully practicable and is unnecessary for the following reasons. Barges are pushed by tugs. A tug pushing a barge is not able to cease entirely; it must maintain control of the barge and steerage capabilities. The draft IHAs already contain a measure that indicates vessels must reduce speeds in the presence of a marine mammal which is the more appropriate way to address any concerns from interaction with barges and vessels. With respect to other activities, the condition included in the draft IHAs provide examples and is not limited to those specifically identified. Because any machinery to lift and place piles is considered ''heavy machinery'', the placement of the pile is already covered in this measure. The condition remains as presented in the draft IHAs.

Comment 6: The Commission recommends that NMFS include in the final authorizations for Rio Grande and Annova the requirement that work must occur only during daylight hours.

Response: NMFS does not concur and does not adopt the recommendation. Both applicants have indicated they intent to conduct pile driving and removal activities during daylight hours only. However, if work needs to extend into the night, work may only be conducted under conditions where there is full visibility of the shutdown zone. Condition 4(d)(ii) in each IHA requires that pile driving and removal must cease if the shutdown zone is not visible.

Comment 7: The Commission recommends that an additional protected species observer (PSO) be deployed at the western edge of the Level B harassment zones from the outset of the projects to ensure that dolphins entering the Level B harassment zones from either end of the BSC would be detected.

Response: The Commission provided this comment during informal correspondence with NMFS and we responded with rationale for why we were not requiring a third PSO for either project unless the trigger identified in the proposed IHA was met (*i.e.,* the applicant reached 75 percent of takes). The Commission's letter did not acknowledge our prior response on this topic. In summary, NMFS does not require the entire Level B harassment monitoring area be covered and there is already a requirement that the applicants extrapolate take from any area that is not able to be monitored in their final report. There will be a PSO positioned at the pile driving site and a second PSO on the eastern (seaward) edge of the Level B harassment zone. As described in the notice of proposed IHAs, dolphins travel the BSC, primarily using the tides. Because dolphins travel up and down the BSC, they are likely to be documented by the PSOs on site and reasonable extrapolation of takes are possible with the two required PSOs. Adding a third PSO at the onset of the pile driving for the project to cover the entire monitoring zone is not necessary and we have not included it. The trigger to add a third PSO if 75 percent of takes are reached remains in the IHAs.

Comment 8: The Commission recommends that NMFS require Rio Grande and Annova to keep a daily running tally of the total Level B harassment takes, based on both observed and extrapolated takes, to ensure timely implementation of measures to avoid exceeding authorized take limits.

Response: We agree that Rio Grande and Annova must ensure they do not exceed authorized takes but do not concur with the recommendation. NMFS is not responsible for ensuring that an applicant does not operate in violation of an issued IHA.

Comment 9: The Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. If NMFS continues to propose to issue renewals, the Commission recommends that it (1) stipulate that a renewal is a *one-time opportunity* (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS does not fully agree with the Commission and, therefore, does not adopt the Commission's recommendation. However, we have identified that the renewal process is a one-time opportunity in **Federal**

Register notices requesting comments, draft and final authorizations, and have updated our web page. Regarding the remainder of the recommendations, NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 10: A member of the public provided a letter that included concerns about various aspects of the project and other existing conditions in Laguna Madre including operational impacts of the project (*e.g.,* discharges of thermal water from the regasification process, LNG tanker water ballast), impacts to sea turtles, habitat impacts from recreational and commercial fishing, safety of storage of chemicals,

Response: These concerns are outside the scope of the one-year IHAs that authorize harassment to marine mammals from pile driving.

Comment 11: A member of the public claims take by Level A harassment may occur given that animals forage and calve within the BSC and must pass the project sites given the dead-end nature of the canal.

Response: Level A harassment equates to injury of a marine mammal. This could occur through non-auditory and auditory pathways. NMFS conducted a complete analysis of the potential for auditory injury (*i.e.,* permanent thresholds shift (PTS)) and the commenter did not provide reason that this analysis may be incorrect. The IHAs also contain a 10 m shutdown distance for heavy equipment to prevent physical injury and that vessels must slow in the presence of marine mammals to reduce the already low risk of vessel interaction resulting in injury. Therefore, the mechanism by which the commenter believes injury may occur is unclear. NMFS has fully evaluated the potential for Level A harassment and has found that taking by Level A harassment is not reasonably anticipated and is not authorizing it.

Comment 12: A member of the public believes the renewal process is vague and requested more information on how NMFS plans to review reports for consideration of renewal, how long that review process will need, and from who or whom reports will be generated.

Response: NMFS' website about the renewal process, including criteria, is available on our website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* The criteria for renewal are also contained within the draft and final IHAs.

Comment 13: A member of the public had concerns that NMFS did not address cumulative impacts to dolphins from other stressors, including, but not limited to, fishing and an additional proposed LNG facility in the BSC.

Response: The MMPA requires NMFS to consider impacts from the specified activity contained within an IHA application. Existing stressors to marine mammals (*e.g.,* current estimated rates of mortality and serious injury from commercial and recreational fishing) are included in our baseline analysis and consideration of the status of the stock. Cumulative impacts from other stressors are considered under the National Environmental Policy Act (NEPA) and are evaluated within the permitting agency's (in this case the Federal Regulatory Energy Commission) Environmental Impact Statements for the two projects which can be found at *https://www.ferc.gov/industries/gas/enviro/eis/2019.asp.*

Comment 15: A member of the public requested NMFS require Rio Grande and Annova to use a double bubble curtain on all impact and vibratory pile driving and removal.

Response: Applicants typically propose using a bubble curtain for impact pile driving only as this method of pile installation is louder than vibratory driving and produces sharp rise times, which has a higher potential for causing auditory impairments (*i.e.,* temporary threshold shift (TTS) and PTS). Rio Grande conservatively proposed using a double bubble curtain on all impact and vibratory pile driving and removal. Annova proposed to use the double bubble curtain on all impact pile driving which is the typical case. The duration of vibratory driving for Annova is short, the pile driving would occur within a basin confined on three sides which reduces noise propagation into the BSC, and vibratory driving produces low source levels without rapid rise times relative to impact pile driving. For these reasons, NMFS is not requiring Annova use a bubble curtain during vibratory pile driving. The use of a double bubble curtain during all impact driving is required for both Rio Grande (as well as vibratory driving and removal, as proposed by the applicant) and Annova.

Comment 16: A member of the public urged NMFS to require PSOs for Rio Grande and Annova to engage and coordinate with local experts to work with, collaborate, and coordinate dolphin monitoring, observations, and data intake and documentation and requested more information on the training and/or certification regimens for the PSOs that they must undertake to be approved and qualified.

Response: NMFS cannot require an applicant to hire or work with local experts without commitment from both parties and the commenter did not identify any specific local experts. NMFS does; however, list PSO qualification requirements, including training and experience, in the IHAs. NMFS also requires PSOs contact the Marine Mammal Stranding Network should any injured or deceased marine mammals be observed. The IHAs also require that PSOs are independent and have no other project-related duties.

Changes From the Proposed IHA to Final IHA

There were no changes between the proposed IHAs and final IHAs: The description of specified activities, amount and type of authorized take, by species, and all mitigation, monitoring and reporting measures contained within the proposed IHAs were carried forward to the final IHAs. We made some adjustments to information contained within the analysis based on comments from the Commission; however, as described in the Comments and Responses section above, these changes did not result in any changes to the IHAs.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by Rio Grande and Annova's proposed projects, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHAs (85 FR 27365; May 8, 2020). Please refer to the proposed IHAs **Federal Register** notice for these descriptions and the summary in Table 3 below.

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE ACTION AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	Laguna Madre	N,Y	unknown [4]	UND	0.4
		Western Coastal GoM	N,N	20,161 (0.17, 17,491, 2012).	175	0.6
Atlantic spotted dolphin	*Stenella frontalis*	Northern GoM	N,N	37,611 (0.28, unk, 2004)	Undet.	42
Rough-toothed dolphin	*Steno bredanensis*	Northern GoM	N,N	624 (0.99, 311, 2009) [5]	2.5	[6] 1.2

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] The abundance estimate reported in the latest stock assessment report for common bottlenose dolphin Gulf of Mexico Bay, Sound, and Estuary stocks is 80 animals. However, this estimate is considered outdated as it is based on surveys from 1992–1993 (Blaylock and Hoggard 1994). Recent photo-identification surveys by Piwetz and Whitehead (2019) in Lower Laguna Madre identified 109 individuals; however, the authors note even this estimate is lower than a minimum population estimate.

[5] This abundance estimate is reported in the latest stock assessment report for rough-toothed dolphins in the Northern Gulf of Mexico stock (Hayes *et al.* 2018). This estimate is considered outdated (more than 8 years old) and is based on surveys from 2009 (Garrison 2016). It does not include continental shelf waters and does not correct for unobserved animals. Data combined from 1992–2009 resulted in an estimate of 4,853 (CV=0.19) (Roberts *et al.* 2016).

[6] Total human M/SI considers the mean annual M/SI from fishery observer related interactions from 2010–2014 and two stranded animals with signs of human-caused mortality (*i.e.,* 0.8 + 0.4).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided discussion of the potential effects of the specified activity on marine mammals and their habitat in our **Federal Register** notice of proposed IHAs (84 FR 63618; November 18, 2018). Therefore, we do not reprint the information here but refer the reader to that document. That document included a summary and discussion of the ways that components of the specified activities may impact marine mammals and their habitat, as well as general background information on sound. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are authorized to be taken by these activities. The Negligible Impact Analysis and Determination section considers the content of this section and the material it references, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Estimated Take

This section provides the means by which the number of incidental takes authorized in the IHAs were derived, for authorization through these IHAs, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdowns)—discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized. Given the scope of work considered, no mortality or serious injury is anticipated or is authorized for this activity. The projects do have the potential to cause Level B (behavioral) harassment of dolphins within the BSC and we have authorized it. Below we describe how the Level B harassment take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and

the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for intermittent (*e.g.,* impact pile driving) sources.

Both Rio Grande and Annova's activities include the use of continuous (vibratory pile driving and removal) and intermittent (impact pile driving) sound sources; therefore, the 120 and 160 dB re: 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Both Rio Grande and Annova's activities include the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the Table 5. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet to calculate Level A harassment threshold isopleths for impact and vibratory pile driving are presented in Table 5 and 6, respectively.

TABLE 5—INPUTS INTO NMFS PTS USER SPREADSHEET FOR IMPACT PILE DRIVING

Input parameters	Rio Grande	Annova	
Spreadsheet Tab Used	E.1) Impact pile driving		
Source Level (SELs-s)	179.7	171	188
Source Level (SPLpk)	205.5	200	213
Weighting Factor Adjustment (kHz)	2		
Number of piles per day	1 (48-in), 2 (42-in)	4	0.5
Number of strikes per pile	400	675	2,700
Propagation (xLogR)	15		

TABLE 5—INPUTS INTO NMFS PTS USER SPREADSHEET FOR IMPACT PILE DRIVING—Continued

Input parameters			
Distance of source level measurement (m)	11 (Rio Grande), 10 (Annova)		

TABLE 6—INPUTS INTO NMFS PTS USER SPREADSHEET FOR VIBRATORY PILE DRIVING

Input parameters	Rio Grande		Annova	
	12-in piles	48-in and 42-in	24-in	96-in
Source Level (RMS SPL) [1]	145	161.2	165	180
Number of piles per day	5	1 (48-in), 2 (42-in)	4	N/A
Duration to drive or remove a single pile (minutes)	[2] 20	24	10 (install), 45 (remove) [3]	[4] 20
Propagation (xLogR)	15			
Distance from source level measurement (m)	16	10	10	10

[1] Source levels for Rio Grande account for a −7db bubble curtain reduction from unattenuated source levels.
[2] We note Rio Grande's application indicated it would take 480 minutes to remove each 12-in pile and 1 pile would be removed per day. Upon request from NMFS, the applicant later clarified this time reflected the removal of all five piles, including when the hammer would not be operating. The actual hammer operation time per pile is 20 minutes and all 5 piles would be removed in a single day.
[3] We note Annova's application indicated it would take 60 minutes to remove each 24-in pile but the applicant later clarified this included time when the hammer would not be operating and that actual hammer time would be, at most, 45 minutes.
[4] Annova is installing 0.5 piles per day. Total vibratory pile driving duration per day to install this 0.5 pile is 20 minutes.

The results of the User Spreadsheet are presented in Table 7. These distances represent the distance at which a dolphin would have to remain for the entire duration considered in the calculation and may be unrealistic (*e.g.,* NMFS does not anticipate a dolphin would remain at 18 m for the entire time it takes to install two 42-in piles with an impact hammer). In all cases, the peak Level A harassment threshold is not reached. For these reasons, the potential for Level A harassment take from all pile driving and removal is very small and the applicants are required to shutdown pile driving should a marine mammal enter the Level A harassment zones.

TABLE 7—LEVEL A HARASSMENT ISOPLETHS AND CORRESPONDING ENSONIFIED AREAS

Pile type	Hammer type	Level A isopleth (m)	Level A area (km^2)
Rio Grande			
42-in	Vibratory	0.5	<0.01
	Impact	20.3	<0.01
48-in-diameter steel tube piles	Vibratory	0.3	<0.01
	Impact	12.8	<0.01
12-in-diameter timber piles	Vibratory	0.1	<0.01
Annova			
24-in	Vibratory	0.3 (install) 0.9 (remove)	<0.01
	Impact	10.9	
92-in	Vibratory	5.4	<0.01
	Impact	93.5	0.04

To estimate the area ensonified to the Level B harassment thresholds, a basic calculation that incorporated the source levels provided in Table 8 and a practical spreading loss model was used to estimate distances to the respective intermittent (160 dB rms) and continuous (120 dB rms) thresholds. However, the width of the BSC is relatively narrow (approximately 300 m wide); therefore, the Level B harassment areas were clipped to account for land. Table 8 provides the calculated Level B harassment isopleths and area accounting for land.

TABLE 8—LEVEL B HARASSMENT DISTANCES AND AREAS FOR RIO GRANDE AND ANNOVA

Hammer type	Pile size (source level dB rms)	Isopleth distance (m)	Level B harassment area (km^2) [1]
Rio Grande			
Impact	42- and 48-in	1,278	1.06

TABLE 8—LEVEL B HARASSMENT DISTANCES AND AREAS FOR RIO GRANDE AND ANNOVA—Continued

Hammer type	Pile size (source level dB rms)	Isopleth distance (m)	Level B harassment area (km^2) [1]
Vibratory	42- and 48-in	5,580	4.85
	12-in	743	0.62
Annova			
Impact	24-in	631	0.56
	96-in	3,415	[2] 1.0
Vibratory	24-in	10,000	[2] 1.0
	96-in	21,544	[2] 1.0

[1] Ensonified areas are truncated by land. See Figures 4–6 in both Rio Grande and Annova's applications.
[2] Although radii to Level B harassment isopleths are similar between applications, Annova's pile driving will take place setback from the shoreline inside a berthing area (currently on land but will be dug out- see Figures 4–6 in Annova's application) versus Rio Grande's pile driving which will be conducted along the current shoreline. The nature of the work creates much smaller ensonified areas for Annova.

Take Calculation and Estimation

The abundance, distribution and density of marine mammals in Laguna Madre is poorly understood. Therefore, while the harassment areas described above are important for planning mitigation (*e.g.,* shutdown to avoid Level A harassment) and monitoring, they are not part of the take estimate calculations. For both applicants, we have considered other quantitative information (*e.g.,* group size and sighting rates) as well as behavior to estimate take.

Bottlenose Dolphins

For bottlenose dolphins, both applicants first estimated density in the Laguna Madre using the number of individuals reported in Piwetz and Whitehead (2019), which was 109 dolphins. We note this is not an abundance estimate of the Laguna Madre stock as Piwetz and Whitehead (2019) conducted the surveys in a limited area of the lower Laguna Madre and the authors note the non-asymptotic nature of the photo-identification discovery curve (accumulation curve) indicates that the sampling effort has not yet identified all, or even most, of the individuals that use this region. Regardless, both applicants used habitat data layers from Finkbeiner *et al.* (2009) to estimate the area of the Laguna Madre, removing the layers that were not dolphin habitat (*e.g.,* land, emergent marsh, and mangroves), which resulted in a 1,938 km^2 area. Separately, they estimated the area of the BSC at 27 km^2, for a total area of 1,965 km^2. Using these inputs, both applicants calculated a density of 0.055 dolphins/km^2 (109/1,965=0.055). NMFS believes this approach is an underestimate since the surveys in Piwetz and Whitehead (2019) were confined to the lower Laguna Madre. Therefore, we applied the 109 animals to the survey area in the study. The report did not provide the survey area (only the combined area covered for all five days) but a rudementary GIS exercise yielded an approximate survey area of 140 km^2. This results in a density of 0.76 dolphins/km^2.

When considering a density-based approach to calculate potential take, NMFS typically recommends the following equation: density × area × pile driving days. Using this equation and the NMFS-derived survey area of 140 km^2, the resulting total take estimate for Rio Grande is approximately 29 ((0.76 dolphins/km^2 × 4.85 km^2 × 7 days) + (0.76 dolphins/km^2 × 0.62 km^2 × 1 day) and approximately 12 for Annova (0.76 dolphins/km^2 × 1.0 km^2 × 16 days).

While these calculations would be appropriate for more open water areas, the results are not realistic for the context of these projects. First, dolphins travel up and down the BSC therefore the potential for them to be exposed to pile driving noise is somewhat independent of the harassment zone sizes as all zones cross the entire width of the channel they are likely to travel into these zones on any given day (*i.e.,* that all dolphins traveling the BSC will eventually pass the terminal sites and therefore have equal chances for exposure). Second, Rio Grande is conducting less work on fewer days than Annova. Given the likely daily occurrence for dolphins to be within the BSC, it is unrealistic to assume Rio Grande has the potential to have more than double the instances of take than Annova. For this reason, NMFS determined the resulting take based on density is not realistic and has instead estimated take based on sighting rates which considers an important parameter—the number of hours of pile driving.

To derive a more realistic take estimate, NMFS considered the Piwetz and Whitehead (2019) data and the amount of pile driving proposed by each applicant. Piwetz and Whitehead (2019) observed 109 dolphins over 26.72 hours of survey effort, resulting in an average of 4.1 dolphins/hour. Rio Grande anticipates installing 12 piles and removing 5 piles over approximately 11.3 hours. Given the number of dolphins/hour, this results in a total take estimate of 46 (4.1 dolphins per hour × 11.3 hours). Annova anticipates installing 20 piles and removing 16 of those 20 piles over approximately 15 hours. Given the number of dolphins/hour, this results in a total take estimate of 62 takes (4.1 dolphins per hour × 15 hours). This amount of take more closely reflects the potential for both applicants to harass animals and allows for an adequate amount of take when considering another important parameter- group size. The average expected group size of dolphins in the BSC is 4.5 dolphins (Piwetz and Whitehead, 2019). The amount of bottlenose dolphin take authorized for Rio Grande and Annova is presented in Table 9 and 10, respectively.

Rough-Toothed and Atlantic Spotted Dolphins

It is unlikely that rough-toothed dolphins or Atlantic spotted dolphins will occur in the BSC as these species typically inhabit coastal and offshore waters. We note that neither of these species were observed during opportunistic and planned surveys in 2016 through 2019 (Ronje *et al.,* 2018; Piwetz and Whitehead 2019). However, because there is a small risk that these animals may be exposed to project-related noise if they do enter the BSC during pile driving (*e.g.,* a stranding event or other abnormal behavior), both Rio Grande and Annova have each requested take equating to the average group size of these species (Maze-Foley and Mullin 2006). These mean group

sizes are 14 rough-toothed dolphins and 26 Atlantic spotted dolphins (Table 9 and 10).

TABLE 9—AUTHORIZED TAKE FOR RIO GRANDE

Species	Stock	Level B harassment take
Bottlenose dolphin	Laguna Madre	46
	Western Gulf of Mexico Coastal.	
Rough-toothed dolphin	N Gulf of Mexico	14
Atlantic spotted dolphin	N Gulf of Mexico	26

TABLE 10—AUTHORIZED TAKE FOR ANNOVA

Species	Stock	Level B harassment take
Bottlenose dolphin	Laguna Madre	62
	Western Gulf of Mexico Coastal.	
Rough-toothed dolphin	N. Gulf of Mexico	14
Atlantic spotted dolphin	N Gulf of Mexico	26

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Both Rio Grande and Annova are required to enact similar mitigation measures to ensure the least practicable adverse impact on marine mammals. Because dolphins are present within the Laguna Madre year-round, we are not proposing any in-water work windows.

Each IHA would contain the following mitigation measures:

For in-water construction, heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, Rio Grande and Annova must cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions. This measure is designed to prevent physical injury from in-water equipment.

Rio Grande and Annova are required to conduct briefings for construction supervisors and crews, the monitoring team, and staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Two PSOs must be stationed on land, barge, boat, or dock with full view of the shutdown zones (Table 11) and with direct view of the opposite shoreline to observe for marine mammals within the Level B harassment zone. If a marine mammal is observed within or approaching the shutdown zone, the PSOs will call for a shutdown.

TABLE 11—SHUTDOWN ZONES

Applicant	Pile	Shutdown zone (m)
Rio Grande	All piles	20
Annova	24-in	20
	96-in	100.

Marine mammal monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone (Table 11), their behavior must be monitored and documented until they leave of their own volition, at which point the activity may begin or they have not been re-sighted within 15 minutes.

If a marine mammal is entering or is observed within an established shutdown zone (Table 11), pile driving must be halted or delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without subsequent detections.

Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine

mammals within the shutdown zone could be detected.

Rio Grande and Annova must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Rio Grande and Annova have stated that they will conduct all pile driving during daylight hours, and both applicants are required to employ a double bubble curtain during all impact pile driving and operate it in a manner consistent with the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column; the lowest bubble ring must be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and air flow to the bubblers must be balanced around the circumference of the pile. Rio Grande will operate a double bubble curtain during all vibratory pile driving and removal and we have accounted for its use in our analysis. Therefore, Rio Grande must also operate this double bubble curtain during vibratory driving and removal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (Table 8), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed without a subsequent sighting.

In the case that 75 percent of the authorized take is met and two or more piles are left to be installed to complete the project, Rio Grande and Annova would implement additional monitoring and mitigation to ensure the authorized take is not exceeded. If this trigger is met, an additional PSO would be positioned at the western edge of the Level B harassment zone.

Based on our evaluation of the measures proposed by the applicants and contained within the IHAs, NMFS has determined that the measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Marine mammal monitoring before, during, and after pile driving and removal must be conducted by NMFS-approved PSOs who are independent and have a degree in biological sciences or related training/field experience. NMFS considers the following qualifications when reviewing potential PSO's curriculum vitae: Ability to conduct field observations and collect data according to assigned protocols, experience or training in the field identification of marine mammals, including the identification of behaviors, sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations, writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior, and ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. Rio Grande and Annova must submit each PSO's curriculum vitae for approval by NMFS prior to the onset of pile driving.

Each IHA holder must submit a draft report on all marine mammal monitoring conducted under their IHA within 90 calendar days of the completion of marine mammal monitoring. A final report must be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain information related to construction activities, weather conditions, the number of marine mammals observed, by species, relative to the pile location (*e.g.,* distance and bearing), description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A harassment and Level B harassment zones during pile driving and removal, if pile driving or removal was occurring at time of sighting, age and sex class, if possible, of all marine mammals observed, PSO locations during marine mammal monitoring, detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any, an extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of

the Level B harassment zone that was not visible. Rio Grande and Annova must also submit all PSO datasheets and/or raw sighting data to NMFS.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to NMFS and the Southeast Marine Mammal Stranding Network. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. Reporting information must include information about the event, species, animal condition and behavior, and if possible, photographs.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis below applies to the issuance of an IHA to Rio Grande and, separately, issuance of an IHA to Annova, as both projects include construction of an LNG terminal in the same area of the BSC.

Pile driving activities associated with both projects, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) incidental to underwater sounds generated from pile driving. Harassment could occur if dolphins are present in relatively close proximity (1–5 km^2) to pile driving and removal.

No Level A harassment, serious injury or mortality is anticipated given the nature of the activities and measures designed to avoid the potential of injury (*e.g.,* PTS) to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Rio Grande and Annova would utilize a double bubble curtain during all impact pile driving while Rio Grande has also committed to using the double bubble curtain during vibratory driving and removal. Specifically, vibratory and impact hammers will be the primary methods of installation. Piles will first be installed using vibratory pile driving. Vibratory pile driving produces lower SPLs than impact pile driving. The rise time of the sound produced by vibratory pile driving is slower, reducing the probability and severity of injury. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact pile driving is used, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft starts (for impact driving), marine mammals are expected to move away from a sound source; thereby, lowering received sound levels.

The activities by Rio Grande and Annova are localized and of relatively short duration (8 and 16 days, respectively). The project area is also very limited in scope spatially (confined to a small area of the BSC). Localized (confined to the BSC) and short-term noise exposures produced by project activities may cause short-term behavioral modifications in dolphins. Surveys in the lower Laguna Madre indicate dolphin behavior is generally dominated by socializing, traveling (often in the direction of tidal movement), and foraging (Ronje *et al.,* 2018; Piwetz and Whitehead, 2019). Dolphins were also observed foraging behind active commercial shrimp trawlers in the BSC as far as the Brownsville Fishing Harbor (Ronje *et al.* 2018). During another survey, commercial fishing trawlers were observed actively operating and 31 percent (n = 5) of groups were observed foraging behind trawlers or directly off the stern taking advantage of discarded bycatch (Piwetz and Whitehead, 2019).

Another Texas waterway similar to the BSC, the Galveston Ship Channel, has been a hot spot for dolphin research in Texas. Dolphins regularly use the GSC to forage (57 percent of observed behavioral states) and socialize (27 percent), and or traveling (5 percent) (Piwetz, 2019). The author found when boats were present, the proportion of time dolphins spent socializing and foraging was significantly less than expected by chance. Swimming speeds increased significantly in the presence of small recreational boats, dolphin-watching tour boats, shrimp trawlers, and when tour boats and shrimp trawlers were both present. We would expect animals in the BSC to respond similarly (*e.g.,* decreased foraging and socializing) to pile driving. However, the activities considered in these IHAs (pile driving) would be stationary in nature and no vessels would be actively approaching dolphins nor would dolphins likely be attracted to pile driving as they are to shrimp trawls.

In general, effects on individuals that are taken by Level B harassment will likely be limited to temporary reactions such as avoidance, increased swimming speeds, and decreased socializing and foraging behaviors. We would anticipate swim speeds would increase as dolphins move closer to the pile driving location (similar to how they react to vessels); however, this would move them quickly past the terminal and pre-pile driving exposure behavior would likely return quickly. Foraging and socializing behaviors may cease; however, these behaviors would also resume shortly thereafter. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein.

The project also is not expected to have significant adverse effects on affected marine mammal habitat. Marine mammal habitat quality within the BSC varies. There is little development along the shoreline until the Brownsville Fishing Harbor, located approximately 8 km west of the project sites, when the BCS becomes commercial/industrial. Dolphin habitat in the BSC would be temporarily, indirectly impacted during the brief duration of pile driving for

both projects. Direct impacts to dolphin habitat would not occur during Annova's construction as the site is currently uplands. For Rio Grande, direct impacts to foraging habitat would be minimal and temporary in nature during pile driving, primarily consisting of increased turbidity. Dredging would permanently deepen the channel at the Rio Grande terminal location; however, the entire BSC is a man-made canal that is dredged. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities, the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from the proposed activities are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment, mortality is anticipated or authorized;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small (1–5 km^2) relative to the overall habitat ranges of all species and does not include habitat areas of special significance;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact; and
- The impacts to marine mammal habitat would be temporary in nature, primarily increased turbidity and noise.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from Rio Grande's specified activities and, separately, Annova's specified activities, will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For coastal stocks (bottlenose, Atlantic spotted, and rough-toothed dolphins) the amount of authorized take is less than one percent of the population. There is no population estimate available for the Laguna Madre stock of bottlenose dolphins. Two studies investigating dolphins in Lower Laguna Madre yielded approximately 60 in 2016 (Ronje *et al.,* 2018) and 109 individuals in 2018 and 2019 (Piwetz and Whitehead, 2019). However, these surveys were very limited in space with respect to the stock range and the numbers reflect identified individuals. More specifically, Ronje *et al.* (2018) limited their survey to the extreme lower portion of Lower Laguna Madre while Piwetz and Whitehead (2019) acknowledge the non-asymptotic nature of the discovery curve (accumulation curve) indicates that the sampling effort has not yet identified all, or even most, of the individuals that use this region (presumably referring to lower Laguna Madre). The entire Laguna Madre stock range include upper and lower Laguna Madre.

To estimate potential abundance, we looked for comparative ecosystems to estimate potential population size and trends in abundance estimates for other Gulf of Mexico BSE stocks. The Indian River Lagoon (IRL) in Florida is similar in configuration and length to Laguna Madre but is approximately half the size (539 km^2 versus 1137km^2). Similar to Laguna Madre, there are no recent stock estimates for the IRL; however, seasonal aerial surveys spanning the IRL from 2002 and 2003 yielded a range of 362 (CV =0.29) to 1316 (CV=0.24) with an overall mean abundance of 662 dolphins (Hayes *et al.,* 2016). For those Gulf of Mexico BSEs that have been more intensively studied in recent years, the trend demonstrates these BSEs support much larger stocks of bottlenose dolphins than previously believed. For example, the abundance estimates for the Barataria Bay, Mobile Bay, and Mississippi Sound stocks based on older data were estimated at 138, 122, and 901 animals, respectively (Hayes *et al.,* 2017). More recent surveys and analysis now estimate those stocks at 2,306, 1,393, and 3,046 dolphins, respectively. For these reasons, it is reasonable to assume the entire Laguna Madre similarly supports several hundred to thousand animals.

Finally, dolphins within the BSC have been documented as following the tides and shrimp trawls making their way back to the fleet docks which are located west of the terminal sites (Ronje *et al.,* 2018). Because the BSC is a dead-end canal, dolphins traveling past the terminal sites in a westward direction must re-transit past the terminal sites to exit the BSC. This is likely to occur on the same day given the tides. While it is not possible to determine if pile driving would be occurring as animals are transiting both west and east of the terminal sites on any given day, it is possible some animals may be exposed to pile driving on more than one occasion on any given day (*e.g.,* if pile driving is occurring in the morning and then several hours later, after a tide change). Therefore, the number of individual dolphins actually harassed may be less than the amount of take authorized.

In summary, surveys in Laguna Madre have been limited to lower Laguna Madre and the authors acknowledge the limitations of their studies for purposes of estimating stock size, the IRL (a lagoon similar in configuration and proximity to ocean waters as the BSC but approximately half the surface water area) supports hundreds to over 1,000 animals, and trends of older stock estimates compared to more recent data for other Gulf of Mexico BSE stocks. For these reasons, it is likely the Laguna Madre stock estimate is, at minimum, several hundred animals. Further, the number of individuals taken may be less than the amount of take authorized. Therefore, for the Laguna Madre stock of bottlenose dolphins, we find that the total taking may reasonably be expected to represent less than one-third of the total likely population abundance.

Based on the analysis contained herein of the proposed activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals relative to the population size of the affected species or stocks may be taken incidental to Rio Grande's proposed activities and, separately, incidental to Annova's proposed activities.

Endangered Species Act

Incidental take of ESA-listed species from the specified activities is not expected or authorized. Therefore, NMFS determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

These actions are consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, the issuance of the IHAs has been categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued IHAs to both Rio Grande and Annova authorizing the take, by Level B harassment only, of small numbers of marine mammals provided the mitigation, monitoring, and reporting requirements included in those IHAs are adhered to.

The IHAs can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Dated: June 29, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14376 Filed 7–2–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on July 21, 2020, from 9:30 a.m. to 1:30 p.m. (Eastern Daylight Time), the Market Risk Advisory Committee (MRAC) will hold a public meeting via teleconference. At this meeting, the MRAC will receive status reports from its subcommittees: Climate-related Market Risk, CCP Risk and Governance, Market Structure, and Interest Rate Benchmark Reform. The meeting will also include a discussion regarding market activity during the early months of the COVID–19 pandemic.

DATES: The meeting will be held on July 21, 2020, from 9:30 a.m. to 1:30 p.m. (Eastern Daylight Time). Please note that the teleconference may end early if the MRAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by July 28, 2020.

ADDRESSES: The meeting will be held via teleconference. You may submit public comments, identified by ''Market Risk Advisory Committee,'' through the CFTC website at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Alicia L. Lewis, Designated Federal Officer, via the contact information listed in the **FOR FURTHER INFORMATION CONTACT** section to discuss alternate means of submitting your comments.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public may listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–877–951–7311.

International Toll and Toll Free: Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 3536606.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.*

All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. app. 2 section 10(a)(2)).

Dated: June 29, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–14378 Filed 7–2–20; 8:45 am]

BILLING CODE 6351–01–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 Commission Support Grants: How To Apply for State Service Commission Support Grants.

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 September 4, 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 Arminda Pappas, 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: Arminda Pappas, 202–606–6659, or by email at *apappas@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Commission Support Grants Application Instructions: How to Apply for State Service Commission Support Grants.

OMB Control Number: 3045–0099.

Type of Review: Renewal.

Respondents/Affected Public: Organizations OR State Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 1,924.

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 Commission Support Grant funding opportunities. CNCS also seeks to continue using the currently approved information collection until the revised information collection is approved by the Office of Management and Budget (OMB). The currently approved information collection is due to expire on Aug. 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 26, 2020.

Arminda Pappas,

Grant Review Manager.

[FR Doc. 2020–14374 Filed 7–2–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following virtual Federal advisory committee meeting of the Advisory Committee on Arlington National Cemetery (ACANC), and the Remember and Explore Subcommittee. These meetings are open to the public. For more information, please visit:http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings.

DATES: The Remember and Explore Subcommittee will meet virtually on Wednesday, July 29, 2020 from 9:00 a.m. to 12:00 p.m., Eastern Standard Time. The full Advisory Committee on Arlington National Cemetery (ACANC) will meet virtually on Wednesday, July 29, 2020 from 2:00 p.m. to 6:00 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Davis; Alternate Designated Federal Officer for the Committee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *matthew.r.davis.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments within ANC; and identify means to capture and convey ANC's history, and improve the quality of visitors' experiences now and for generations to come.

The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Agenda: The Remember and Explore Subcommittee will receive briefings on the Tomb of the Unknown Soldier preservation work and the Centennial plan; review Commemorative works proposals from the following agencies: The Office of Strategic Services (OSS), Apollo 1, and The Protestant Chaplains Office; and review the status of the educational outreach program efforts by ANC.

The Committee will receive an update briefing on the Southern expansion project; receive an update on the status of the Revised Eligibility Draft Federal Rule; consider a recommendation for placement of above mentioned Commemorative monuments; and review reports from subcommittee meetings.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public.

Procedures for Attendance and Public Comment: Contact Mr. Matthew Davis at *matthew.r.davis.civ@mail.mil* to register to attend any of these virtual meetings. Public attendance will be via virtual attendance only. To attend any of these events, submit your full name, organization, email address, and phone number, and which meeting you would like to attend. Upon receipt of this information, a link will be sent to the email address provided which will allow virtual attendance to the event. Requests to attend the meetings must be received by 5:00 p.m. Eastern Standard Time, on Wednesday, July 22, 2020. (ANC will be unable to provide technical assistance to any user experiencing technical difficulties.)

For additional information about public access procedures, contact Mr. Matthew Davis, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Subcommittees and/or the Committee in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Matthew Davis, the Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow any member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during these meetings only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the appropriate Chair determine whether the subject matter of each comment is relevant to the missions and/or the topics to be addressed in these public meeting. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be invited to speak in the order in which their requests were received by the Designated Federal Officer. The appropriate Chair may allot a specific amount of time for comments.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–14392 Filed 7–2–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0064]

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office (NRO), Department of Defense (DoD).

ACTION: Rescindment of a System of Records Notice (SORN).

SUMMARY: The NRO is rescinding a System of Records, Health and Fitness Evaluation Records, QNRO–01. The purpose of this System of Records was to provide fitness assessments and design individual wellness programs. The NRO Health and Fitness Evaluation Program was discontinued and the supporting information system was decommissioned. The system records were destroyed in accordance with the record retention and disposal policy as specified in the SORN.

DATES: This System of Records rescindment is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lavergne, NRO, Advanced Systems and Technology Directorate, 14675 Lee Road, Chantilly, VA 20151–1715 or by phone at (703) 227–9022 or email, *lavergnm@nro.mil.*

SUPPLEMENTARY INFORMATION: The NRO Health and Fitness Program was decommissioned and all records were destroyed in accordance with the records retention and disposal policies in the published SORN.

The DoD notices for Systems of Records subject to the Privacy Act of 1974 (5 U.S.C. 552a), 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 12, 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).

SYSTEM NAME AND NUMBER

Health and Fitness Evaluation Records, QNRO–01.

HISTORY

April 4, 2006, 71 FR 16768; August 22, 2000, 65 FR 50969.

Dated: June 29, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14373 Filed 7–2–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Table Rock Lake Oversight Committee Meetings Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of revised dates for open committee meetings and request for comments.

SUMMARY: The Department of Defense (DoD) published a notice on April 17, 2020 that announced the third meeting of the Table Rock Lake Oversight Committee, which was to take place on Wednesday, May 6, 2020 from 8:00 a.m. to 5:00 p.m., had been cancelled due to concerns with COVID–19/State of Missouri ''Stay-at-Home'' order. The notice stated the meeting would be re-scheduled at a later date, along with

meeting four. DoD is publishing this notice to announce the revised schedule for Meeting 3 of the Federal advisory committee meetings of the Table Rock Lake Oversight Committee (TRLOC).

DATES: The meeting will be held on: Meeting 3: Thursday, July 16, 2020, 8 a.m. to 5 p.m. This meeting will be held virtually.

ADDRESSES: U.S. Army Corps of Engineers, Little Rock District, ATTN: Table Rock Lake Oversight Committee (Operations Division), P.O. Box 867, Little Rock, Arkansas, 72203–0867.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Shortt, Alternate Designated Federal Officer (ADFO) for the Committee, in writing at U.S. Army Corps of Engineers, Little Rock District, Operations Division, P.O. Box 867 Little Rock, Arkansas, 72203–0867, or by email at *CESWL-TRLOC-DFO@usace.army.mil.*

SUPPLEMENTARY INFORMATION: These meetings are being held pursuant to the implementation of Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680) and under the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 86 Stat. 770.), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102- 3.150).

Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer for the Table Rock Lake Oversight Council, the Table Rock Lake Oversight Council was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting on July 16, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meetings: The TRLOC is an independent Federal advisory committee established as directed by Section 1185(c) of the Water Resources Development Act of 2016 (130 Stat. 1680). The committee is advisory in nature only with duties to include providing information and recommendations to the U.S. Army Corps of Engineers, Little Rock District Engineer on revisions to the Table Rock Lake Master Plan and Shoreline Management Plan. The TRLOC may also, at the discretion of the District Engineer, review any permit to be issued under the provisions of the existing master plan and shoreline management plan until any approved revisions are finalized and become part of the formal governing documents.

Proposed Agenda: Agenda—Meeting 3

I. Call to Order, DFO and TRLOC Chairperson
II. Public Comment Session
III. Presentations of Requested Material Related to Draft Master and Shoreline Management Plans
IV. Corps Presentation on Commander Recommended Review of Permit
V. Committee Discussion/Questions/Recommendations on Master Plan
VI. Committee Discussion/Questions/Recommendations on Shoreline Management Plan
VII. Committee Discussion/Questions/Recommendations on Commander Recommended Review of Permit
VIII. Adjournment

Accessibility to the Meeting: This meeting will be held entirely virtually, and all public access and participation will be virtual in nature. The information needed to access the virtual meeting will be posted on the TRLOC website *https://go.usa.gov/xwRbv* July 9, one week prior to the meeting. The most up-to-date information and instructions about the virtual meeting will also be posted there.

Written Comments and Statements: Pursuant to 41 CFR 102–3.1050) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted via email to *CESWL-TableRockSMP_FAC@usace.army.mil* or by mail to the US Army Corps of Engineers, Table Rock Lake Oversight Committee, P.O. Box 867, Little Rock, Arkansas 72203–0867. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer or Alternate Designated Federal Officer at least seven (7) business days prior to the third meeting to be considered by the Committee. The Designated Federal Officer/Alternate Designated Federal Officer and the Committee Chair will review all timely submitted written comments or statements and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date will not be provided to the Committee, as their final recommendations will be submitted to the District Engineer for consideration during the third meeting. Please note that because the TRLOC operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. A three (3) hour period will be provided near the beginning of Meeting 3 for virtual verbal comments. In the interest of time and for allowing everyone to be heard, individuals will be given a maximum of two (2) minutes to address their comments to the TRLOC. Individuals will not be allowed to transfer time to other individuals. A court reporter will be in attendance to record the TRLOC meetings.

David B. Olson,

U.S. Army Corps of Engineers Federal Register Liaison Officer.

[FR Doc. 2020–14344 Filed 7–2–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0108]

Agency Information Collection Activities; Comment Request; HBCU Capital Financing Program Deferment Applications

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: Approval by the OMB has been requested by June 30, 2020. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before September 4, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0108. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail,

commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Donald Watson, 202–453–6166.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: HBCU Capital Financing Program Deferment Applications.

OMB Control Number: 1840–NEW.

Type of Review: New information collection

Respondents/Affected Public: Private Sector; State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 50.

Abstract: In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136 (March 27, 2020), Congress provided authority for deferments due to a qualifying emergency. Generally, the CARES Act provides that the Secretary may grant a deferment to recipients of Program loans, regardless of whether the recipient is a public or private HBCU, for the duration of the coronavirus-related emergency. The Department has developed an application for HBCUs to seek a deferment of a Program loan under the CARES Act. This application will allow a Program participant to request the deferment and submit information for the Department's required report to Congress regarding its use of its CARES Act authority to grant the deferments.

Additional Information: An emergency clearance approval for the use of the system is described below due to the following conditions:

Pursuant to the Office of Management and Budget (OMB) procedures established at 5 CFR 1320, ED requests that the following collection of information, HBCU Capital Financing Program Deferment Applications, be processed in accordance with section 1320.13 Emergency Processing. ED has determined that this information must be collected prior to the expiration of time periods established under Part 1320, and that this information is essential to the ED's ability to effectively implement the CARES Act, Public Law 116–136 (March 27, 2020) and address the economic disruption posed by the Novel (new) Coronavirus (''2019–nCoV'').

Dated: June 30, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14432 Filed 7–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[EERE–2019–BT–PET–0019–0008]

Energy Efficiency Program for Industrial Equipment: Final Determination Classifying North Carolina Advanced Energy Corporation as a Nationally Recognized Certification Program for Electric Motors and Small Electric Motors

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

ACTION: Notice of final determination.

SUMMARY: This notice announces a final determination classifying North Carolina Advanced Energy Corporation as a nationally recognized certification program under United States Department of Energy (''DOE'') regulations regarding federal recognition of certification programs for electric motors and small electric motors.

DATES: This final determination is effective July 6, 2020.

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

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2019-BT-PET-0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Part C of Title III of the Energy Policy and Conservation Act, as amended (''EPCA'') contains energy conservation requirements for, among other things, electric motors and small electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316.[1] Section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of electric motors ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). DOE codified this requirement at 10 CFR 431.17(a)(5). DOE also established certain compliance testing requirements for manufacturers of small electric motors. 77 FR 26608 (May 4, 2012) Manufacturers of small electric motors have the option of either self-certifying the efficiency of their small electric motors or they can use a certification program nationally recognized in the U.S to certify them. (10 CFR 431.445) DOE developed a regulatory process for the recognition, and withdrawal of recognition, for certification programs nationally recognized in the U.S. The criteria and procedures for national recognition of an energy efficiency certification program for electric motors are codified at 10 CFR 431.20 and 10 CFR 431.21 for electric motors and at 10 CFR 431.447 and 10 CFR 431.448 for small electric motors. Each step of the process and evaluation criteria are discussed below.

For a certification program to be classified by DOE as being nationally recognized in the United States for the testing and certification of electric motors and small electric motors, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with the aforementioned sections.

For the Department to grant such a petition, the petitioner's certification program must:

(1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity;

(2) Be independent of electric motor and small electric motor manufacturers (as applicable), importers, distributors, private labelers or vendors;

(3) Be qualified to operate a certification system in a highly competent manner; and

(4) Be expert in the following test procedures and methodologies:

(a) For electric motors, it must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Method B or CSA C390–10. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. (10 CFR 431.20(b)); and

(b) For small electric motors, it must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747, or similar procedures and methodologies for determining the energy efficiency of small electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. (10 CFR 431.447(b))

The petition requesting classification as a nationally recognized certification program must contain a narrative statement explaining why the organization meets the above criteria, be accompanied by documentation that supports the narrative statement, and be signed by an authorized representative. (10 CFR 431.20(c), and 10 CFR 431.447(c)).

II. Discussion

Pursuant to 10 CFR 431.20—10 CFR 431.21 and 10 CFR 431.447—10 CFR 431.448, on February 11, 2019, North Carolina Advanced Energy Corporation Efficiency Verification Services (''Advanced Energy'') submitted to DOE a Petition for Recognition related to the group's motor efficiency verification services. That petition, titled, ''Energy Efficiency Evaluation of Electric Motors and Small Electric Motors to US Department of Energy Regulations as stipulated in 10 CFR part 431, subpart B and Subpart X'' (''Petition'' or ''Advanced Energy Petition''), was accompanied by a cover letter from Advanced Energy to the Department containing four separate sections, including individual narrative statements: (1) Standards and Procedures; (2) Independent Status; (3) Qualification of Advanced Energy to Operate a Certification System; and (4) Expertise in Electric Motor Test Procedures. The petition included supporting documentation on these subjects. The Department is required to publish in the **Federal Register** such petitions for public notice and solicitation of comments, data and information as to whether the Petition should be granted. 10 CFR 431.21(b) and 10 CFR 431.448(b). In accordance with requirements in 10 CFR 431.21(b) and 10 CFR 431.448(b), DOE published Advanced Energy's petition in the **Federal Register** on July 8, 2019, and requested public comments. 84 FR 32437. DOE did not receive any comments responding to the petition.

As required by 10 CFR 431.21(d) and 10 CFR 431.448(d), DOE subsequently published a notification of interim determination regarding Advanced Energy's petition and solicited comments. 85 FR 70520 (December 23, 2019). In the notification of interim determination, DOE noted that, after reviewing submitted materials and having received no comments, that it found no specific cause to reject the petition. It tentatively determined that Advanced Energy meets the requirements at 10 CFR 431.20 and 10 CFR 431.21 for electric motors and at 10 CFR 431.447 and 10 CFR 431.448 for small electric motors because they (1) have satisfactory standards and procedures for conducting and administering a certification system, (2) are independent of electric motor and small electric motor manufacturers, and (3) have expertise with both the electric motors and small electric motors test procedures.

In response to the notice of interim determination, GE Industrial Motors, a manufacturer, submitted a comment to DOE on January 22, 2020. GE Industrial Motors (''GE'') expressed concerns regarding Advanced Energy's procedures to ensure (1) no other manufacturers would be present during testing of a competitor's motor; (2) the test data is kept confidential; and (3) Advanced Energy would not analyze and compare test data from various manufacturers. (GE, No. 10 at p. 1) Advanced Energy submitted a response to DOE regarding GE's comment. (Advanced Energy, No. 11.1 at p. 1) Advanced Energy stated that it requires all clients to review, sign and return appropriate documentation to ensure confidentiality. These documents include: (1) ISO–IEC 17065 Operations Manual; (2) Standard Operating Procedure; (3) Certification Scheme; (4) Mutual Non-Disclosure Agreement and Hold Harmless; and (5) Client Agreement and Terms of Service. Specifically, Advanced Energy cited section 4.5 of the ISO–IEC 17065 Operations Manual, which covers confidentiality. Advanced Energy provided copies of all five documents as

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

part of their response to GE.[2] Advanced Energy added that it developed a mechanism for safeguarding impartiality as described in Section 5.2 of the ISO–IEC 17065 Operations Manual and explained that these specific procedures mitigate the risks mentioned by GE. (Advanced Energy, No. 11.1 at p.1)

In reviewing the comment and response, DOE finds no specific cause to reject Advanced Energy's request for recognition as a nationally recognized certification program for electric motors and small electric motors. Therefore, the Department hereby announces its final determination pursuant to 10 CFR 431.21(d) and 10 CFR 431.448(d) that Advanced Energy is classified as a nationally recognized certification program for electric motors and small electric motors.

Signing Authority

This document of the Department of Energy was signed on June 26, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, 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 30, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–14400 Filed 7–2–20; 8:45 am]

BILLING CODE 6450–01–P

[2] Copies of these documents were added to the docket (Advanced Energy, No. 11.2—No 11.6)

DEPARTMENT OF ENERGY

[Case Number 2019–008; EERE–2019–BT–WAV–0023]

Energy Conservation Program: Notice of Petition for Waiver of LG Electronics U.S.A., Inc. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure and Notice of Grant of Interim Waiver

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

ACTION: Notice of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver and interim waiver from LG Electronics U.S.A., Inc. (''LGE''), which seeks a waiver from the U.S. Department of Energy (''DOE'') test procedure used for determining the efficiency of specified central air conditioner (''CAC'') and heat pump (''HP'') basic models. DOE also gives notice of an Interim Waiver Order that requires LGE to test and rate specified CAC and HP basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning LGE's petition and its suggested alternate test procedure so as to inform DOE's final decision on LGE's waiver request.

DATES: The Interim Waiver Order is effective on July 6, 2020. Written comments and information will be accepted on or before August 5, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, interested persons may submit comments, identified by case number ''2019–008'', and Docket number ''EERE–2019–BT–WAV–0023,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: LG2019WAV0023@ee.doe.gov.* Include case number, 2019–008, in the subject line of the message.
- *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. 2019–008, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. If possible, please submit all items on a ''CD'', in which case it is not necessary to include printed copies.

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

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 *http://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0023.* The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *AS_Waiver_Request@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is publishing LGE's petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv), absent any confidential business information. DOE invites all interested parties to submit in writing by August 5, 2020, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Jean-Cyril Walker, *walker@khlaw.com,* Keller and Heckman LLP, 1001 G Street NW, Suite 500 West, Washington, DC 20001.

Submitting comments via http://www.regulations.gov. The *http://*

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

However, your contact information will be publicly viewable if you include it in the comment 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. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

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

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

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

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

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

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

Signing Authority

This document of the Department of Energy was signed on June 26, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, 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 30, 2020.

Treena V. Garrett,

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

Case Number 2019–008

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] among other things, authorizes the U.S. Department of Energy (''DOE'') to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include central air conditioners and central air conditioning heat pumps (CACs and HPs), the subject of this Interim Waiver Order. (42 U.S.C. 6292(a)(3))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation

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

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

standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for CACs and HPs is contained in the Code of Federal Regulations (''CFR'') at 10 CFR part 430, subpart B, appendix M, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* (referred to in this Interim Waiver Order as ''appendix M'').

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. *See* 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. *See* 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *See* 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. *See* 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. *See* 10 CFR 430.27(e)(2). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. *See* 10 CFR 430.27(h)(1).

When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. *See* 10 CFR 430.27(h)(2).

II. LGE's Petition for Waiver and Interim Waiver

On September 5, 2019, LGE filed a petition for waiver and interim waiver from the test procedure for CACs and HPs set forth at appendix M. According to LGE, appendix M does not include provisions for determining cooling intermediate air volume rate, cooling minimum air volume rate, and heating intermediate air volume rate for the variable-speed coil-only single-split systems specified in its petition. LGE asserts that although the CAC and HP test procedure at appendix M provides for testing of variable-speed systems, it does not contemplate the variation presented by systems comprised of LGE's variable-speed coil-only single-split systems. LGE notes that DOE previously granted waivers to GD Midea Heating & Ventilating Equipment Co., Ltd. (''GD Midea'') and TCL air conditioner (zhongshan) Co. Ltd. (''TCL AC''), for systems that contain variable-speed outdoor units that are non-communicative systems for which compressor speed varies based only on controls located on the outdoor unit that is paired with an indoor unit that maintains a constant indoor blower fan speed. 83 FR 56065 and 84 FR 11941. LGE asserts that testing the variable-speed coil-only single-split systems specified in its petition pursuant to the current appendix M procedure does not yield results that are representative of the systems' true energy consumption characteristics.

LGE also requests an interim waiver from the existing DOE test procedure for the same reasons set forth by GD Midea and TCL AC. DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. *See* 10 CFR 430.27(e)(2).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)) Consistent representations are important when making representations about the energy efficiency of products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to its regulations at 10 CFR 430.27, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the interim waiver.

As noted, DOE has granted to GD Midea and TCL AC waivers from the DOE CAC and HP test procedure for variable-speed coil-only single-split systems, subject to use of an alternate test procedure. 84 FR 11941 and 83 FR 56065. In its petition, LGE requests that it be allowed to use the same alternate test procedure as that granted to GD Midea and TCL AC. That is, LGE requests that the specified basic models listed in the petition be tested according to the test procedure for CACs and HPs prescribed by DOE at appendix M, except that, as described below, the cooling full-load air volume rate would also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate would also be used as the heating intermediate air volume rate.

IV. Interim Waiver Order

DOE has reviewed LGE's application for an interim waiver, the alternate test procedure requested by LGE, and the additional materials LGE provided in support of its petition. Based on this review, the alternate test procedure appears to allow for the accurate measurement of the of efficiency of the products specified in LGE's petition, while alleviating the testing problems associated with the six basic models specified in its petition. Consequently, it appears likely that LGE's petition for waiver will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant LGE immediate relief pending a determination of the petition for waiver.

For the reasons stated, it is *ordered* that:

(1) LGE must test and rate the central air conditioner and heat pump (''CAC and HP'') basic models LUU189HV, LUU249HV, LUU369HV, LUU429HV, LUU488HV, and LUU489HV, which are comprised of the individual combinations listed below,[3] using the alternate test procedure set forth in paragraph (2).

Basic model No.	Brand	Outdoor unit	Coil-only indoor unit
LUU189HV	LG Electronics U.S.A., Inc.	LUU189HV	LG–C1–24–14L
	LG Electronics U.S.A., Inc.	LUU189HV	LG–C1–24–14R
	LG Electronics U.S.A., Inc.	LUU189HV	LG–C1–24–17L
	LG Electronics U.S.A., Inc.	LUU189HV	LG–C1–24–17R
	LG Electronics U.S.A., Inc.	LUU189HV	LG–A1–24–14L
	LG Electronics U.S.A., Inc.	LUU189HV	LG–A1–24–14R
	LG Electronics U.S.A., Inc.	LUU189HV	LG–A1–24–17L
	LG Electronics U.S.A., Inc.	LUU189HV	LG–A1–24–17R
LUU249HV	LG Electronics U.S.A., Inc.	LUU249HV	LG–C1–24–14L
	LG Electronics U.S.A., Inc.	LUU249HV	LG–C1–24–14R
	LG Electronics U.S.A., Inc.	LUU249HV	LG–C1–36–17L
	LG Electronics U.S.A., Inc.	LUU249HV	LG–C1–36–17R
	LG Electronics U.S.A., Inc.	LUU249HV	LG–A1–24–14L
	LG Electronics U.S.A., Inc.	LUU249HV	LG–A1–24–14R
	LG Electronics U.S.A., Inc.	LUU249HV	LG–A1–36–17L
	LG Electronics U.S.A., Inc.	LUU249HV	LG–A1–36–17R
LUU369HV	LG Electronics U.S.A., Inc.	LUU369HV	LG–C2–36–14L
	LG Electronics U.S.A., Inc.	LUU369HV	LG–C2–36–14R
	LG Electronics U.S.A., Inc.	LUU369HV	LG–C1–36–17L
	LG Electronics U.S.A., Inc.	LUU369HV	LG–C1–36–17R
	LG Electronics U.S.A., Inc.	LUU369HV	LG–A2–36–14L
	LG Electronics U.S.A., Inc.	LUU369HV	LG–A2–36–14R
	LG Electronics U.S.A., Inc.	LUU369HV	LG–A1–36–17L
	LG Electronics U.S.A., Inc.	LUU369HV	LG–A1–36–17R
LUU429HV	LG Electronics U.S.A., Inc.	LUU429HV	LG–C2–48–17L
	LG Electronics U.S.A., Inc.	LUU429HV	LG–C2–48–17R
	LG Electronics U.S.A., Inc.	LUU429HV	LG–C2–48–21L
	LG Electronics U.S.A., Inc.	LUU429HV	LG–C2–48–21R
	LG Electronics U.S.A., Inc.	LUU429HV	LG–A2–48–17L
	LG Electronics U.S.A., Inc.	LUU429HV	LG–A2–48–17R
	LG Electronics U.S.A., Inc.	LUU429HV	LG–A2–48–21L
	LG Electronics U.S.A., Inc.	LUU429HV	LG–A2–48–21R
LUU488HV	LG Electronics U.S.A., Inc.	LUU488HV	LG–C2–48–17L
	LG Electronics U.S.A., Inc.	LUU488HV	LG–C2–48–17R
	LG Electronics U.S.A., Inc.	LUU488HV	LG–C2–48–21L
	LG Electronics U.S.A., Inc.	LUU488HV	LG–C2–48–21R
	LG Electronics U.S.A., Inc.	LUU488HV	LG–A2–48–17L
	LG Electronics U.S.A., Inc.	LUU488HV	LG–A2–48–17R
	LG Electronics U.S.A., Inc.	LUU488HV	LG–A2–48–21L
	LG Electronics U.S.A., Inc.	LUU488HV	LG–A2–48–21R
LUU489HV	LG Electronics U.S.A., Inc.	LUU489HV	LG–C2–48–17L
	LG Electronics U.S.A., Inc.	LUU489HV	LG–C2–48–17R
	LG Electronics U.S.A., Inc.	LUU489HV	LG–C2–48–21L
	LG Electronics U.S.A., Inc.	LUU489HV	LG–C2–48–21R
	LG Electronics U.S.A., Inc.	LUU489HV	LG–A2–48–17L
	LG Electronics U.S.A., Inc.	LUU489HV	LG–A2–48–17R
	LG Electronics U.S.A., Inc.	LUU489HV	LG–A2–48–21L
	LG Electronics U.S.A., Inc.	LUU489HV	LG–A2–48–21R

(2) The alternate test procedure for the LGE basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M (''appendix M''), except that as described below, for coil-only combinations: the cooling full-load air volume rate as determined in section 3.1.4.1.1.c of appendix M shall also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate as determined in section 3.1.4.4.1.a of appendix M shall also be used as the heating intermediate air volume rate. All other requirements of appendix M and DOE's regulations remain applicable.

In 3.1.4.2, *Cooling Minimum Air Volume Rate,* include:

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.3, *Cooling Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling intermediate air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.

In 3.1.4.6, *Heating Intermediate Air Volume Rate,* include:

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the heating intermediate air volume rate is the same

[3] The specified basic models contain individual combinations that each consist of an outdoor unit that uses a variable speed compressor matched with a coil-only indoor unit.

as the heating full-load air volume rate determined in section 3.1.4.4.1.a.

(3) *Representations.* LGE may not make representations about the efficiency of the basic models identified in paragraph (1) of this Interim Waiver Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, test data, and documentary materials provided by LGE are valid. If LGE makes any modifications to the controls or configurations of these basic models, the Interim Waiver Order will no longer be valid and LGE will either be required to use the current Federal test method or submit a new application for a test procedure interim waiver. DOE may rescind or modify this Interim Waiver Order at any time if it determines the factual basis underlying the petition for Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of a basic models' true energy consumption characteristics. *See* 10 CFR 430.27(k)(1). Likewise, LGE may request that DOE rescind or modify the Interim Waiver Order if LGE discovers an error in the information provided to DOE as part of its petition, determines that the Interim Waiver Order is no longer needed, or for other appropriate reasons. *See* 10 CFR 430.27(k)(2).

(6) Issuance of this Interim Waiver Order does not release LGE from the certification requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. LGE may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CACs and HPs. Alternatively, if appropriate, LGE may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signed in Washington, DC, on June 26, 2020.

Alexander N. Fitzsimmons,

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

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September 5, 2019

Via Electronic Mail

U.S. Department of Energy
Building Technologies Program
Test Procedure Waiver
C/O Ms. Lucy deButts
1000 Independence Avenue SW
Mailstop EE-5B
Washington, DC 20585-0121
AS_Waiver_Requests@ee.doe.gov

Via Electronic Mail

Writer's Direct Access
Jean-Cyril Walker
(202) 434-4181
walker@khlaw.com

Re: PUBLIC Petition for Waiver and Application for Interim Waiver from the Uniform Test Method for Measuring the Energy Consumption of Central Air Conditions and Heat Pumps by LG Electronics U.S.A., Inc.

On behalf of our client, LG Electronics U.S.A., Inc. (hereinafter, "LGE"), we respectfully submit this Petition for Waiver and Application for Interim Waiver requesting exemption by the Department of Energy ("DOE" or "Department") from certain parts of the test procedure for measuring the energy consumption of central air conditioners ("CAC") and heat pumps under 10 C.F.R. § 430.27. LGE is the U.S. affiliate of LG Electronics, Inc., a manufacturer of air conditioners and other related home appliance and home entertainment products sold worldwide, including in the United States. LG Electronics, Inc.'s worldwide headquarters is located at LG Twin Towers 20, Yoido-dong, Youngdungpo-gu Seoul, Korea 150-721. LGE is headquartered at 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

I. Petition for Waiver

LGE seeks the Department's approval of this proposed amendment to the CAC and heat pump test procedure to allow representative testing of its single-split air conditioner and heat pump outdoor units with variable-speed compressors, when matched with the specified coil-only indoor units.[1] Although the CAC test procedure at 10 C.F.R. § 430, Appendix M provides for testing of variable-speed systems, it does not contemplate the variation presented by systems comprised of LGE's variable-speed outdoor condensing units matched with coil-only indoor units (hereinafter, "variable-speed, coil-only single-split systems").

Specifically, Appendix M does not provide a means to determine the cooling minimum, cooling intermediate, or heating intermediate air volume rates for these products and thus, prevents manufacturers from: (1) establishing product ratings in compliance with 10 C.F.R. Part 430, (2) determining the products' compliance with DOE's minimum energy efficiency standards under 10 C.F.R. § 430.32; (3) certifying the products pursuant to DOE's requirements at 10 C.F.R. Part 429; and (4) distributing the products in commerce. Accordingly, testing variable-speed, coil-only single-split systems pursuant to the current Appendix M procedure does not yield results that are representative of the systems' true energy consumption characteristics.

This limitation in the DOE test procedure has already been identified in petitions for waiver by GD Midea Heating & Ventilating Equipment Co., Ltd. ("GD Midea"),[2] and TCL Air Conditioner (Zhongshan) Co., Ltd. ("TCL").[3] Both of these companies also petitioned for a waiver from the test procedure for their variable-speed, coil-only single-split systems because they (1) operate as non-communicative systems, and (2) maintain constant indoor air volume rates. Recognizing that these systems "cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics," DOE previously granted test procedure waivers to both GD Midea and TCL for these products.[4]

Accordingly, LGE now seeks a similar waiver for its variable-speed, coil-only single-split systems pursuant to the Department regulations at 10 C.F.R. § 430.27. This provision provides that any person may submit a petition to waive the requirements of 10 C.F.R. § 430.23 or the applicable test procedure for a basic model on grounds that:

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[1] Although the LGE outdoor units covered by this petition are sold on an individual basis, they are not currently marketed or sold in the configuration contemplated by this Petition, nor are the [REDACTED] indoor units specified herein currently being distributed in commerce in the United States. Accordingly, this petition is timely filed pursuant to 10 C.F.R. § 430.27(j).

[2] See 2017-10-27 Petition for Waiver and Interim Waiver for certain GD Midea's variable speed coil-only single- split systems, Rulemaking Docket Document EERE-2017-BT-WAV-0060-0001.

[3] See 2018-07-19 Request for waiver from test procedures for variable speed coil-only single-split system air conditioners, Rulemaking Docket Document EERE-2018-BT-WAV-0013-0001.

[4] Energy Conservation Program: Decision and Order Granting a Waiver to GD Midea Heating & Ventilating Equipment Co., Ltd. From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure, 83 Fed. Reg. 56,065 (Nov. 9, 2018) [hereinafter Decision and Order Granting a Waiver to GD Midea]; Energy Conservation Program: Decision and Order Granting a Waiver to TCL Air Conditioner (Zhongshan) Co., Ltd. from the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure, 84 Fed. Reg. 11,941 (March 29, 2019) [hereinafter Decision and Order Granting a Waiver to TCL].

> *...the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures or cause the prescribed test procedures to evaluate the basic model in a manner so unrepresentative of its true energy and/or water consumption characteristics as to provide materially inaccurate comparative data.*[5]

LGE respectfully submits that sufficient grounds exist for DOE to grant this Petition because, as indicated above, the test procedure at Appendix M does not provide a method of testing the variable-speed, coil-only systems to the fullest extent of the test procedure.

A. Test Procedure

Generally, 10 C.F.R. § 430.23(m) directs that the energy efficiency or other useful performance measures of CACs and heat pumps must be determined using the test procedure at Appendix M to 10 C.F.R. § 430, Subpart B. The scope of the test procedure includes single-split air conditioners and heat pumps but lacks coverage for manufacturers to test systems with variable-speed compressors in a coil-only configuration in full compliance with the test procedure. Specifically, Tables 8 and 14 provide six air volume rates (*i.e.*, minimum, intermediate, and full-load cooling and heating) for variable-speed single-split systems in cooling and heating mode test conditions. The specified air volume rates are determined in accordance with sections 3.1.4.1 through 3.1.4.6. of Appendix M. However, sections 3.1.4.2. (cooling minimum air volume rate), 3.1.4.3 (cooling intermediate air volume rate), and 3.1.4.6. (heating intermediate air volume rate) do not provide procedures for testing variable-speed, coil-only systems, making testing and rating the systems in accordance with the test procedure infeasible. Without the ability to test and rate the systems, compliance with the energy efficiency standards at 10 C.F.R. § 430.32(c) cannot be determined.

B. LGE's Proposed Modifications to the Test Procedure

With this Petition, LGE requests that DOE grant a test procedure waiver that will allow the Company to test its variable-speed, coil-only split-systems. The basic and individual models subject to this Petition include:

Basic Model	Outdoor Unit (Brand: LGE)	Coil-Only Indoor Unit (Brand: [REDACTED])
LUU189HV	LUU189HV	LG-C1-24-14L
	LUU189HV	LG-C1-24-14R
LUU249HV	LUU249HV	LG-C1-24-14L
	LUU249HV	LG-C1-24-14R
	LUU249HV	LG-C1-36-17L
	LUU249HV	LG-C1-36-17R
LUU369HV	LUU369HV	LG-C2-36-14L
	LUU369HV	LG-C2-36-14R
	LUU369HV	LG-C1-36-17L
	LUU369HV	LG-C1-36-17R
LUU429HV	LUU429HV	LG-C2-48-17L

[5] 10 C.F.R. § 430.27(l).

	LUU429HV	LG-C2-48-17R
	LUU429HV	LG-C2-48-21L
	LUU429HV	LG-C2-48-21R
LUU488HV	LUU488HV	LG-C2-48-17L
	LUU488HV	LG-C2-48-17R
	LUU488HV	LG-C2-48-21L
	LUU488HV	LG-C2-48-21R
LUU489HV	LUU489HV	LG-C2-48-17L
	LUU489HV	LG-C2-48-17R
	LUU489HV	LG-C2-48-21L
	LUU489HV	LG-C2-48-21R

LGE proposes to follow the alternate test procedure set out by the Department in petitions for waiver granted to both GD Midea and TCL,[6] by using:

> *...the test procedure for CACs and HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M, except that as described below, for coil-only combinations: The cooling full-load air volume rate as determined in section 3.1.4.1.1.c of Appendix M shall also be used as the cooling intermediate and cooling minimum air volume rates, and the heating full-load air volume rate as determined in section 3.1.4.4.1.a of Appendix M shall also be used as the heating intermediate air volume rate. All other requirements of Appendix M remain applicable.*
>
> *In 3.1.4.2, Cooling Minimum Air Volume Rate, include:*
>
> > *f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.*
>
> *In 3.1.4.3, Cooling Intermediate Air Volume Rate, include:*
>
> > *d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling intermediate air volume rate is the same as the cooling full-load air volume rate determined in section 3.1.4.1.1.c.*
>
> *In 3.1.4.6, Heating Intermediate Air Volume Rate, include:*
>
> > *d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the heating intermediate air volume rate is the same as the heating full-load air volume rate determined in section 3.1.4.4.1.*

II. Application for Interim Waiver

The DOE may grant an Interim Waiver if the applicant can "demonstrate likely success of the petition for waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the petition for interim waiver."[7] LGE submits that it is likely to succeed on the merits as this Petition is predicated on the same infeasibilities of the Appendix M test procedure that were recognized and addressed by the

[6] Decision and Order Granting a Waiver to GD Midea, 83 Fed. Reg. at 56,067; Decision and Order Granting a Waiver to TCL, 84 Fed. Reg. at 11,942.

[7] 10 C.F.R. § 430.27(b)(2).

Department in granting waiver petitions to GD Midea and TCL. In addition, LGE is proposing a technically sound, proven, and easily justifiable alternative test procedure already approved by the Department to address the void in the Appendix M test procedure for similarly situated variable-speed, coil-only single-split systems produced by GD Midea and TCL.

An Interim Waiver is also warranted from a competitive standpoint, as a denial of LGE's petition would place the Company in a significant competitive disadvantage as it would not be able to rate, certify, and sell its variable-speed, coil-only single-split systems alongside its competitors' products. Public policy considerations also support granting the interim waiver because the current void in the test procedure prevents LGE from distributing products to U.S. consumers that are not only easy to install and use, but also provide significant energy efficiency savings.

III. Conclusion

LGE urges DOE to grant its Petition for Waiver and Application for Interim Waiver to test its variable-speed, coil-only single-split air conditioners and heat pumps systems as noted above. Granting LGE's Petition for Waiver will encourage the introduction of advanced technologies while providing proper consideration of energy consumption.

IV. Affected Persons

Primarily affected persons in the variable-speed, coil-only single-split air conditioner and heat pump category are identified in Exhibit 1 of this Petition. Provided DOE grants LGE an Interim Waiver, the Company will notify all of these entities as required by the Department's regulations and provide them with a version of this Petition upon publication.

Respectfully submitted,

/ s /

Jean-Cyril Walker

Enclosures

cc: Sean Kim, LG Electronics U.S.A., Inc.

BILLING CODE 6450–01–C

Exhibit 1

LGE Notification List

TABLE 1—AFFECTED COMPANY NOTIFICATION LIST

Company	Representative contact
Aaon, Inc.	*alexf@aaon.com*
Advanced Distributor Products, LLC	*greg.goetzinger@adpnow.com*
Allied Air Enterprises, LLC	*Jennifer.george@alliedair.com*
AllStyle Coil Company, LP	*justinm@allstyle.com*
Amana Company, LP	*Pete.alexander@goodmanmfg.com*
Aspen Manufacturing, LLC	*Jason.Makowski@aspenmfg.com*
AUX Air Conditioner Co., Ltd.	*Kangyuqin@auxgroup.com*
Carrier Corporation	*Matthew.P.Gunn@carrier.utc.com*
Daikin Applied Americas Inc.	*thanh.bui@goodmanmfg.com*
Daikin North America	*shinichi.nakaishi@goodmanmfg.com*
ECOER Inc.	*yeson@ecoer.com*
Enviromaster International LLC	*davdre@ecrinternational.com*
First Co.	*gwright@firstco.com*
Friedrich Air Conditioning, LLC	*pkendrick@friedrich.com*
Fujitsu General America, Inc.	*athrudekoos@fujitsugeneral.com*
GD Midea Air-Conditioning Equipment Co., Ltd.	*zhaoxh1@midea.com.cn*
GD Midea Heating & Ventilating Equipment Co., Ltd.	*yangss@midea.com*
Goodman Manufacturing Company, L.P. dba Daikin Manufacturing Company, L.P. and Goodman Company, L.P. dba Daikin Company, L.P.	*thanh.bui@goodmanmfg.com*; *james.kistler@goodmanmfg.com*
Gree Electric Appliances, Inc. of Zhuhai	*gree.certification@cn.gree.com*
Guangdong Chigo Air-conditioning Co., Ltd	*adyzang@126.com*
Guangdong Chigo Heating & Ventilation Equipment Co., Ltd	*zhujianen@chigo-cac.com*
Haier US Appliance Solutions, Inc., dba GE Appliances, a Haier Company.	*yhu@haieramerica.com*
Hisense (Guangdong) Air Conditioning Co., Ltd.	*luoguojian@hisense.com*
Ingersoll Rand Company	*jim.vershaw@irco.com*
Johnson Controls, Inc.	*jessie.a.bell@jci.com*
Lennox Industries, Inc.	*todd.mcintosh@lennoxind.com*
Mitsubishi Electric Cooling & Heating	*pdoppel@hvac.mea.com*
Mortex Products, Inc. dba Summit Manufacturing	*gpatterson@mortx.com*
National Comfort Products	*KFordJr@nrac.com*
Nortek Global HVAC LLC	*Matt.lattanzi@nortek.com*
Panasonic Corporation of North America	*hiroaki.tanaka@us.panasonic.com*
Petra Engineering Industries Co.	*m-bahaa@petra-eng.com.jo*
Qingdao Haier Air Conditioner General Co., Ltd.	*liuxuefeng@haier.com*
Refrigeration Industries Company	*edmundo.gabriel@ric.com.kw*
Rheem Sales Company, Inc.	*scott.creamer@rheem.com*
Samsung Electronics Co., Ltd.	*ck.kolandayan@samsunghvac.com*
Sharp Electronics Corporation	*tpruitt@sharpsec.com*
SpacePak, A Mestek Company	*glenz@mestek.com*
Summit Manufacturing, Inc.	*tsmall@mortx.com*
TCL Air Conditioner (ZhongShan) Co., Ltd.	kt_
Texas Furnace, LLC	*acanales@allstyle.com*
Unico, Inc.	*craig@unicosystem.com*
Villara Corporation	*radcliffb@villara.com*
Wolf Steel Ltd	*WBesada@napoleonproducts.com*
Zamil Air Conditioners & Home Appliances Co. (L.L.C.)	*sirajuddinm@zamilac.com*

[FR Doc. 2020–14402 Filed 7–2–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–482–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 17, 2020, Enable Gas Transmission, LLC. (EGT), 910 Louisiana Street, Suite 48040, Houston, Texas 77002, filed in Docket No. CP20–482–000 a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and EGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, to: (i) install a new 1.5-mile pipeline that will provide transportation service from EGT's existing Delhi Compressor Station to a tap on EGT's existing Line CP; (ii) modify the existing Delhi Compressor Station including abandonment of existing compressor units and installation of a new compressor unit package; (iii) permanently remove and relocate an existing compressor unit from EGT's White River Compressor Station to its existing Byars Lake Compressor Station; (iv) install auxiliary facilities at EGT's existing FM–63 and FM–65 receiver site; (v) install auxiliary facilities at EGT's existing Amber Junction Compressor Station; and (vi) install auxiliary facilities at EGT's existing Beirne Compressor Station.

All project work will be conducted within Clark and Jackson Counties,

Arkansas; Richland Parish, Louisiana; and Grady and McClain Counties, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Lisa Yoho, Senior Director, Regulatory & FERC Compliance, Enable Gas Transmission, LLC, 910 Louisiana Street, Suite 48040, Houston, Texas 77002, by telephone at (346) 701–2539, or by email at *lisa.yoho@enablemidstream.com.*

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 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.

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 should submit an original and two copies of the protest or intervention 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 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14423 Filed 7–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL19–4–000]

Commission Information Collection Activities; Request for Emergency Processing for FERC–6(PL)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for emergency processing.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is submitting an emergency request for the information collection, FERC–6(PL) (One-time Re-filing Under Docket PL19–4 of Page 700 of Form No. 6 (Annual Report of Oil Pipeline Companies)), to the Office of Management and Budget (OMB) for approval.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@ferc.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–6(PL), One-Time Refiling Under Docket No. PL19–4 of Page 700 of Form 6 (Annual Report of Oil Pipeline Companies).

OMB Control No.: TBD.

Type of Request: Request for Emergency Processing and Approval Pursuant to 5 CFR 1320.13.

Abstract: In the Energy Policy Act of 1992, Congress required the Commission to develop a simplified method for changing oil pipeline rates. In response, the Commission established an indexing methodology that allows oil pipelines to change rates based upon an annual industry-wide index.[1] The Commission committed to review the index level every five years to ensure that the index level continues to reflect annual industry-wide cost changes.[2] In Order No. 561 and each successive five-year review, the Commission calculated the index level based upon the Kahn Methodology, which determines the differences over the prior five-year period between changes in costs reported on page 700

[1] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. 30,985, at 30,947 (1993), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. 31,000 (1994), *aff'd, Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[2] *Id.*

of FERC Form No. 6 [3] and changes in the Producer Price Index for Finished Goods (PPI–FG). The index level is then set at PPI–FG plus (or minus) this differential. In the 2020 five-year review, the Commission will measure pipeline cost changes over the period from 2014–2019 in order to establish the index level for the five-year period from 2021–2026.

On May 21, 2020, the Commission issued a Policy Statement on Determining Return on Equity for Natural Gas and Oil Pipelines (ROE Policy Statement), in which the Commission adopted a revised methodology for determining return on equity (ROE) used to calculate oil pipelines' Annual Cost of Service on page 700 of FERC Form No. 6.[4] The issuance of the ROE Policy Statement may affect the oil pipeline industry's 2019 costs reported on page 700 that the Commission will use in the 2020 five-year review. Thus, the ROE Policy Statement encouraged pipelines to file, on a one-time basis, updated page 700 data for 2019 reflecting the Commission's revised methodology and solicited comments on this voluntary information collection pursuant to the PRA by June 26, 2020.

The Commission received five comments in response to the ROE Policy Statement, one of which addressed the information collection for oil pipelines. On June 11, 2020, Liquids Shippers Group filed a motion for reconsideration of the ROE Policy Statement and a request for expedited action (Motion). The Motion asserts that the voluntary information collection improperly gives pipelines discretion to file ROEs that are higher, which would increase the index level, while refraining from filing ROEs that are lower, which would decrease the index level. Thus, the Motion states that the information collection will bias the record in the five-year review proceeding.

The Commission will address the Motion in due course. However, the Motion should not affect the Commission's request for OMB's emergency processing and approval of the FERC–6(PL). First, the Motion does not reference the PRA or the burdens the information collection would impose. Second, the Motion addresses the information collection from the perspective of shippers, rather than pipelines that will be subject to the information collection. Third, the Motion seeks to convert this voluntary information collection into a mandatory one and implementing a mandatory collection at this time would likely delay the five-year review. Fourth, the Commission will address the merits of Liquids Shippers Group's claims regarding the calculation of the index level in the five-year review proceeding itself, where the Commission has requested comments on this very issue.[5] The effect of this data on the Commission's analysis in the five-year review will depend upon how many pipelines file updated page 700 data and the comments that the Commission receives.

Accordingly, the Commission requests that OMB review and approve FERC–6(PL) [the request to have pipelines voluntarily refile, on a one-time basis, page 700 of their 2019 FERC Form No. 6] in order to reflect the ROE Policy Statement. The Commission requests emergency processing of this information collection because this collection is essential to the mission of the Commission and public harm is reasonably likely to occur if normal clearance procedures are followed.

FERC submitted a formal request to OMB on June 29, 2020 for emergency approval of the one-time FERC–6(PL).[6] The Commission requested an OMB decision on FERC–6(PL) by July 6, 2020.

Estimate of Annual Burden.[7] The Commission estimates the annual public reporting burden and cost [8] for the information collection as:

FERC–6(PL)—ESTIMATED ANNUAL BURDEN DUE TO DOCKET NO. PL19–4[9]

[Figures may be rounded]

	Number of potential respondents	Annual number of responses per Respondent	Total number of responses	Average burden hours and cost ($) per response	Total annual burden hours and total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1) = (6)
Updated ROE Study	244	1	244	187.5 hrs.; $15,000	45,750 hrs.; $3,660,000	$15,000
Refile FERC Form No. 6, page 700	244	1	244	0.5 hrs.; $40	122 hrs.; $9,760	40
Total, Due to PL19–4	244	1	244		45,872 hrs.; $3,669,760	15,040

Dated: June 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14422 Filed 7–2–20; 8:45 am]

BILLING CODE 6717–01–P

[3] FERC Form No. 6 (OMB Control No. 1902–0022), the Annual Report of Oil Pipeline Companies, is required by 18 CFR 357.2.

[4] *Inquiry Regarding the Commission's Policy for Determining Return on Equity,* 171 FERC 61,155 (2020).

[5] *Five-Year Review of the Oil Pipeline Index,* 171 FERC 61,239 at PP 2, 8.

[6] The request pending at OMB (ICR 202005–1902–002) for approval of the voluntary re-filing of Page 700 of the FERC Form No. 6 will be retracted. It is being replaced by the request for emergency approval of the FERC–6(PL).

[7] Burden is 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 Title 5 of Code of Federal Regulations 1320.3.

[8] The Commission staff estimates that the industry's skill set and cost (for wages and benefits) for performing the ROE study and completing and filing FERC–6(PL) is comparable to the Commission's skill set and average cost. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year or $80.00/hour.

[9] The Commission staff has conservatively assumed a 100 percent voluntary response rate.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10674–017]

Kaukauna Utilities; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Kimberly Hydroelectric Project (project), located on the Lower Fox River near the Village of Kimberly in Outagamie County, Wisconsin.

The environmental assessment (EA) analyzes the potential environmental effects of continuing to operate the project, and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)-208–3676, or for 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.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments 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. Please put docket number ''P–10674–017'' on the first page of your response.

For further information, please contact Colleen Corballis by phone at (202) 502–8598, or by email at *colleen.corballis@ferc.gov.*

Dated: June 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14424 Filed 7–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–460–000]

Northern Natural Gas Company; Notice of Schedule for Environmental Review of the Clifton to Palmyra A-Line Abandonment Project

On May 21, 2020, Northern Natural Gas Company (Northern) filed an application in Docket No. CP20–460–000 requesting abandonment authorization and a Certificate of Public Convenience and Necessity pursuant to Section 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities. The proposed project is known as the Clifton to Palmyra A-Line Abandonment Project (Project), and Northern states it would enhance the safety, security, and operational efficiency of its pipeline system.

On May 28, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—September 16, 2020
90-day Federal Authorization Decision Deadline—December 15, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Northern proposes to abandon in-place a total of approximately 115.9 miles of its M600A and M590A 24-inch-diameter pipeline and M600J 20-inch-diameter pipeline (collectively referred to as the A-line) from Clifton, Kansas to Palmyra, Nebraska. The Project is located in Clay and Washington Counties, Kansas, and Gage, Jefferson, Lancaster, and Otoe Counties, Nebraska. Northern also would increase compression capacity at its existing Beatrice Compressor Station in Gage County, Nebraska, to replace the lost capacity from the proposed abandonment.

Background

On June 9, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Palmyra to Clifton A-line Abandonment Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* and follow the instructions to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the *https://elibrary.ferc.gov/idmws/search/fercgensearch.asp''eLibrary* link, enter the selected date range, the Docket Number excluding the last three digits (*i.e.,* CP20–460), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at*FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dates: June 29, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14421 Filed 7–2–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0598; FRL–10011–45–OAR]

Petition for Partial Reconsideration of Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action denying petition for reconsideration.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for partial reconsideration of a final rule under the Clean Air Act (CAA) published in the **Federal Register** on September 29, 2017, titled, ''Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas.'' This rule removed Texas from the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), and affirmed the continued validity of the EPA's 2012 determination that participation in CSAPR meets the Regional Haze Rule's criteria for an alternative to the application of source-specific best available retrofit technology (BART). The November 28, 2018, petition, submitted by Sierra Club and the National Parks Conservation Association, requested that the EPA reconsider the latter aspect of the rule. The EPA has denied the petition in a letter to the petitioners for reasons the EPA explains in that document.

FOR FURTHER INFORMATION CONTACT: Corey A. Mocka, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Mail Code C539–04, Research Triangle Park, N.C. 27711; phone number: (919) 541–5142; email address: *mocka.corey@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

This **Federal Register** notice, the petition for reconsideration, and the response letter to the petitioner are available in the docket that the EPA established for the rulemaking, under Docket ID NO. EPA–HQ–OAR–2016–0598.

All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Out of an abundance of caution for members of the public and our staff, the EPA is temporarily suspending the Docket Center and Reading Room for public visitors 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 and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our federal partners so we can respond rapidly as conditions change regarding COVID–19.

In addition, the EPA has established a website for visibility and regional haze rulemakings at: *https://www.epa.gov/visibility.* This **Federal Register** notice, the petition for reconsideration, and the response letter denying the petition are also available on this website along with other information.

II. Judicial Review

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

This action is a denial of an administrative petition requesting reconsideration of an aspect of a final rule, ''Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas,'' 82 FR 45481 (September 29, 2017). That rule is nationally applicable; in addition, to the extent that rule may be found to be locally or regionally applicable, the EPA found in that rule that it is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). *See* 82 FR at 45495–96. Further, that rule is currently being challenged in the Court of Appeals for the District of Columbia Circuit.[1] For the same reasons set forth in that rule, 82 FR at 45495–96, this action denying a petition for reconsideration of that rule is nationally applicable and, in addition, to the extent this action may be found to be locally or regionally applicable, the Administrator finds that the action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petition for review of this action denying the petition for reconsideration must be filed in the Court of Appeals for the District of Columbia Circuit on or before September 4, 2020.

Andrew Wheeler,

Administrator.

[FR Doc. 2020–14409 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–02–2019–2033; FRL–10011–82–Region 2]

Proposed CERCLA Cost Recovery Settlement for the Old Roosevelt Field Contaminated Groundwater Area Superfund Site, Town of Hempstead, Nassau County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed cost recovery settlement agreement pursuant to CERCLA with Johnson & Hoffman, LLC, Ansaco Properties One, LLC, and Ansaco, LLC (''Settling Parties'') for the Old Roosevelt Field Contaminated Groundwater Area Superfund Site (''Site''), Town of Hempstead, Nassau County, New York.

[1] *Nat'l Parks Conservation Ass'n* v. *EPA,* No. 17–1253 (D.C. Cir., filed November 28, 2018).

DATES: Comments must be submitted on or before August 5, 2020.

ADDRESSES: Comments can be sent via email to Elizabeth Leilani Davis at *davis.leilani@epa.gov.* Comments should reference the Old Roosevelt Field Contaminated Groundwater Area Superfund Site, Town of Hempstead, New York, Settlement Agreement for Recovery of Response Costs, Index No. CERCLA–02–2019–2033.

The proposed settlement is available for public inspection at this weblink:*https://semspub.epa.gov/src/document/02/598770.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Leilani Davis, Attorney, Office of Regional Counsel, New York/Caribbean Superfund Branch, U.S. Environmental Protection Agency. Email: *davis.leilani@epa.gov.* Telephone: 212–637–3249.

SUPPLEMENTARY INFORMATION: Under the settlement, EPA will receive from the Settling Parties $207,000.00 in past response costs with respect to the Site. The settlement provides, in exchange for the above payment, a covenant not to sue by EPA or to take administrative action against the Settling Parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site. For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection online and/or at EPA Region 2, 290 Broadway, New York, NY 10007–1866.

Pasquale Evangelista,

Director, Superfund & Emergency Management Division, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2020–14459 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10011–26–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protect ion Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually July 24 and 27, 2020. The CHPAC advises the Environmental Protection Agency (EPA) on science, regulations and other issues relating to children's environmental health.

DATES: July 24, 2020 from 1 p.m. to 6 p.m. and July 27, 2020 from 1 p.m. to 6 p.m.

ADDRESSES: The meeting will take place virtually. If you want to listen to the meeting or provide comments, please email *louie.nica@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Nica Louie, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–7633 or *louie.nica@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Nica Louie at 202–564–7633 or *louie.nica@epa.gov.*

Dated: June 30, 2020.

Nica Mostaghim,

Environmental Health Scientist.

[FR Doc. 2020–14455 Filed 7–2–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 20–158; DA 20–581; FRS 16865]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice of availability; request for comments.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (the Bureau) announces the availability of the FCC Public Notice seeking comment on whether certain docketed Commission proceedings should be terminated as dormant.

DATES: Comments are due on or before August 5, 2020, and reply comments are due on or before August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Zac Champ, Consumer and Governmental Affairs Bureau at: (202) 418–1495 or email*Zac.Champ@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, CG Docket No. 20–158; DA 20–581, released on June 2, 2020. The full text of this document, including instructions on how to file comments; the spreadsheet associated with document DA 20–581 listing the proceedings proposed for termination; and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS at: *https://www.fcc.gov/ecfs/.* Document DA 20–581 and the spreadsheet associated with document DA 20–581 listing the proceedings proposed for termination can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/document/cgb-seeks-comment-termination-certain-proceedings-dormant-2.*

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/fcccloses-headquarters-open-window-and-changes-hand-delivery-policy.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the respective dates indicated in the **DATES** section of this document.

Federal Communications Commission.

Gregory Haledjian,

Legal Advisor,Office of the Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2020–14345 Filed 7–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0855; FRS 16904]

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 September 4, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via *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: 3060–0855.

Title: Telecommunications Reporting Worksheets and Related Collections, FCC Forms 499–A and 499–Q.

Form Number(s): FCC Forms 499–A and 499–Q.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents and Responses: 6,900 respondents; 41,250 responses.

Estimated Time per Response: 0.25 hours–25 hours.

Frequency of Response: Annually, quarterly, recordkeeping and on occasion reporting requirements.

Obligation To Respond: Mandatory. Statutory authority for this collection of information is contained in 151, 154(i), 154(j), 155, 157, 159, 201, 205, 214, 225, 254, 303(r), 715 and 719 of the Act, 47 U.S.C. 151, 154(i), 154(j), 155, 157, 159, 201, 205, 214, 225, 254, 303(r), 616, and 620.

Total Annual Burden: 252,025 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will allow respondents to certify that data contained in their submissions is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the FCC worksheets. If the Commission receives a request for or proposes to disclose the information, the respondent would be required to make the full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission.

Needs and Uses: This information collection requires contributors to the federal universal service fund, telecommunications relay service fund, and numbering administration to file, pursuant to sections 151, 225, 251 and 254 of the Act, a Telecommunications Reporting Worksheet on an annual basis (FCC Form 499–A and/or on a quarterly basis (FCC Form 499–Q). The information is also used to calculate FCC regulatory fees for interstate telecommunications service providers.

Federal Communications Commission.

Cecilia Sigmund,

Associate Secretary, Office of the Secretary.

[FR Doc. 2020–14348 Filed 7–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov*, or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201062–004.

Agreement Name: Lease and Operating Agreement Between Philadelphia Regional Port Authority and Penn City Investments, Inc.

Parties: Philadelphia Regional Port Authority and Penn City Investments, Inc.

Filing Party: Michael Deutsch; Thompson Coburn LLP.

Synopsis: The enclosed Amendment No. 4 amends the lease to document that Penn City Investments, at the direction of the Port, has vacated and ceased operations at Piers 38–40, Pier 80 Annex, and Pier 78. As noted in Amendment No. 4, Penn City Investments continues to operate Pier 80, Pier 74 Annex, and Pier 78 Annex (collectively, the ''Retained Premises''). Amendment No. 4 also contains provisions regarding rent at the Retained Premises and other miscellaneous changes.

Proposed Effective Date: 6/15/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/21357.

Agreement No.: 012206–004.

Agreement Name: Grimaldi/''K'' Line Space Charter Agreement.

Parties: Grimaldi Deep Sea S.P.A.; Grimaldi Euromed S.P.A.; and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment adds Mexico to the geographic scope of the Agreement.

Proposed Effective Date: 6/16/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/253.

Dated: June 29, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–14305 Filed 7–2–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than August 5, 2020.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *First Citizens Bancshares, Inc., Raleigh, North Carolina,* to retain 5.05 percent and acquire solely as a result of stock redemptions up to 9 percent of the voting shares of Commerce West Bank, Irvine, California.

Board of Governors of the Federal Reserve System, June 30, 2020.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2020–14450 Filed 7–2–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 21, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Nancy Kay Toppenberg, Newton, Iowa, together with Linda Louise Fleagle and Jerry Lee Fleagle, both of Coralville, Iowa, and Brian Toppenberg, Norwalk, Iowa;* as a group acting in concert, to acquire voting shares of First State Bank Holding Company, and thereby indirectly acquire voting shares of First State Bank, both of Lynnville, Iowa.

B. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Selwyn Isakow, LaJolla, California;* to acquire additional voting shares of Private Bancorp of America, Inc., and thereby indirectly acquire voting shares of Calprivate Bank, both of LaJolla, California.

Board of Governors of the Federal Reserve System, June 30, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14434 Filed 7–2–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Tuesday, July 14, 2020, from 10:00 a.m. to 1:15 p.m.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Monday, July 6, 2020. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427–1128.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Tuesday, July 14, 2020, the Council meeting will convene at 10:00

a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting will begin with an update on AHRQ's recent accomplishments in Research, Practice Improvements and Data and Analytics. The agenda will also include an update on AHRQ and COVID–19 and a presentation on Improving Health Services Research Across the Federal Enterprise. The meeting will adjourn at 1:15 p.m. The meeting is open to the public. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to *https://www.ahrq.gov/news/events/nac/.*

The final agenda will be available on the AHRQ website no later than Tuesday, July 7, 2020.

Dated: June 29, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–14336 Filed 7–2–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC); Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC); July 22, 2020, from 10:00 a.m. to 01:00 p.m., EDT (OPEN) and July 22, 2020, from 01:45 p.m. to 04:15 p.m., EDT (CLOSED), Teleconference 1–800–369–3110; Participant Code 7563795, which was published in the **Federal Register** on May 20, 2020, Volume 85, Number 98, pages 30709–30710.

The meeting is being amended to extend the oral public comment period during the open session, change the time of the closed session, and request written comments by email submission; and should read as follows:

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC). This meeting is partially open and partially closed to the public. The open session is limited only by the ports available. There will be 2,000 telephone ports available. There will also be 55 minutes allotted for oral public comments at the end of the open session from 12:20 p.m. to 1:15 p.m., EDT on July 22, 2020. In addition, written comments may also be submitted for the meeting record. Written comments should be emailed to *NCIPCBSC@cdc.gov* and will be accepted until July 28, 2020, 5:00 p.m., EDT.

The public is encouraged to register to participate by telephone and/or provide oral public comment using the registration form available at the link provided: *https://www.surveymonkey.com/r/NVV9XM2.*

Individuals registered to provide oral public comment will be called upon to speak based on the order of registration. After persons who have registered have spoken, any remaining time in the oral public comment period will be used for members of the public who have not registered to speak but wish to offer comment. Individuals making oral public comment during the meeting will have a 2-minute speaking limit to allow for as many comments as possible.

DATES: The meeting will be held on July 22, 2020, 10:00 a.m. to 1:15 p.m., EDT (OPEN) and July 22, 2020, 2:00 p.m. to 4:30 p.m., EDT (CLOSED).

FOR FURTHER INFORMATION CONTACT: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop S106–9, Atlanta, GA 30341, Telephone (770) 488–3953, Email address: *NCIPCBSC@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–14447 Filed 7–2–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2020–0051]

Request for Information Concerning Personnel and the Retention of Next Generation Sequencing Data in Clinical and Public Health Laboratories; Extension of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 15, 2020, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) published a notice in the **Federal Register** requesting public comment on the Request for Information Concerning Personnel and the Retention of Next Generation Sequencing Data in Clinical and Public Health Laboratories (85 FR 29456). Written and electronic comments were to be received on or before July 14, 2020. HHS/CDC has received a request asking for a 60-day extension of the comment period. In consideration of this request, HHS/CDC is extending the comment period to September 14, 2020.

DATES: Written comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0051 by any of the following methods only. CDC does not accept comment by email.

Internet: Access the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail: Heather Stang, MS, MT, Division of Laboratory Systems, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, GA 30329. Docket No. CDC–2020–0051.

All relevant comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the plan, please access *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Stang, MS, MT, Center for Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, GA 30329, telephone (800) 232–4636; email: *dlsinquiries@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data about topics related to personnel performing informatics activities, as well as data storage and retention practices related to the use of next generation sequencing (NGS) technology. In addition, CDC invites comments specifically on the following questions:

(1) What are the roles and responsibilities for all personnel performing bioinformatics or pathology/laboratory informatics activities? What training is considered essential for each of the roles? What competencies are considered essential for each of the roles? What minimum educational requirements (degrees or courses) are required for each of the roles?

(2) What are the challenges for recruitment and retention of bioinformatics or pathology/laboratory informatics personnel?

(3) What are examples of how NGS data files are used in addition to generating a clinical test result?

(4) What NGS data files should be retained for quality assurance, repeat analyses, or subsequent analyses? How long should these NGS data files be retained?

(5) What are the challenges and approaches for laboratories to maintain and utilize previous versions of sequence analysis software?

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure.

Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that

identifies you in the body of your comments, that information will be on public display. Do not submit public comments by email. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign.

Background and Brief Description

Clinical laboratory testing technology has advanced significantly since the CLIA regulations were first implemented approximately 30 years ago. Next generation sequencing (NGS) technologies provide the high-throughput capability to rapidly and cost-effectively sequence large regions and mixed populations of DNA and RNA, when compared to traditional sequencing methods. This technology results in a significant increase in data that requires specialized analysis to derive a clinically meaningful result. NGS has led to improvements in diagnoses and patient care in many areas of medicine that include medical genetics, pediatrics, oncology, and microbiology. In some instances, NGS has led to life-saving diagnoses and treatment pathways, not achievable using other testing modalities. One element that differentiates NGS from most laboratory methodologies is its significant reliance on informatics to achieve a meaningful and reportable result. As a consequence, clinical laboratories require personnel knowledgeable in bioinformatics or pathology/laboratory informatics to design and manage the bioinformatics analysis.

While CLIA regulations apply to clinical NGS testing, there is a lack of clarity regarding how the general CLIA quality system and personnel requirements should be specifically implemented for the NGS bioinformatics components. In April 2019, CLIAC made eight recommendations regarding CLIA's application to NGS-based technologies. This request for information is soliciting comments from the public for more information on topic areas mentioned in two of the recommendations, specifically, the qualifications of personnel performing bioinformatics activities; storage and retention of NGS data files; and maintenance of sequence analysis software. The April 2019 CLIAC summary is available in the docket under the Supporting Materials tab and at *https://www.cdc.gov/cliac/past-meetings.html.*

The qualifications and responsibilities of personnel performing the informatics component of the testing process are not addressed in the CLIA regulations. For the purpose of this request for information, the informatics component of NGS includes the analysis of NGS machine-generated data and subsequent computational processes. Therefore, CDC is asking the public to describe different responsibilities of personnel providing bioinformatics or pathology/laboratory informatics expertise such as validating and assuring that the informatics pipeline meets documented performance specifications.

CDC is also interested in learning the skills, training, and education of personnel who will fill bioinformatics or pathology/laboratory informatics positions, and how clinical and public health laboratories can recruit and retain personnel with these identified skills.

Lastly, the NGS testing process generates large amounts of data and requires multiple file types. CLIA regulations specify at 42 CFR 493.1105(a)(3) that all

analytic systems records must be kept for at least two years, but the regulations do not specify the types of data to be captured or the retention time for a given data type. The regulations do not address the capability to access and reanalyze the data after the test is performed. This capability may require retention of the version of software used in the original analysis. CDC requests comment from the public on this topic.

HHS/CDC has posted all related materials to the docket on *www.regulations.gov.*

Dated: June 30, 2020.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2020–14417 Filed 7–2–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20GX]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Validated Follow-up Interview of Clinicians on Outpatient Antibiotic Stewardship Interventions to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 10, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, 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.

Proposed Project

Validated Follow-up Interview of Clinicians on Outpatient Antibiotic Stewardship Interventions—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Code of Federal Regulations under subsections C and D of section 247d–5 authorizes education of medical and health services personnel in antimicrobial resistance and appropriate use of antibiotics and the funding of eligible entities to increase capacity to detect, monitor, and combat antimicrobial resistance. Through the Centers for Disease Control and Prevention's (CDC) SHEPheRD funding mechanism, the University of Utah has been awarded a contract to perform such work as stated above within a research framework in the urgent care setting, with interventions based on the Core Elements of Outpatient Antibiotic Stewardship. Intermountain Healthcare is the subcontractor for this work, and operates the clinics participating in the intervention arm of this research study.

The proposed request for data collection will allow Intermountain Healthcare to explore knowledge, attitudes, and practices among clinicians to identify barriers and facilitators after the implementation of the antibiotic stewardship program in the urgent care setting of participating clinics. CDC requests approval for 207 estimated annualized burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Urgent Care Clinician	Interview Guide	40	1	1
Urgent Care Clinician	Survey	250	1	40/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–14330 Filed 7–2–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3018]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Healthcare Provider Perception of Boxed Warning Information Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 5, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comment'' or by using the search function. The title of this information collection is ''Healthcare Provider Perception of Boxed Warning Information Survey.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Healthcare Provider Perception of Boxed Warning Information Survey

OMB Control Number 0910—NEW

I. Background

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The proposed collection of information will investigate healthcare providers' (HCPs') awareness, perceptions, and beliefs about the benefits and risks of an FDA-approved product that carries a boxed warning. The prescribing information for an FDA-approved drug or biologic (sometimes

referred to as the ''PI'', ''package insert'', or ''prescription drug labeling'') provides a summary of the essential information needed for the safe and effective use of that medication, described in FDA guidance entitled ''Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biologic Products—Content and Format,'' published in October 2011 (*https://www.fda.gov/media/71866/download*). In certain situations, a drug's prescribing information may include a boxed warning in addition to other sections of the labeling to highlight important safety information about specific serious risks of that drug. Boxed warning information may be included as part of prescribing information at the time of FDA approval. Boxed warning information may also be added or modified to the prescribing information of drugs already on the market on the basis of new safety information.

Boxed warnings are an important and frequently used communication tool. A review of literature has suggested that the addition or modification of boxed warning information in the postmarket setting (after a drug has been approved) has had varying effects on HCPs' practices regarding prescribing, dosing, and patient monitoring (Ref. 1). However, this review and others have identified several gaps in the existing literature, including the limited number of drugs or drug classes studied (Ref. 2). Further, little research has focused on understanding *how* HCPs receive, process, and use boxed warning information to support their treatment decisions and patient counseling.

To address this research gap, we propose conducting a web-based survey of HCPs. The proposed collection of information will strengthen FDA's understanding of how HCPs may receive, process, and use boxed warning and other safety labeling information. This survey will be conducted as part of a mixed methods research approach to explore HCPs' beliefs (or ''mental models'') about the benefits and risks of a drug that carries a boxed warning and how the drug's boxed warning information may influence their communication with patients, their treatment decisions and related decisions such as prescreening for risk factors or monitoring for adverse events (Ref. 3). This survey research will build upon preliminary qualitative research FDA has conducted, under OMB control number 0910–0695, with HCPs in this target population, through indepth individual interviews.

The general research questions in this data collection are as follows:

1. What awareness, knowledge, and beliefs do HCPs have regarding boxed warning information for a prescription drug or class of drugs?

2. When making prescribing decisions, how do HCPs consider boxed warning information about a potential treatment? How does boxed warning information factor into their assessments of a drug's potential benefits and risks to their patients?

3. How do HCPs communicate with their patients about boxed warning information?

4. What factors (e.g., experience treating a condition) are associated with HCPs' awareness, knowledge, and beliefs about boxed warning information?

In order to explore a range of potential perceptions and uses of boxed warning information that may exist under different contexts, this survey research will evaluate two medical product scenarios involving an FDA-approved medication or class of medications that include boxed warning information. The scenarios will include pertinent prescribing information from the FDA-approved labeling for these medications. We plan to conduct one pretest survey with 50 voluntary participants and one main survey with 1,156 voluntary participants. The survey will be conducted online. Survey response is estimated to take no longer than 20 minutes.

Participants in the pretest survey and main survey will be recruited online through a web-based HCP survey research panel. Participants will be HCPs with prescribing authority who prescribe medications to treat one of medical conditions in the medical product scenarios. Participants will include primary care providers (including internal medicine, family medicine, and general medicine, as well as nurse practitioners, and physician assistants) and relevant medical specialists. Participants will be screened for their current amount of time spent in direct patient care, prescribing volume, and experience treating the relevant medical condition. Demographic soft quotas will be used to help ensure that the survey population is generally reflective of the demographic composition of physicians in the United States, according to the American Medical Association.

The pretest and main studies will have the same design and will follow the same procedure. In advance of the pretest survey, we will conduct cognitive testing of the survey questionnaire to refine the survey instruments. The main survey will be refined as necessary following the pretest survey.

In the **Federal Register** of August 8, 2019 (84 FR 38996), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received three comments that were PRA related. Below is a response to each of the commenters' questions. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. The entirety of the public comments was considered even if not fully captured by our paraphrasing in this document.

(Comment 1) The first public comment ''agrees with the data collection,'' but finds the intent of the data collection unclear and expresses concern that ''the data will be collecting in the survey will be used adversarially [sic] [against providers]''. The commenter described experiences ''as a healthcare provider, [battling] daily with both ends of the spectrum,'' including patients who want a ''brand new drug'' even though it will likely provide little therapeutic benefit, as well as patients who would benefit from a product but ''adamantly refuse based on a [boxed warning].'' The commenter further stated that ''As a provider, I can present the information I have at hand, but how do I combat new information that is identified specifically, a [boxed warning] post prescribing a new medication?''

(Response 1) FDA appreciates the commenter's experience, which is relevant to the research question that the proposed data collection is intended to inform: how HCPs consider boxed warning information when making treatment decisions and how they communicate boxed warning information to their patients. As described in Section A.2, the intent of the data collection to better understand the range of HCPs' experiences and informational needs regarding boxed warning information.

(Comment 2) The second public comment expressed concern regarding how ''[a] voluntary commitment to participating in a professional assessment survey demonstrates some level engagement and awareness [and therefore this] survey will assess an already engaged section of providers, potentially skewing the data.''

(Response 2) In accordance with the requirements set forth by institutional review boards and OMB, any research must involve voluntary participation of research participants. FDA acknowledges there may be a coverage

bias from the use of an opt-in web panel as a sample frame (*i.e.,* HCPs who choose to be part of a research panel may differ from HCPs who do not choose to be part of a research panels). As a basic check, in our analysis of the study findings, we will compare the demographic characteristics of the population of survey respondents to the population of U.S. prescribers within the relevant medical specialties. We will document the nature and limitations of our sampling frame and the potential implications of that on the interpretation of the research findings.

(Comment 3) The third public comment comprised 2 overarching comments (3a and 3b below) and 13 additional (3c to 3p) comments on individual items on the questionnaire, to which we have responded below.

(Comment 3a) We recommend considering two different ''archetypes'' for the medical product scenarios to gain insight on different situations. Consideration should be given to a drug/class with specific risk factors identified in a BW [boxed warning], a drug/class launched with a BW, or drug/class with a BW that was established post approval.

(Response 3a) FDA agrees with the importance of capturing different archetypes (*e.g.,* characteristics or features) of the medical scenario and of the boxed warning. The identified scenarios, vaginal inserts to treat vulvo-vaginal atrophy (VVA) in post-menopausal women and direct-acting antivirals to treat chronic hepatitis C viral (HCV) infection were identified because they differ along some important characteristics. These characteristics include seriousness of condition, characteristics of the safety concerns, length and nature of the boxed warning information, and length of time since the boxed warning was included.

(Comment 3b): We also recommend that FDA consider additional study designs such as retrospective analysis on prescribing habits. Data could be collected on prescribing habits of medications before and after inclusion of a BW in labeling. This study could be used as a complementary evaluation on the understanding the impact of BW.

(Response 3b): FDA agrees that there is value in complementary research approaches using the same scenarios and appreciate the suggestion. We will explore the feasibility of undertaking a related outcomes-focused study looking at prescribing behaviors in future studies.

(Comment 3c): In an effort to streamline the questionnaire, [we] recommend considering the removal of [Question 1] and relying on Questions 2 to 6 to assess the level of experience.

(Response 3c): FDA appreciates feedback suggesting opportunities to streamline the questionnaire, and we have considered appropriate ways to streamline. Q1 elicits a self-assessment of their level of experience treating the scenario condition, which provides very important context for understanding HCPs' perceptions. This concept is distinct from concepts elicited in Q2 to 6. For example, a self-assessment of experience with a condition may not be associated with the number of patients the HCP currently sees.

(Comment 3d): [We] recommend consolidating Q5 and Q6 into a single question. . . [and] including the drug of interest in the list of options [and] adjusting the [choice] selections so that they become mutually exclusive. [We] would further recommend screening out physicians from taking remainder of the survey that do not prescribe drugs with BW based on their responses to Q4 to 6.

(Response 3d): In the questionnaire draft that the commenter reviewed, Q5 asks respondents how often they prescribe the scenario drug and Q6 ask how often they prescribe a number of other types of products that FDA believes providers may be using to treat the condition. In the revised questionnaire (now Q4 and Q5), we keep the two questions as separate, but we have greatly simplified the latter (now Q5) so that it does not elicit prescribing rates, but rather asks respondents to indicate which treatments they have used in a typical month. The elicitation of the frequency (''a few times per month, a few times a year, etc.'') is important with respect to the scenario drug. We have modified the response items to be mutually exclusive.

Potential participants are screened based on their experience with treating each of the medical conditions, but not based on their prescribing behavior regarding any the particular product. For the purposes of this research, exclusion due to not prescribing the specific product with the boxed warning is not appropriate, as long as the healthcare provide meets the other criteria. If, for example, a provider chooses categorically not to prescribe a particular product that has a boxed warning, it could be driven in part by his or her perception of the boxed warning information. We are still interested in this prescriber's perception of the benefits and risks of the scenario product.

(Comment 3e): There may be a need to differentiate HCPs who initiate vs. those that refill, therefore [we] recommend including a question to ask what % of prescriptions are initiated vs. refill.

(Response 3e): FDA agrees that there may be a need to differentiate HCPs who initiate vs. those who only prescribe refills for the scenario drug. The revised questionnaire (question 4a) now allows differentiation between HCPs who initiate prescriptions versus HCPs who have only prescribed a refill for the scenario drug.

(Comment 3f): The description of patient and condition will likely influence the responses and the physicians' consideration of the BW. [We] recommend taking into consideration where the patient is in the treatment journey and where the drug with the BW is in the treatment algorithm. The instructions also imply that this treatment must only be prescribed to females. If the treatment is not limited to females [we] recommend modifying the instructions to be more general neutral.

(Response 3f): Where the patient is in the treatment journey and where the treatment is within the treatment algorithm are important concepts. The descriptions of the patient and condition in the revised questionnaire [preceding Q6] identify where the patient is in the journey, and the scenarios were constructed such that the scenario drug with the BW would be considered a commonly considered treatment option for patients who fit the patient description. One of the scenarios [estrogens to treat VVA] is only applicable to females. The patient description in the HCV scenario questionnaire has been modified to be gender neutral and to apply to patients in general that the responder sees, not a specific patient.

(Comment 3g): [We] recommend asking an additional question after Q7 and 8 to assess reasoning by respondent. This approach can provide an initial indicator of unaided awareness and impact of BW for HCPs. For example, [we] propose: ''what are your safety concerns when considering [drug] for patients [open end].''

(Response 3g): FDA agrees that eliciting this type of information from respondents is very important. The questionnaire includes a very similar open-ended question [Q11 in the revised questionnaire] to elicit the potential rare but serious side effects that the respondent discusses with patients. In an attempt to minimize respondent burden, we therefore did not add the suggested questions because it would be redundant.

(Comment 3h): A physician's response may be dependent on the

condition and the contributions of symptoms to the condition. [We] request rational for inclusion of Q9 to 11 on earlier phase of condition and Q7 to 8 related to more specific patient and condition descriptions.

(Response 3h): In the questionnaire draft that the commenter reviewed included two descriptions. The first description referenced an individual patient with specific characteristics of relevance to the prescribing scenario. With the second description, respondents were asked to think about a broader patient population. Based on the commenter's feedback as well as the results of the cognitive interviewing, we have revised the scenario description to have a single prototypical description of a population of patients of relevance to the prescribing scenario. For example, the scenario used for the VVA questionnaire states: ''For the next few questions, we would like you to consider your patients who are postmenopausal women complaining of symptoms such as vaginal itching and discomfort or pain during intercourse. They have previously tried over-the-counter ointments with little success.''

(Comment 3i): [Regarding Q12] Because risk/benefit considerations will likely be a key factor in deciding whether to prescribe the drug, [we] recommend including risk/benefit as a possible selection. Relevant for inclusion of the selection ''This patient's preference about mode of administration'' will be depending on the available treatment options for condition selected. [We] recommend adding an option in Q12 of ''other (specify)'' instead of including Q12OTH as a separate question. This approach will enable respondents to rank another option.

(Response 3i): FDA agrees that risk/benefit is a critical assessment and factor into HCPs' decisions whether to prescribe a drug, and there are multiple questions in the questionnaire designed to get at this overarching judgment of the respondent. In the questionnaire draft that the commenter reviewed, Q12 (Question 11 in the revised questionnaire) asks respondents to indicate the specific factors that play the most important role when deciding whether or not to prescribe the scenario drug. These factors include separate considerations on both the risks and benefits, such as ''patient's understanding of and comfort with the risks of this medication'' and medical history as part of ''patient's medical and health context.'' We did not include a risk/benefit as an option because that would be redundant. We did, however, address the commenter's recommendation about Q12OTH (a question to allow for the respondent to identify other factors). Question 11 in the revised questionnaire now includes an option: ''other (please specify)'', rather than asking it as a separate question. Should the survey respondent feel that we left out risk/benefit assessment as a separate factor, they may input this in the ''other (specify)'' field.

(Comment 3j): [Regarding Q12l] [We] recommend inclusion of a description of the specific risks in BW instead of the proposed option ''risks outlined in the boxed warning.''

(Response 3j): FDA believes the commenter meant to reference Question 15l. In the questionnaire draft that the commenter reviewed, question 15l asks respondents to indicate specific risks (multiple choice) they discuss with the patient about the product. In the revised question, we modified this to an open-ended question, intentionally designed to elicit spontaneous response about the rare but serious side effects that they discus. Further on in the survey is a specific recall question asking respondents to identify the risks (multiple choice) they recall being discussed in the boxed warning for the specific product.

(Comment 3k): [We] recommend moving Question 17 and 18 to the end of the survey, as they seem less important than the following questions 19–22.

(Response 3k): In the questionnaire draft that the commenter reviewed, Q17 and Q18 ask respondents to indicate where they typically look for information about the scenario drug or other similar products (medical journals, search engines, etc.). In the revised draft, we have simplified Q17 and Q18 into a single question (now Q15). In light of this comment, we considered other placements for this question. We believe placement of this question is justified as the last question respondents' answer regarding their overall perceptions regarding the scenario drug before they move to focusing their attention on the boxed warning information specifically. We could not determine a better place later in the questionnaire to include this question because it would require the respondent to go back to thinking broadly about information sources.

(Comment 3l): Consider moving this general perception question 19 about BW earlier in the survey.

(Response 3l): The placement of this question is deliberate. In the questionnaire draft that the commenter reviewed, Q19 ask respondents their opinion of the primary role of a boxed warning (*e.g.,* ''to highlight the most serious potential risks of the product; to disclose clinical trial and other product safety testing information.''). This questionnaire has been specifically designed to not prime respondents to think about boxed warnings at the start of the questionnaire. We do not disclose that the scenario product carries a boxed warning, nor does it elicit respondents' perception of boxed warnings until they have provided their overall perceptions of the safety and benefit-risk profile of the scenario product. The intent is to generate and see if concerns about the information relayed in the boxed warning spontaneously arises. The first mention of boxed warning appears immediately before Q19 (now Q16 in the revised questionnaire): ''The next questions refers to the boxed warning information on the product labeling for [drug].'' Because of this, we have left the question as is in the revised questionnaire.

(Comment 3m): Assuming the drug with the BW referenced in the rest of the survey is the BW explicitly shown at this point in the survey, [we] recommend not allowing respondents to go back to ''correct'' previous answers.

(Response 3m): FDA agrees with the commenter's suggestion, and we have set the programming language of the web-based questionnaire to not allow respondents to go back and change their answers.

(Comment 3n): Please provide rationale for the relevance of asking Question 28_H.

(Response 3n): In the questionnaire draft that the commenter reviewed, Q28_H asks respondents to provide their estimate of how many prescription drugs they think carry a boxed warning. The question has less relevance compared to other questions in the questionnaire, and it did not add value in the cognitive interviews. Therefore, to address this comment, we excluded the question in the revised questionnaire.

(Comment 3o): Assessing ''favorability'' of a BW is an awkward question. Recommend revising Q29 to an agreement statement. For example, ''BW provides important information to me.'' If Question 29 is revised, then recommend removing Q30.

(Response 3o): In the questionnaire draft that the commenter reviewed, Q29 asks the respondent to rate how favorable their opinion is of boxed warnings in general. This question is intended to provide an overall assessment of boxed warnings. The question was not confusing to participants in the cognitive interviews. In addition, another question (Q23 in

the revised questionnaire) asks level-of-agreement questions very similar to the type of question the commenter proposes (*e.g.,* ''I counsel my patients differently when prescribing a product with a boxed warning.''). The revised questionnaire, however, excludes the open-ended Q30 in the revised questionnaire, in an effort to streamline the survey and reduce respondent burden.

(Comment 3p): [We] recommend adding an option ''I'm not sure/I don't know/I'm not familiar'' to Questions 2, 3, 4, 7, 8, 12, 14, 15, 23, 24, 25, 28, 29.

(Response 3p): FDA reviewed the survey and added an Unsure/Don't know option where we deemed appropriate: Qs 2, 3, 4, 28, 29. Questions 8 and 25 were removed. Q23 has an ''Other (specify)'' option where participants can elaborate if they are unable to choose an answer. For certain key questions that elicits respondents' opinions (Qs 7, 12, 14, 15, 24), we did not add Unsure/Don't know in order to encourage them to thoughtfully pick an answer. However, participants can proceed through the questions without providing an answer, if they wish.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest Screener	84	1	84	0.05 (3 minutes)	4
Pretest Informed Consent	50	1	50	0.05 (3 minutes)	2
Pretest Survey Completes	50	1	50	0.28 (17 minutes)	14
Main Survey Screener	1,927	1	1,927	0.05 (3 minutes)	96
Main Survey Informed Consent	1,156	1	1,156	0.05 (3 minutes)	58
Main Survey Completes	1,156	1	1,156	0.28 (17 minutes)	324
Total	4,423				498

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display with the Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are not available electronically at *https://www.regulations.gov* as these references are copyright protected.

1. Dusetzina, S.B., A.S. Higashi, E.R. Dorsey, et al., ''Impact of FDA Drug Risk Communications on Health Care Utilization and Health Behaviors: A Systematic Review.'' *Medical Care,* 50(6):466–478, 2012.
2. Briesacher, B.A., S.B. Soumerai, F. Zhang, et al., ''A Critical Review of Methods to Evaluate the Impact of FDA Regulatory Actions.'' *Pharmacoepidemiology Drug and Safety,* 22(9):986–994, 2013.
3. Morgan, M.G., et al., *Risk Communication: A Mental Models Approach.* Cambridge University Press, 2002.

Dated: June 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14377 Filed 7–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2020–N–1228]

Agency Information Collection Activities; Proposed Collection; Comment Request; Study of Multiple Indications in Direct-to-Consumer Television Advertisements

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed study entitled ''Study of Multiple Indications in Direct-to-Consumer Television Advertisements.''

DATES: Submit either electronic or written comments on the collection of information by September 4, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 4, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 4, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA 2020–N–1228 for ''Study of Multiple Indications in Direct-to-Consumer Television Advertisements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.* The questionnaire is available upon request from *DTCResearch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Study of Multiple Indications in Direct-to-Consumer Television Advertisements—OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health, in part, by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated, so that patients and health care providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health.

Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features, including content and format.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our

homepage, which can be found at: *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer (DTC) survey conducted in 1999.

A number of prescription drugs are approved for multiple indications. These indications can be similar in certain respects (*e.g.,* diabetic peripheral neuropathy and fibromyalgia, which are both conditions that manifest in pain) or very different from one another (*e.g.,* diabetic peripheral neuropathy and general anxiety disorder). If a drug is approved for multiple indications, sponsors choose whether to promote only one of those indications in DTC television advertising, or multiple indications in the same television ad. We are unaware of any quantitative research that addresses how presenting multiple indications in one ad affects consumers' processing of drug information. Some research suggests that presenting more than one indication in a television ad, regardless of the similarity of the indications, may increase the cognitive load on consumers, thus decreasing their understanding of the drug's indications (Refs. 1 and3).

When more than one indication is presented, the similarity or dissimilarity of the indications may affect participants' ability to remember and understand the indications. If this is the case, it is not clear whether similarity would have a positive or negative effect in the multimodal context of a television ad (*e.g.,* Refs. 4 and 5).

This study will provide preliminary information on whether consumers face challenges when multiple indications are promoted in a single television ad. The study also will explore whether similarity of the indications affects participants' likelihood to recall and understand the indications, and whether its effect would be positive or negative.

We propose to test three types of fictional DTC television ads—one that promotes a single indication, one that promotes an indication plus a similar indication, and one that promotes an indication plus a dissimilar indication—in two different medical conditions (Table 1).

TABLE 1—STUDY DESIGN—1 × 3 FACTORIAL EXPERIMENT REPEATED IN TWO MEDICAL CONDITIONS

	Indication 1	Indication 1 plus a similar indication	Indication 1 plus a dissimilar indication
Study 1: Diabetic peripheral neuropathy (DPN)	DPN	DPN + fibromyalgia	DPN + general anxiety disorder.
Study 2: Rheumatoid arthritis (RA)	RA	RA + psoriatic arthritis	RA + leukemia.

We plan to conduct two pretests (one for each main study) and two main studies not longer than 20 minutes, administered via internet panel, to test the experimental manipulations and pilot the main study procedures. Participants will be randomly assigned to view one study ad and then complete a questionnaire that assesses recall and comprehension of the drug's benefits and risks, benefit and risk perceptions, attitudes, and behavioral intentions. We will also measure covariates such as demographics and health literacy. Taking into account prior research, it is our hypothesis that participants will be more likely to correctly recall and understand the first indication when it is presented alone, compared with when it is presented with a second (similar or dissimilar) indication. We will explore whether similarity of the indications affects participants' likelihood to recall and understand the indications. We will also explore the effects of the indication presentation on benefit and risk perceptions, attitudes toward the drug and the indication information, and intentions to look for more information and ask a doctor about the drug.

For all phases of this research, we will recruit adult volunteers 18 years of age or older. For Pretest 1 and Study 1, we will recruit participants who self-report being diagnosed with diabetes (N = 60 in Pretest 1 and N = 402 in Study 1). For Pretest 2 and Study 2, we will recruit participants who self-report being diagnosed with rheumatoid arthritis (N = 60 in Pretest 2 and N = 402 in Study 2). We will exclude individuals who work for the Department of Health and Human Services or work in the healthcare, marketing, or pharmaceutical industries. We will also exclude pretest participants from the main studies, and participants will not be able to participate in both Studies 1 and 2. With these sample sizes, we will have sufficient power to detect small-sized effects in Studies 1 and 2. For the burden estimate, we include an additional 10% over our target number of valid completes to account for some overage. FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual respondents	Average burden per response	Total hours
Pretest 1 & 2 screener	264	1	264	.083 (5 min)	22
Pretest 1 & 2	132	1	132	.333 (20 min)	44
Main Study 1 & 2 screener	1,770	1	1,770	.083 (5 min)	147
Main Study 1 & 2	885	1	885	.333 (20 min)	295
Total					508

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

II. References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references

are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Mayer, R.E., & Moreno, R. (2003), Nine Ways to Reduce Cognitive Load in Multimedia Learning. *Educational Psychologist, 38*(1), 43–52.
2. Mutlu-Bayraktar, D., Cosgun, V., & Altan, T. (2019), Cognitive Load in Multimedia Learning Environments: A Systematic Review. *Computers & Education,* 141, 103618.
3. Betts, K. R., Boudewyns, V., Aikin, K. J., Squire, C., Dolina, S., Hayes, J. J., & Southwell, B. G. (2018), Serious and Actionable Risks, Plus Disclosure: Investigating an Alternative Approach for Presenting Risk Information in Prescription Drug Television Advertisements. *Research in Social and Administrative Pharmacy, 14*(10), 951–963.
4. Jiang, Y. V., Lee, H. J., Asaad, A., & Remington, R. (2016), Similarity Effects in Visual Working Memory, *Psychonomic Bulletin & Review,* 23(2), 476–482.
5. Oberauer, K., & Lange, E. B. (2008), Interference in Verbal Working Memory: Distinguishing Similarity-based Confusion, Feature Overwriting, and Feature Migration, *Journal of Memory and Language,* 58(3), 730–745.

Dated: June 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14375 Filed 7–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5841]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by August 5, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Generic Clearance for Qualitative Data to Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for Qualitative Data to Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

OMB Control Number 0910–NEW

This notice announces the FDA information collection request from the OMB for a generic clearance that will allow FDA to use qualitative social/behavioral science data collection techniques (*i.e.,* individual in-depth interviews, small group discussions, focus groups, and observations) to understand stakeholders' perceptions, attitudes, motivations, and behaviors better regarding various issues associated with food and cosmetic products, dietary supplements, and animal food and feed. Understanding consumers', manufacturers', and producers' perceptions, attitudes, motivations, and behaviors plays an important role in improving FDA's communications impacting these various stakeholders and in assisting in the development of quantitative study proposals, complementing other important research efforts in the Agency.

FDA will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- the collections are low burden for participants (based on considerations of total burden hours, total number of participants, or burden hours per participant) and are low cost for both the participants and the Federal Government;
- the collections are noncontroversial;
- personally identifiable information (PII) is collected only to the extent necessary [1] and is not retained;
- information gathered will not be used for the purpose of substantially informing influential policy decisions; [2] and.
- information gathered will yield qualitative information; the collections will not be designed or expected to yield statistical data or used as though the results are generalizable to the population of study.

If these conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process.

To obtain approval for a collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the interview or moderator guide, screening questionnaire).

FDA will submit individual qualitative collections under this generic clearance to the OMB. Individual qualitative collections will also undergo review by FDA's institutional review board, senior leadership in the Center for Food Safety and Applied Nutrition, and PRA specialists.

Description of Participants: Participants in this collection of information may include a wide range of consumers and other FDA stakeholders such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed.

In the **Federal Register** of February 10, 2020 (85 FR 7564), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although five comments

[1] For example, collections that collect PII to provide remuneration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All Privacy Act requirements will be met.

[2] As defined in OMB and Agency Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

were received, they were not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN, BY ANTICIPATED DATA COLLECTION METHODS

Type of interview	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual In-Depth Interview Screening.	4,800	1	4,800	0.08 (5 minutes)	384
Individual In-Depth Interviews	400	1	400	1	400
Focus Group/Small Group Participant Screening.	10,800	1	10,800	0.08 (5 minutes)	864
Focus Group/Small Group Discussion.	3,600	1	3,600	1.5	5,400
Observation Screening	720	1	720	0.08 (5 minutes)	58
Observations	144	1	144	2	288
Total	20,464				7,394

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The total estimated annual burden is 7,394 hours and 20,464 responses. Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The number of participants to be included in each new collection will vary, depending on the nature of the compliance efforts and the target audience.

The estimated burden hours for focus groups for this collection of information have been increased from the burden published in the **Federal Register** on February 10, 2020, to the burden published in this **Federal Register** notice. The adjustment in burden hours for focus groups reflects the increased need for this type of data collection across the above-mentioned topic areas.

Dated: June 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14365 Filed 7–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1261]

Agency Information Collection Activities; Proposed Collection; Comment Request; Study of Disclosures to Health Care Providers Regarding Data that Do Not Support Unapproved Use of an Approved Prescription Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled ''Study of Disclosures to Health Care Providers Regarding Data that Do Not Support Unapproved Use of an Approved Prescription Drug.''

DATES: Submit either electronic or written comments on the collection of information by September 4, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 4, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 4, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1261 for ''Study of Disclosures to Health Care Providers Regarding Data that Do Not Support Unapproved Use of an Approved Prescription Drug.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at

https://www.regulations.gov or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov. For copies of the questionnaire contact:* Office of Prescription Drug Promotion (OPDP) Research Team, *DTCresearch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Study of Disclosures to Health Care Providers Regarding Data That Do Not Support Unapproved Use of an Approved Prescription Drug

OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated, so that patients and health care providers can make informed decisions about treatment options. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission. Our research focuses in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first two topic areas.

Because we recognize that the strength of data and the confidence in the robust nature of the findings is improved by utilizing the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm090276.htm.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a survey on direct-to-consumer advertisements conducted in 1999.

The revised draft guidance entitled ''Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices'' (2014),[1] recommends that information such as reprints, clinical practice guidelines, and textbooks that discuss unapproved uses of approved drug products be disseminated with a representative publication that reaches contrary or different conclusions, when

[1] ''Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices; Revised Draft Guidance'' (2014). Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/distributing-scientific-and-medical-publications-unapproved-new-uses-recommended-practices-revised.*When final, this guidance will represent FDA's current thinking on this topic.

such information exists. Similarly, the draft guidance entitled ''Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices'' (2011) [2] recommends that when conclusions of articles or texts that are disseminated in response to an unsolicited request have been specifically called into question by other articles or texts, a firm should disseminate representative publications that reach contrary or different conclusions regarding the use at issue.

Pharmaceutical firms sometimes choose to disseminate publications to health care professionals (HCPs) that include data that appear to support an unapproved use of an approved product. At the same time, published data that are not supportive of that unapproved use may also exist. For example, unsupportive published information could describe an increased risk of negative outcomes (*e.g.,* death, relapse) from the unapproved use of the approved product, suggesting that the unapproved use does not have a positive benefit-risk ratio. The purpose of this research is to examine HCPs' perceptions and behavioral intentions about an unapproved new use of an approved prescription drug when made aware of other data that are not supportive of the unapproved use. This research will also evaluate the effectiveness of various disclosure approaches for communicating the unsupportive information. We will use the results of this research to better understand: (1) HCPs' perceptions of an unapproved use of a prescription drug; (2) HCPs' perceptions about an unapproved use of an approved prescription drug when they are aware of the existence of unsupportive information about it; (3) HCPs' perceptions of disclosures referencing the existence of unsupportive information about that particular use; and (4) examine the utility and effectiveness of various approaches to the communication of this information. In particular, we plan to examine how different approaches to the communication of unsupportive information affect physician's thoughts and attitudes about the unapproved use. Five approaches will be examined: (1) The provision of the unsupportive data in the form of a representative publication; (2) a disclosure summarizing the unsupportive data and including a citation to the representative publication; (3) a disclosure that does not include a summary of the unsupportive data but does acknowledge that unsupportive data exist and includes a citation to the representative publication; (4) a general disclosure that unsupportive data *may* exist, without conceding that such data do exist; or (5) nothing—the absence of any presentation of unsupportive data or any disclosure about such data (control condition). We have four research questions:

RQ1: When considering a presentation of data about an unapproved use of an approved drug product, how does the existence of unsupportive data impact HCP perceptions and intentions with regard to that unapproved use?

RQ2: Without presenting the specific unsupportive data, how does the way in which the existence of unsupportive data is communicated impact HCPs' perceptions and intentions with regard to an unapproved use of an approved drug product?

RQ3: How are HCP perceptions of and intentions towards an unapproved use of an approved drug product affected by the disclosure of specific unsupportive data versus disclosure statements about this data that do not include the data itself?

RQ4: Do other variables (*e.g.,* demographics) have an impact on these effects?

These research questions will be examined in two medical conditions.

We plan to conduct one pretest with 180 voluntary adult participants and one main study with 1,600 voluntary adult participants. Participants in the main study will be 510 oncologists in the oncology medical condition and 1,090 primary care physicians in the diabetes medical condition. All participants will be physicians who engage in patient care at least 50 percent of the time and do not work for a pharmaceutical company, marketing firm, or the Department of Health and Human Services. The gender, race/ethnicity, and ages of the participating HCPs will be self-identified by participants. We will aim to include a mix of demographic segments to ensure a diversity of viewpoints and backgrounds. Power analyses were conducted to ensure adequate sample sizes to detect small to medium effects.

The studies will be conducted online. The pretest and main studies will have the same design and will follow the same procedure. The base stimulus in both the pretest and main studies will consist of a sample publication supporting an unapproved use of an approved drug product. Within each medical condition, participants will be randomly assigned to one of five test conditions (see Figure 1). Following exposure to the stimuli, they will be asked to complete a questionnaire that assesses comprehension, perceptions, prescribing intentions, and demographics. In the pretest, participants will also answer questions about the study design and questionnaire.

[1] ''Distributing Scientific and Medical Publications on Unapproved New Uses—Recommended Practices; Revised Draft Guidance'' (2014). Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/distributing-scientific-and-medical-publications-unapproved-new-uses-recommended-practices-revised.*When final, this guidance will represent FDA's current thinking on this topic.

Figure 1: Study Design

	Accompanied by representative publication with unsupportive data	Accompanied by disclosure with summary of unsupportive data and including a citation for that data	Accompanied by disclosure that unsupportive data exist and including a citation for that data, but without a summary of the unsupportive data	Accompanied by general disclosure that unsupportive data *may* exist and no citation	No disclosure or material about unsupportive data
Medical Condition 1					
Medical Condition 2					

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest screener	290	1	290	0.08 (5 minutes)	23
Pretest completes	180	1	180	0.33 (20 minutes)	59
Main study screener	2,526	1	2,526	0.08 (5 minutes)	202
Main study completes, Medical Condition 1	510	1	510	0.33 (20 minutes)	168
Main study completes, Medical Condition 2	1,090	1	1,090	0.33 (20 minutes)	360
Total	1,600				812

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14372 Filed 7–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank Continues Temporary Waiver of User Fees for Eligible Entities

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to its authority under Federal regulations for the National Practitioner Data Bank (NPDB), HRSA's Division of Practitioner Data Bank announces a continuation of its temporary waiver of user fees for NPDB queries from March 1, 2020, through September 30, 2020, to support our eligible entities in making credentialing, hiring, privileging, and licensing decisions in combatting the COVID–19 pandemic. The waiver includes all one-time queries and continuous queries during the waiver time period. Fees for self-queries will not be waived. The NPDB is a confidential information clearinghouse created by Congress and is intended to facilitate a comprehensive review of the professional credentials of health care practitioners, entities, providers, and suppliers. In response to President Trump's declaration of a national emergency and associated emergency declarations by all states, the Federal Government, state governments, and many health care entities have taken unprecedented steps regarding licensure portability and the deployment of health workforce resources, including the expansion of telemedicine and granting of disaster privileges. HRSA's NPDB is in a unique position to temporarily waive fees, granting NPDB access to the nation's hospitals, health centers, health plans, state licensing boards, Federal agencies, and other eligible health care entities in support of their efforts to mobilize and appropriately deploy health workforce professionals.

DATES: The NPDB waiver announcement published on April 17, 2020 (85 FR 21447), was effective retroactively from March 1, 2020, through May 31, 2020. This update continues the waiver through September 30, 2020.

FOR FURTHER INFORMATION CONTACT: David Loewenstein, Director, Division of Practitioner Data Bank, Bureau of Health Workforce, HRSA, (301) 443–2300, *NPDBPolicy@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The NPDB will waive fees retroactively from March 1, 2020, through September 30, 2020, for eligible entity queries (one-time query and continuous query). The NPDB will not refund the cost of queries performed prior to the announcement of the waiver, but will issue query credits to reimburse entities for one-time and continuous queries performed and paid for during the waiver period. Regulations regarding the NPDB are codified at 45 CFR part 60.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–14291 Filed 7–2–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

DATES: The meeting will be held on Wednesday, July 22, 2020, from 11:00 a.m. until 4:30 p.m., and Thursday, July 23, 2020, from 11:00 a.m. until 4:30 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted at on the SACHRP website when this information becomes available.

ADDRESSES: This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted one week prior to the meeting at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240–453–8141; fax: 240–453–6909; email address*SACHRP@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination.

The SACHRP meeting will open to the public at 11:00 a.m., on Wednesday, July 22, 2020, followed by opening remarks from Dr. Jerry Menikoff, Director of OHRP and Dr. Stephen Rosenfeld, SACHRP Chair. The meeting will begin with presentation of recommendations on the NIH Draft Data Management and Sharing Policy. This will be followed by a review of the Deceased Organ Intervention Research recommendations, and edits discussed at the March SACHRP meeting. The remainder of the meeting will be devoted to a new topic, the interpretation of Public Health Surveillance, 45 CFR 46.102(l)(2) and 46.102(k). The second day, July 23rd, will again host discussion of Public Health Surveillance, 45 CFR 46.102(l)(2) and 46.102(k), as well as consideration of a second new topic, Risks to Non-subjects in Human Subjects Research. For the full and updated meeting agenda, see *http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html.*

The public will have an opportunity to comment to the SACHRP during the meeting's public comment session or by submitting written public comment. Persons who wish to provide public comment should review instructions at *https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html* and respond by midnight Wednesday, July 17, 2020, ET. Individuals submitting written statements as public comment should submit their comments to SACHRP at *SACHRP@hhs.gov.* Verbal comments will be limited to three minutes each.

Time will be allotted for public comment on both days. Note that public comment must be relevant to topics currently being addressed by the SACHRP.

Dated: June 30, 2020.

Julia G. Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2020–14431 Filed 7–2–20; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Child Psychopathology and Developmental Disabilities.

Date: July 27, 2020.

Time: 2:00 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: Biao Tian, Ph.D. Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 3089B, MSC 7848 Bethesda, MD 20892 (301) 402–4411 *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Drug Discovery, Clinical, and Field Research in Infectious Diseases.

Date: July 29, 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: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808 Bethesda, MD 20892 (301) 496–6980 *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodevelopmental and Neurological Disorders.

Date: July 29, 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: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194,

MSC 7846, Bethesda, MD 20892, (301) 237–9838 *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Aging, Inflammation, and Neurological Topics.

Date: July 29, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., Chief, BDCN IRG Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846 Bethesda, MD 20892 (301) 435–1246 *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technologies.

Date: July 29, 2020.

Time: 1:00 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 (Telephone Conference Call).

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849 Bethesda, MD 20892 301–806–8065 *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.

Date: July 29, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770 Bethesda, MD 20892 301–827–6480 *weikts@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: July 30–31, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814 Bethesda, MD 20892 (240) 498–7546 *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Sciences.

Date: July 30, 2020.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814 Bethesda, MD 20892 (301) 435–1743 *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: July 30, 2020.

Time: 11:00 a.m. to 1:30 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: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846 Bethesda, MD 20892 (301) 435–1766 *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathobiology of Alzheimer's Disease.

Date: July 31, 2020.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: ALEKSEY GREGORY Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, MSC 7846 Bethesda, MD 20817 (301) 435–1042 *aleksey.kazantsev@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 29, 2020.

Tyeshia M. Roberson,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14367 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

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 Biomedical Imaging and Bioengineering Special Emphasis Panel MIDRC Contract Review.

Date: July 13, 2020.

Time: 11:00 a.m. to 05:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer National Institute of Biomedical Imaging and Bioengineering National Institutes of Health 6707 Democracy Blvd. Bethesda, MD 20892 (301) 451–4794 *dennis.hlasta@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: __June 29, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14364 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK New Investigator Gateway Awards for

Collaborative Type 1 Diabetes Research Review Panel.

Date: July 24–27, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Peter J. Kozel, Ph.D. Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 29, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14369 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccine Research and Design (HIVRAD), Program (P01).

Date: July 29–30, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Cynthia L. De La Fuente, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20852, 240–669–2740, *delafuentecl@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 29, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14368 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Mechanism for Time-Sensitive Drug Abuse Research (R21 Clinical Trial Optional).

Date: July 29, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neurosciences Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, (301) 435–1426, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 29, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14363 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Opportunities for Collaborative Research at the NIH Clinical Center (U01).

Date: July 23, 2020.

Time: 2:00 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: Amy Kathleen Wernimont, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, (301) 827–6427 *amy.wernimont@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Animal Models of Stress, Addiction, and Psychopathology.

Date: July 28, 2020.

Time: 1:00 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 (Telephone Conference Call).

Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, *hargravesl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Sciences and Patient Management Member Conflict Special Emphasis Panel.

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 (Telephone Conference Call).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827–4446, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of the Vascular and Hematological Systems.

Date: July 31, 2020.

Time: 9:00 a.m. to 8:00 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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206 *komissar@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–054: Transgender People: Immunity, Prevention, and Treatment of HIV and STIs.

Date: July 31, 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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7852, Bethesda, MD 20892, (301) 451–8754 *tuoj@nei.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 29, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14362 Filed 7–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0050]

Agency Information Collection Activities: Importation Bond Structure

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 September 4, 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 1651–0050 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: Importation Bond Structure.

OMB Number: 1651–0050.

Form Number: CBP Forms 301 and 5297.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Bonds are used to ensure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Bonds are required pursuant to 19 U.S.C.1608, 1623; 22 U.S.C. 463; 19 CFR part 113.

Each person who is required by law or regulation to post a bond in order to secure a Customs transaction must submit the bond on CBP Form 301 which is available at: *https://www.cbp.gov/newsroom/publications/forms?title=301&=Apply.*

Surety bonds are usually executed by an agent of the surety. The surety company grants authority to the agent

via a Corporate Surety Power of Attorney, CBP Form 5297. This power is vested with CBP so that when a bond is filed, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. CBP Form 5297 is available at: *https://www.cbp.gov/document/forms/form-5297-corporate-surety-power-attorney.*

Form 301, Customs Bond

Estimated Number of Annual Respondents: 750,000.

Total Number of Estimated Annual Responses: 750,000.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 187,500.

Form 5297, Corporate Surety Power of Attorney.

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Dated: June 30, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–14412 Filed 7–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Faith-Based Security Advisory Council; Correction

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of new Federal Advisory Committee; correction.

SUMMARY: The Department of Homeland Security (DHS) is correcting a notice published on June 29, 2020. In error, this notice previously stated that a less than 15 day good cause justification was obtained. Instead, this notice should reflect its publishing will comply fully with the 15 day notice requirement.

DATES: The 15-day period described in 41 CFR 102–3.65(b) terminates 15 calendar days after the date of publication.

FOR FURTHER INFORMATION CONTACT: Traci Silas at *FBSAC@hq.dhs.gov* or at (202) 603–1142.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of June 29, 2020, in FR Doc. 2020–13882, on page 38916, in the second column, remove the paragraph stating ''In accordance with 41 CFR 102–3.65(b), as requested by the Department, the General Services Administration Committee Management Secretariat has approved a period of less than 15 calendar days pursuant to the publication of this notice for the filing of the FBSAC Charter.''

Zarinah Traci Silas,

Senior Director and Alternate Designated Federal Official.

[FR Doc. 2020–14370 Filed 7–2–20; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–25]

30-Day Notice of Proposed Information Collection: Capital Needs Assessment (CNAs), OMB Control No.: 2502–0505

AGENCY: Office of the Chief Information Officer, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 5, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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/Start Printed Page 15501PRAMain.* 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 30, 2020 at 85 FR 17596.

A. Overview of Information Collection

Title of Information Collection: Capital Needs Assessment (CNAs).

OMB Approval Number: 2502–0505.

OMB Expiration Date: 08/31/2021.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: A Capital Needs Assessment is a detailed review of a property's expected capital expenditures over future years. It is needed to appropriately value a project/property, to determine financial sustainability, and to plan for funding of an escrow account to be used for capital repair and replacement needs during the estimate period. It is used by external parties, and HUD for valuation, underwriting, and asset management purposes. The proposed change involves the current excel assessment tool that is being rewritten and incorporated into the system for enhanced security and credentials.

Respondents (i.e., affected public): Assessor firms, lender originator, lender servicer, Participating Administrative Entity (PAE), Public Housing Agency (PHA) for RAD Projects, and the Project Rental Assistance Contract (PRAC) owner.

Estimated Number of Respondents: 2,041.

Estimated Number of Responses: 2,041.

Frequency of Response: Once periodically.

Average Hours per Response: 36 hours.

Total Estimated Burden: 73,476 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) 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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: June 26, 2020.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–14271 Filed 7–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2020–N059; FF09E00000 190 FXES11130900000; OMB Control Number 1018–0094]

Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 4, 2020.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0094 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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 Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) provides a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the ESA are no longer necessary. Section 10(a)(1)(A) of the ESA authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. ESA Section 10(d) requires that such permits be applied for in good faith and, if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the ESA.

Our regulations implementing the ESA are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR) (50 CFR 13 and 50 CFR 17). The regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited. Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.)

We collect information associated with application forms to determine the eligibility of applicants for permits requested in accordance with the criteria in section 10 of the ESA. The Service uses the following permit application forms for activities associated with native endangered and threatened species:

- Form 3–200–54, *Enhancement of Survival Permits Associated with Safe Harbor Agreement & Candidate Conservation Agreement with Assurances*
- Form 3–200–55, *Scientific Purposes, Enhancement of Propagation or Survival Permits (i.e., Recovery Permits) and Interstate Commerce Permits*
- Form 3–200–56, *Incidental Take Permits Associated with a Habitat Conservation Plan*

Based on which permits are issued, we also require reports to monitor activities associated with permitted activities in accordance with their permits issued based on 50 CFR 17. Annual reports associated with permits are tailored to a specific activity based on the requirements for specific types of permits. In some cases, we developed specific information collection forms to facilitate and standardize the reporting and review, and to facilitate development of electronic forms and electronic reporting and retrieval of that information.

Annual reporting of the results subsequent to the activity authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) of the ESA and its implementing regulations at 50 CFR 17). These reports allow us to evaluate the success of the project, formulate further research, and develop and adjust management and recovery plans for the species. We use the following reports specific to particular species (and regions, where appropriate):

- Form 3–202–55a, *Region 2 [Southwest] Bat Reporting Spreadsheet*
- Form 3–202–55b, *Region 3 [Midwest] Bat Reporting Spreadsheet*
- Form 3–202–55c, *Region 4 [Southeast] Bat Reporting Spreadsheet*
- Form 3–202–55d, *Region 5 [Northeast] Bat Reporting Spreadsheet*
- Form 3–202–55e, *Region 6 [Mountain-Prairie] Bat Reporting Spreadsheet*
- Form 3–202–55f, *Non–Releasable Sea Turtle Annual Report*
- Form 3–202–55g, *Sea Turtle Rehabilitation*

Additionally, we require the following notifications be made to the Service:

- Private landowners who have an Enhancement of Survival Permit (and accompanying Safe Harbor Agreement or Candidate Conservation Agreement with Assurances) must notify us if their land management activities incidentally take a listed or candidate species covered under their permit.
- We issue Enhancement of Survival Permits to landowners, and their name is printed on the permit. If ownership of the land changes, this permit does not automatically transfer to the new landowner. Therefore, we ask the permittee to notify us if there is a change in land ownership so that we may update the permit; and
- If a recovery or interstate commerce permit authorizes activities that include keeping wildlife in captivity, we ask the permittee to notify us if any of the captive wildlife escape.

Proposed Revisions

The Service is proposing to revise this collection to request OMB approval of the following seven new forms:

- Form 3–2523, *Freshwater Mussel Reporting Form*
- Form 3–2526, *Bumble Bee Reporting Form*
- Form 3–2530, *California/Nevada Recovery Permit Annual Summary Report Form*
- Form 3–2531, *General Recovery Permit Reporting Form*
- Form 3–2532, *U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form*
- Form 3–2533, *U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form*
- Form 3–2534, *U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form*

Annual reporting of the results subsequent to the activity authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) of the ESA and its implementing regulations at 50 CFR 17). The Service designed the forms to facilitate the electronic reporting specifically for each species. The Service will use the reported data to evaluate the success of the permitted project, formulate further research, and develop and adjust management and recovery plans for the species. The data will also inform 5–year reviews and Species Status Assessments conducted under the ESA.

The Service is proposing to separate the existing approved FWS Form 3–200–55 into the following two separate forms:

- Form 3–200–59, *Recovery Permit Application Form*
- Form 3–200–60, *Interstate Commerce Application Form*

In the existing Form 3–200–55, the applicant may have difficulty distinguishing which fields should be completed, and which are relevant to the other permit type. Modifying this form will enable permittees applying for these separate permit types to more efficiently complete the forms, reducing confusion by eliminating text and fields that are not relevant to the type of permit the applicant is seeking. The forms also have been slightly updated and revised to better incorporate and explain the fields necessary to each permit category. Completion of the information on the forms regarding the activity(ies) to be authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) of the ESA and its implementing regulations at 50 CFR 17).

The Service is proposing to revise and rename the following five forms associated with bat surveys:

- Form 3–202–55a, *U.S. Fish and Wildlife Service Geographic Area: Southwestern Bat Reporting Form*
- Form 3–202–55b, *U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form*
- Form 3–202–55c, *U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form*
- Form 3–202–55d, *U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form*
- Form 3–202–55e, *U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form*

The Service is proposing changes to these forms to address comments received from the respondents. These changes include adding columns to increase flexibility for user data entry, to increase accuracy of Global Positioning System data, and to add three fields specifically requested by State natural resource agencies in order to unify their State databases with that of the Service. These additions eliminate the need for filing a separate reporting form with the State and reduce the overall reporting burden on the respondents. Completion of the information on the forms regarding the activity(ies) to be authorized by the permit is required in most cases (under the authority of section 10(a)(1)(A) of the ESA and its implementing regulations at 50 CFR 17).

The Service is proposing to revise and renew the following two forms associated with Habitat Conservation Plans, Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances:

- Form 3–200–54, *Enhancement of Survival Permits Associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances*
- Form 3–200–56, *Incidental Take Permits Associated with a Habitat Conservation Plan*

The Service is proposing to remove program contact information currently in these application forms, and instead link to a permanent website. This website will be frequently maintained and will provide the public with the most accurate contact information.

ePermits Initiative

The Service's new ePermits initiative is an automated permit application system that will allow the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish,

Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has internet access, including personal computers (PCs), tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of associated permit application fees, where applicable.

Upon completion of the new e-permitting system, applicants applying for Recovery, Interstate Commerce, Habitat Conservation Plan Incidental Take Permits, Candidate Conservation Agreements with Assurances, and Safe Harbor Agreements Enhancement of Survival Permits will have the opportunity to apply directly online through a secure, web-based platform.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR 10, 13, and 17.

OMB Control Number: 1018–0094.

Form Number: FWS Forms 3–200–54, 3–200–56, 3–200–59 (new), 3–200–60 (new), 3–202–55a through 3–202–55g, 3–202–55i, 3–2523 (new), 3–2526 (new), and 3–2530 through 3–2534 (new).

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion, annually, one time.

Total Estimated Annual Nonhour Burden Cost: $59,750 for fees associated with permit applications and amendments.

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
SAFE HARBOR AGREEMENTS/CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES				
Application (Form 3–200–54):				
Individuals	5	5	3	15
Private Sector	21	21	3	63
Government	7	7	3	21
Annual Report:				
Individuals	10	10	8	80
Private Sector	40	40	8	320
Government	14	14	8	112
Notifications (Incidental Take):				
Individuals	1	1	1	1
Notifications (Change in Land Owner):				
Individuals	1	1	1	1
HABITAT CONSERVATION PLANS				
Application (Form 3–200–56):				
Individuals	30	30	3	90
Private Sector	40	40	3	120
Government	5	5	3	15
Annual Report:				
Individuals	360	360	10	3,600
Private Sector	380	380	10	3,800
Government	25	25	10	250
Plan:				
Individuals	10	10	2,080	20,800
Private Sector	20	20	2,080	41,600
Government	16	16	2,080	33,280
RECOVERY/INTERSTATE COMMERCE				
Recovery Permit Application (Form 3–200–59) NEW:				
Individuals	225	225	3	675
Private Sector	225	225	3	675
Government	110	110	3	330
Interstate Commerce Application (Form 3–200–60) NEW:				
Individuals	45	45	3	135
Private Sector	10	10	3	30
Government	10	10	3	30
Annual Report:				
Individuals	200	200	3	600
Private Sector	225	225	3	675
Government	310	310	3	930
Request to Revise List of Authorized Individuals:				
Private Sector	30	30	0.5	15
Notification (Escape of Wildlife):				
Private Sector	1	1	1	1
Annual Report—Form 3–202–55a (U.S. Fish and Wildlife Service Geographic Area: Southwestern Bat Reporting Form):				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours *
Annual Report—Form 3–202–55b (U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form):				
Individuals	15	15	2.5	38
Private Sector	15	15	2.5	38
Government	12	12	2.5	30
Annual Report—Form 3–202*–55c (U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form):*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Annual Report—Form 3–202*–55d (U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form):*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Annual Report—Form 3–202*–55e (U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form):*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Annual Report—Form 3–202*–55f Non-Releasable Sea Turtle Annual Report:*				
Private Sector	2	2	0.5	1
Government	5	5	0.5	3
Quarterly Report—Form 3–202*–55g Sea Turtle Rehabilitation:*				
Private Sector	20	20	0.5	10
Annual Report—Form 3–2523 (Freshwater Mussel Reporting Form) NEW:				
Individuals	15	15	2	30
Private Sector	70	70	2	140
Government	15	15	2	30
Annual Report—Form 3–2526 (Bumble Bee Reporting Form) NEW:				
Individuals	45	45	2	90
Private Sector	15	15	2	30
Government	15	15	2	30
Annual Report—Form 3–2530 (California/Nevada Annual Reporting Form) NEW:				
Individuals	291	291	3	873
Private Sector	291	291	3	873
Government	173	173	3	519
Annual Report—Form 3–2531 (General Annual Reporting Form) NEW				
Individuals	200	200	3	600
Private Sector	225	225	3	675
Government	310	310	3	930
Annual Report—Form 3–2532 *(U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form) NEW*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Annual Report—Form 3–2533 *(U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form) NEW:*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Annual Report—Form 3–2534 *(U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form) NEW:*				
Individuals	5	5	2.5	13
Private Sector	5	5	2.5	13
Government	5	5	2.5	13
Totals	4,215	4,215	.....	113,465

* Rounded.

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.*).

Dated: June 30, 2020.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–14457 Filed 7–2–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Catawba Indian Nation Business Leasing Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On June 25, 2020, the Bureau of Indian Affairs (BIA) approved the

Catawba Indian Nation's leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, *sharelene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs,

has approved the Tribal regulations for the Catawba Indian Nation.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal Government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases

and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Catawba Indian Nation.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–14484 Filed 7–2–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030389; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Nashville District, Nashville, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Army Corps of Engineers, Nashville District (USACE), has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on July 19, 2017. This notice corrects the number of associated funerary objects.

ADDRESSES: Dr. Valerie McCormack, Archeologist, Department of Defense, Nashville District, Corps of Engineers, U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, Room A–405, Nashville, TN 37203, telephone (615) 736–7847, email *Valerie.j.mccormack@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Army Corps of Engineers, Nashville District, Nashville, TN. The human remains and associated funerary objects were removed from Stewart County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (82 FR 33155–33156, July 19, 2017). During a re-inventory of the collection, an additional 11 associated funerary objects from site 40SW23 were located.

Correction

In the **Federal Register** (82 FR 33155, July 19, 2017), column 2, paragraph 3, sentence 9 is corrected by substituting the following sentence:

The 11 associated funerary objects are limestone slabs from a stone box grave.

In the **Federal Register** (82 FR 33156, July 19, 2017), column 1, paragraph 3, sentence 3 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(3)(A), the 142 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

For questions related to this notice, contact Dr. Valerie McCormack, Archeologist, Department of Defense, Nashville District, Corps of Engineers, U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, Room A–405, Nashville, TN 37203, telephone (615) 736–7847, email *Valerie.j.mccormack@usace.army.mil.*

The U.S. Army Corps of Engineers, Nashville District, is responsible for notifying the Cherokee Nation, Eastern Band of the Cherokee Indians, and the United Keetoowah Band of the Cherokee Indians in Oklahoma that this notice has been published.

Dated: May 27, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–14396 Filed 7–2–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030388; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California Department of Transportation, Sacramento, CA, and Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The California Department of Transportation and the Fowler Museum at the University of California Los Angeles (UCLA) have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the California Department of Transportation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the California Department of Transportation at the address in this notice by August 5, 2020.

ADDRESSES: Sarah Allred, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *Sarah.Allred@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the California Department of Transportation, Sacramento, CA, and in the physical custody of the Fowler Museum at the University of California Los Angeles, Los Angeles, CA. The human remains and associated funerary objects were removed from Batiquitos Lagoon, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The

National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made on behalf of the California Department of Transportation by the Fowler Museum at UCLA professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (previously listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of Rincon Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Sycuan Band of the Kumeyaay Nation; and the San Luis Rey Band of Luiseno Indians, a non-federally recognized Indian group (hereafter referred to as ''The Consulted Tribes and Groups'').

History and Description of the Remains

In 1960 and 1961, human remains representing, at minimum, two individuals were removed from Batiquitos Lagoon in San Diego County, CA. They were excavated by R. H. Crabtree and Claude Warren as part of the UCLA Archaeological Survey under contract with the State Division of Beaches and Parks (now the Department of Parks and Recreation) for the Division of Highways (now the California Department of Transportation). The excavation site was in the proposed freeway (referred to at time of excavation as Highway 101, but now is Interstate 5) right-of-way. The collection was analyzed at UCLA and transferred to the Fowler Museum at UCLA for curation. Human remains consist of one sub-adult female individual and fragmentary human remains from a second individual (age/sex unknown). No known individuals were identified. The 14 associated funerary objects are 11 unmodified animal bones, one unmodified shell, one shell bead, and one soil sample. (Despite an exhaustive search by Fowler Museum staff, currently, eight additional unmodified animal bones among the associated funerary objects are absent.)

Radiocarbon dates between 5340 and 1940 B.C. obtained from two shell samples place the earliest occupation of the Batiquitos Lagoon site in the Early Holocene. That occupation was followed by a temporary abandonment of coastal sites due to strong environmental changes that resulted in the silting of the lagoon and the depletion of natural resources. Oral history of the Kumeyaay describes their oceanic origins and movements on the landscape. Over time, as environmental and social stresses occurred, coastal groups likely became interrelated with inland groups and relied upon each other. These relationships are reflected in their song cycles and sand paintings, as well as in the archeological record. The Kumeyaay locate Batiquitos within their traditional aboriginal territory. Moreover, geographical, oral traditional, archeological, ethnographic, and linguistic lines of evidence all support the existence of a cultural affiliation of the present-day Kumeyaay with the human remains listed in this notice.

Determinations Made by the California Department of Transportation

Officials of the California Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 14 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California (previously listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Sarah Allred, California Department of Transportation, P.O. Box 942874 MS 27, Sacramento, CA 94271–0001, telephone (916) 653–0013, email *Sarah.Allred@dot.ca.gov,* by August 5, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The California Department of Transportation is responsible for notifying The Consulted Tribes and Groups that this notice has been published.

Dated: May 27, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–14399 Filed 7–2–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030387; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Interior Region 10, California-Great Basin, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Interior Region 10, California-Great Basin (Reclamation Region 10), has completed

an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Reclamation Region 10. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Reclamation Region 10 at the address in this notice by August 5, 2020.

ADDRESSES: Melanie Ryan, NAGPRA Specialist/Physical Anthropologist, Bureau of Reclamation, Interior Region 10, California-Great Basin, MP–153, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5526, email *emryan@usbr.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Reclamation, Interior Region 10, California-Great Basin, Sacramento, CA. The human remains and associated funerary objects were removed from lands in Ventura County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by Reclamation Region 10 professional staff in consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

History and Description of the Remains

In 1958 and 1959, the human remains of, at minimum, 15 individuals were removed from two sites in Ventura County, CA, owned by the Bureau of Reclamation—Las Casitas I (CA–VEN–48) and Las Casitas III (CA–VEN–115). The human remains were removed during excavations carried out by the University of Southern California under the direction of William Wallace ahead of Reclamation's Ventura River Project and construction of the Casitas Dam, Dike, and Reservoir.

In 1964, the collections from Las Casitas I and III were transferred from the University of Southern California to the University of California, Los Angeles (UCLA), where they remain in the custody of UCLA's Fowler Museum. In 2017, Reclamation Region 10 discovered that the collections from Las Casita I and III are under Reclamation's control and contain human remains and associated funerary objects.

The human remains from Las Casitas I (CA–VEN–48; UCLA Number 446) represent nine individuals—eight formal burials and 48 pieces of disarticulated, fragmentary remains. Evidence of rodent activity on the human remains might account for the disparate proveniences of the 48 bone fragments. Among the human remains are two older adult females; one young adult male; two adult males; one older adult male; and two adults of indeterminate sex. No known individuals were identified. The 95 associated funerary objects are 56 shell beads, 13 pieces of animal bone, 10 sandstone manos, three pieces of worked bone, four pieces of worked ochre, two pieces of chert debitage, one bone scraper, one chert scraper, one chert core, one chert projectile point, one quartzite core/hammerstone, one sandstone ground stone ball, and one stone fragment. (According to the Fowler Museum's records, there were originally 97 associated funerary objects, but one worked bone and one drilled cowrie shell were lost in a fire in 1970.)

The human remains from Las Casitas III (CA–VEN–115; UCLA Number 448) represent six individuals—five formal burials and 15 teeth recovered from a midden context. No known individuals were identified. The two associated funerary objects are shell beads. (According to the Fowler Museum's records, as of May 28, 1976, one chert scraper was apparently lost while on loan.)

The amount of wear on the dentition and the associated artifacts indicate that the human remains are Native American. In consultation with the Santa Ynez Band of Chumash Mission Indians, of the Santa Ynez Reservation, California, Reclamation Region 10 determined that the land from which these human remains and associated funerary objects were removed is within traditional territory of the Chumash, and that the associated funerary objects are consistent with those groups who are ancestral to present day Chumash.

Determinations made by the U.S. Department of the Interior, Bureau of Reclamation, Interior Region 10, California-Great Basin Office

Officials of the U.S. Department of the Interior, Bureau of Reclamation, Interior Region 10, California-Great Basin Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 15 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 97 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Melanie Ryan, NAGPRA Specialist/Physical Anthropologist, Bureau of Reclamation, Interior Region 10, California-Great Basin, MP–153, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5526, email *emryan@usbr.gov,* by August 5, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The U.S. Department of the Interior, Bureau of Reclamation, Interior Region

10, California-Great Basin Office is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: May 27, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–14398 Filed 7–2–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030386; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Items: Hudson Museum, University of Maine, Orono, ME

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Hudson Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Hudson Museum, University of Maine. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Hudson Museum, University of Maine at the address in this notice by August 5, 2020.

ADDRESSES: Gretchen Faulkner, Director, Hudson Museum, University of Maine, 5746 Collins Center for the Arts, Orono, ME 04469, telephone (207) 581–1904, email *gretchen.faulkner@maine.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Hudson Museum, University of Maine, Orono, ME, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The five items listed below were acquired by William P. Palmer III. In 1982, Palmer bequeathed the items to the University of Maine and they became part of the Hudson Museum's holdings.

HM5510, a Tlingit Shaman's pipe from Kake Village on Kupreanof Island, Alaska, was collected by George Thornton Emmons and accessioned by the Heye Foundation (catalog number 1/2922). On March 15, 1967, the Heye Foundation transferred this piece to Morton D. May. Subsequently, it was acquired by William P. Palmer III.

HM3222, a Tlingit Shaman's guardian figure, was formerly part of the Christian Rub Collection, Santa Barbara, California. It was acquired by William P. Palmer III from Proctor Stafford, Los Angeles, California.

HM5574, a Tlingit Shaman's mask representing the porpoise spirit, was collected by George Thornton Emmons and accessioned by the Heye Foundation (catalog number 11/1751). In June of 1949, the Heye Foundation transferred this piece to Julius Carlebach. Subsequently, Morton D. May acquired it from Carlebach. Later, it was acquired by William P. Palmer III.

HM5500 is a Tlingit Shaman's guardian figure. Records for this object appear to indicate that around 1968, this figure was acquired by William P. Palmer III from Walt Killiam, a dealer in Chester, Connecticut.

HM5460, is a Tlingit Raven grave totem. Records for this object indicate that it originally hung in the Elks Lodge, Juneau, Alaska. It was formerly in the collection of Axel Rasmussen, William Spratling, and Proctor Stafford. William P. Palmer III acquired it from Proctor Stafford.

In June 2018, a delegation from the Central Council of the Tlingit & Haida Indian Tribes came to the Hudson Museum, University of Maine to consult on these objects. The group included Harold Jacobs, Sarah Dybdahl, Stephanie Masterman, Herman Davis Sr., Herman Davis, Jr. and Neeka Cook. In conjunction with the Hudson Museum staff and Hudson Museum cooperating curators, it was determined that these objects are culturally affiliated with the Central Council of the Tlingit & Haida Indian Tribes.

Determinations Made by the Hudson Museum, University of Maine

Officials of the Hudson Museum, University of Maine have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the five cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Central Council of the Tlingit & Haida Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Gretchen Faulkner, Director, Hudson Museum, University of Maine, 5746 Collins Center for the Arts, Orono, ME 04469, telephone (207) 581–1904, email *gretchen.faulkner@maine.edu,* by August 5, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Central Council of the Tlingit & Haida Indian Tribes may proceed.

The Hudson Museum, University of Maine is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: May 27, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–14397 Filed 7–2–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1168]

Certain Light-Emitting Diode Products, Systems, and Components Thereof (III); Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on June 26, 2020, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, should the Commission find a violation. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 (''Section 337'') provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless the public interest factors listed in 19 U.S.C. 1337(d)(1) prevent such action.

The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order (''LEO'') directed to certain light-emitting diode products, systems, and components thereof imported, sold for importation, and/or sold after importation by Cree, Inc. of Durham, North Carolina; Cree Hong Kong, Ltd. of Shatin, Hong Kong; Cree Huizhou Solid State Lighting Co. Ltd. of Guangdong, China; Lumileds Holding B.V. of Schipol, Netherlands; Lumileds LLC of San Jose, California; Nichia Corp. of Tokushima, Japan; Nichia America Corp. of Wixom, Michigan; OSRAM Licht AG and OSRAM GmbH, both of Munich, Germany; OSRAM Opto Semiconductors GmbH of Regensburg, Germany; OSRAM Opto Semiconductors, Inc. of Sunnyvale, California; Acuity Brands, Inc. of Atlanta, Georgia; Acuity Brands Lighting, Inc. of Conyers, Georgia; General Electric Company of Boston, Massachusetts; Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC) of Cleveland, Ohio; Current Lighting Solutions, LLC of Cleveland, Ohio; LEDVANCE LLC of Wilmington, Massachusetts; Leedarson Lighting Co., Ltd. of Xiamen, China; Leedarson America, Inc. of Smyrna, Georgia; Signify N.V. (f/k/a Phillips Lighting N.V.) of Eindhoven, Netherlands; and Signify North America Corporation of Somerset, New Jersey that infringe one or more of claims 1, 2, 3, 5, 6, and 21 of U.S. Patent No. 7,095,053; and claims l and 6 of U.S. Patent No. 7,528,421.

The Commission is interested in developing the record on the public interest in this investigation. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bond issued in this investigation on June 26, 2020. Comments should address whether issuance of the remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended LEO are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended LEO;

(iii) Identify like or directly competitive articles that complainant, its licensees, and/or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, its licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended LEO within a commercially reasonable time; and

(v) Explain how the recommended LEO would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on July 28, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 *FR* 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1168'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary ((202) 205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Dated: June 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14366 Filed 7–2–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–650–651 (Preliminary)]

Phosphate Fertilizers from Morocco and Russia; Institution of Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation Nos. 701–TA–650–651 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of phosphate fertilizers from Morocco and Russia, provided for in subheadings 3103.11.00, 3103.19.00, 3105.20.00, 3105.30.00, 3105.40.00, 3105.51.00, and 3105.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of Morocco and Russia. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by August 10, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 17, 2020.

DATES: Applicable June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), in response to a petition filed on June 26, 2020, by The Mosaic Company, Plymouth, Minnesota.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting its Title VII (antidumping and countervailing duty) preliminary phase staff conferences through submissions of written opening remarks and written testimony, staff questions and written responses to those questions, and postconference briefs. Requests to appear at the conference should be emailed to*preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 15, 2020. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement. Please note the Secretary's Office will accept only electronic filings during 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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 22, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written opening remarks and testimony to the Commission on or before July 15, 2020. Staff questions will be provided to the parties on July 17, 2020, and written responses should be submitted to the Commission on or before July 22, 2020. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations 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 any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, 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.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 29, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14294 Filed 7–2–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0039]

Agency Information Collection Activities; Proposed eCollection eComments Requested;

Federal Firearms Licensee Firearms Inventory Theft/Loss Report—ATF Form 3310.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

–Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

–Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

–Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

–Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3310.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Federal Government.

Abstract: The Federal Firearms Licensee Firearms Inventory Theft/Loss Report—ATF Form 3310.11 is used by federal firearms licensees (FFLs) to report theft or loss of inventory or collection to the Attorney General and other appropriate authorities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,000 respondents will utilize the form annually, and it will take each respondent approximately 24 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,600 hours, which is equal to 4,000 (# of respondents) * .4 (24 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 30, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–14382 Filed 7–2–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Ohio

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a retroactive change in benefit period eligibility under the EB program for Ohio. The following changes have occurred since the publication of the last notice regarding the State's EB status:

Based on Ohio's State law, which provides for the temporary adoption of the optional TUR trigger during periods of 100 percent Federal financing, and data released by the Bureau of Labor Statistics on May 22, 2020, the seasonally-adjusted total unemployment rate for Ohio rose to meet the 8.0 percent threshold to trigger ''on'' to a high unemployment period in EB. The payable period for Ohio under the high unemployment period is retroactive to June 7, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the

states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202)–693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14353 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Arizona and Nebraska

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Arizona and Nebraska.

The following change has occurred since the publication of the last notice regarding each States' EB status:

The 13-week insured unemployment rates (IUR) for Arizona and Nebraska, for the week ending May 30, 2020, rose above 5.0 percent and exceeded 120 percent of the corresponding average rates in the two prior years. Therefore, beginning the week of June 14, 2020, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC. 20210, telephone number: (202)–693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14352 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Wyoming

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Wyoming. The following change has occurred since the publication of the last notice regarding the State's EB status:

The 13-week insured unemployment rate (IUR) for Wyoming, for the week ending June 6, 2020, rose above 5.0 percent and exceeded 120 percent of the corresponding average rates in the two prior years. Therefore, beginning the week of June 21, 2020, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC. 20210, telephone number: (202)–693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14354 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Utah

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit payment status under the EB program for Utah.

The following change has occurred since the publication of the last notice regarding each Utah's EB status:

The 13-week insured unemployment rate (IUR) for Utah, for the week ending June 13, 2020, rose above 5.0 percent and exceeded 120 percent of the corresponding average rate in the two prior years. Therefore, beginning the week of June 28, 2020, eligible unemployed workers will be able to collect up to an additional 13 weeks of UI benefits.

The trigger notice covering state eligibility for the EB program can be found at: *http://oui.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program and the terms and conditions on which they are payable are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC. 20210, telephone number: (202)–693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14355 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Alaska, Kansas, North Carolina, New Hampshire, New Jersey, New York, Oregon, Texas, and Vermont

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Alaska, Kansas, North Carolina, New Hampshire, New Jersey, New York, Oregon, Texas, and Vermont.

The following changes have occurred since the publication of the last notice regarding the States' EB status:

Based on the data released by the Bureau of Labor Statistics on June 19, 2020, the seasonally-adjusted total unemployment rates for Alaska, Kansas, North Carolina, New Hampshire, New Jersey, New York, Oregon, Texas, and Vermont rose to meet the 8.0% threshold to trigger ''on'' to a high unemployment period in EB. The payable period for these states under the high unemployment period begins July 5, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c)(1)). Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14350 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Rhode Island and Washington

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Rhode Island and Washington.

The following changes have occurred since the publication of the last notice regarding the States EB status:

Based on the data released by the Bureau of Labor Statistics on May 22, 2020, the seasonally-adjusted total unemployment rates for Rhode Island and Washington rose to meet the 8.0% threshold to trigger ''on'' to a high unemployment period in EB. The payable period for these states under the high unemployment period begins June 7, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Kevin Stapleton, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202)–693–3009 (this is not a toll-free number) or by email: *Stapleton.Kevin@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–14351 Filed 7–2–20; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on July 14, 2020. The meeting will commence at 3:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: PUBLIC NOTICE OF VIRTUAL REMOTE MEETING Legal Services Corporation Headquarters

(LSC) will be conducting the July 14, 2020 meeting remotely via ZOOM.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Finance Committee meeting will be open to public observation. Members of the public who wish to participate remotely may do so by following the directions provided below.

DIRECTIONS FOR OPEN SESSION:

- To join the Zoom meeting by computer please click this link.
- Meeting ID: 893 8453 8011
- Password: Justice74
- To join the Zoom meeting with one touch from your mobile phone, click below:

+13126266799, 89384538011#,1#,812073#

- To join the Zoom meeting by phone, use this information:

Dial by your location
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Germantown)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
- Meeting ID: 893 8453 8011
- Password: 812073

Find your local number: *https://us02web.zoom.us/u/kYQkyBeCq*

- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of June 16, 2020
3. Public comment regarding Fiscal Year 2022 budget request
4. Consider and act on Fiscal Year 2022 Budget Request *Resolution 2020–XXX*
5. Public comment on other matters
6. Consider and act on other business
7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Karly Satkowiak, Special Counsel at (202) 295–1633 and Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting.

If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 1, 2020.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2020–14574 Filed 7–1–20; 4:15 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249, 50–373, 50–374, 50–352, 50–353, 50–410, 50–277, 50–278, 50–254, and 50–265; NRC–2020–0151]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Unit 2; Peach Bottom Atomic Power Station, Units 2 and 3; and Quad Cities Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to the facility operating licenses for the following facilities operated by Exelon Generation Company, LLC: Dresden Nuclear Power Station (Dresden), Units 2 and 3; LaSalle County Station (LaSalle), Units 1 and 2; Limerick Generating Station (Limerick), Units 1 and 2; Nine Mile Point Nuclear Station (Nine Mile Point), Unit 2; Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3; and Quad Cities Nuclear Power Station (Quad Cities), Units 1 and 2. The proposed amendments would revise technical specification (TS) requirements for certain physical parameters at each facility.

DATES: Submit comments by August 5, 2020. Requests for a hearing or petitions for leave to intervene must be filed by August 5, 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–2020–0151. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges-Roman; 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: Blake A. Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380, email: *Blake.Purnell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0151 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–2020–0151.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The license amendment request from Exelon Generation Company, LLC, dated April 30, 2020, is available in ADAMS under Accession No. ML20121A274.

B. Submitting Comments

Please include Docket ID NRC–2020–0151 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. Introduction

The NRC is considering issuance of amendments to the facility operating licenses for the following boiling-water reactors (BWRs) operated by Exelon Generation Company, LLC: Dresden, Units 2 and 3, located in Grundy County, Illinois; LaSalle, Units 1 and 2, located in LaSalle County, Illinois; Limerick, Units 1 and 2, located in Montgomery County, Pennsylvania; Nine Mile Point, Unit 2, located in Oswego County, New York; Peach Bottom, Units 2 and 3, located in York and Lancaster Counties, Pennsylvania; and Quad Cities, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendments would revise certain TS requirements for the following physical parameters: (1) The drywell-to-suppression chamber differential pressure at Dresden and Quad Cities; (2) the primary containment oxygen concentration at Dresden, LaSalle, Nine Mile Point, Peach Bottom, and Quad Cities; and (3) the drywell and suppression chamber oxygen concentration at Limerick. The proposed changes are based, in part, on Technical Specifications Task Force (TSTF) traveler TSTF–568, Revision 2, ''Revise Applicability of BWR/4 TS 3.6.2.5 and TS 3.6.3.2'' (ADAMS Accession No. ML19141A122).

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facilities in accordance with the proposed amendments 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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises certain TS requirements for the following physical parameters: (1) The drywell-to-suppression chamber differential pressure at Dresden and Quad Cities; (2) the primary containment oxygen concentration at Dresden, LaSalle, Nine Mile Point, Peach Bottom, and Quad Cities; and (3) the drywell and suppression chamber oxygen concentration at Limerick. Specifically, the proposed change revises the applicability of the limiting conditions for operation (LCOs) for these parameters and the remedial actions to be taken when these LCOs are not met. The TS limits on these parameters are not affected by the proposed change. These parameters are not initiators to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not affected by the proposed change.

The mitigation of some accidents previously evaluated includes assumptions regarding these physical parameters. The applicability of the LCOs related to oxygen concentration is changed from Mode 1 (Operational Condition 1 for Limerick) when thermal power is greater than 15 percent to Modes 1 and 2 (Operational Conditions 1 and 2 for Limerick). This expands the applicability of the LCOs related to oxygen concentration for each facility and will not affect the consequences of an accident.

The existing exceptions in the applicability of the LCOs for the subject physical parameters are removed. For each subject parameter, if the LCO is not met, then the licensee must either restore the parameter to within the specified limit or be in a mode or condition where the LCO is not applicable. The proposed change includes increasing the completion times for these actions. The consequences of an event that could affect the subject parameters are no different during the proposed completion times than the consequences of the same event during the existing completion times. A note referencing LCO 3.0.4.c is added to the TS actions to permit entering a mode or condition where the LCOs for the subject parameters are applicable but not met. The addition of LCO 3.0.4.c has no effect on the consequences of an accident. The changes to the completion times and addition of LCO 3.0.4.c replace the existing applicability exceptions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS requirements for the following physical parameters: (1) The drywell-to-suppression chamber differential pressure at Dresden and Quad Cities; (2) the primary containment oxygen concentration at Dresden, LaSalle, Nine Mile Point, Peach Bottom, and Quad Cities; and (3) the drywell and suppression chamber oxygen concentration at Limerick. Specifically, the proposed change revises the applicability of the LCOs for these parameters and the actions for when these LCOs are not met. The proposed change does not involve a physical alteration of these plants (*i.e.,* no new or different type of equipment will be installed). No credible new failure mechanisms, malfunctions, or accident initiators that would have been considered a design-basis accident in the Updated Final Safety Analysis Report for these plants are created because hydrogen generation is not risk significant for design-basis accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS requirements for the following physical parameters: (1) The drywell-to-suppression chamber differential

pressure at Dresden and Quad Cities; (2) the primary containment oxygen concentration at Dresden, LaSalle, Nine Mile Point, Peach Bottom, and Quad Cities; and (3) the drywell and suppression chamber oxygen concentration at Limerick. Specifically, the proposed change revises the applicability of the LCOs for these parameters and the actions for when these LCOs are not met. No safety limits are affected. No LCOs or physical parameter limits are affected. The TS requirements for these parameters assure sufficient safety margins are maintained, and that the design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the licensing basis for each plant. The proposed change does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. 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 amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day notice period if the Commission concludes the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments 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 in the **Federal Register** a notice of issuance. 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.

III. 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 amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendments. 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 amendments 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.

IV. 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.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Nancy L. Salgado.

Dated: June 30, 2020.

For the Nuclear Regulatory Commission.

Blake A. Purnell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–14405 Filed 7–2–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that the July 16, 2020, meeting of the Federal Prevailing Rate Advisory Committee previously announced in the **Federal Register** on Monday, December 23, 2019, is being changed to a virtual meeting via teleconference. There will be no in-person gathering for this meeting.

DATES: The meeting announce in the **Federal Register** of Monday, December 23, 2019, at 84 FR 70580, has been changed to a virtual meeting that will be held on July 16, 2020, beginning at 10:00 a.m. (EDT).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines. This notice is published less than 15 days prior to the meeting due to administrative delays caused by the impact of the novel coronavirus SARS-CoV–2, which has required a rescheduling of the meeting from an in-person meeting to a virtual meeting.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area
- Special wage schedules for ship surveyors in Puerto Rico
- Amendments to 5 CFR 532.201, 532.207, 532.235, and 532.247

Public Participation: The July 16, 2020, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the teleconference by audio access only. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''July 16 FPRAC Meeting'' no later than Tuesday, July 14, 2020.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–14357 Filed 7–2–20; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–186 and CP2020–210]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 7, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–186 and CP2020–210; Filing Title: USPS Request to Add Priority Mail Contract 631 to Competitive Product List and Notice of Filing Materials Under Seal; Filing

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Acceptance Date: June 26, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: July 7, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–14340 Filed 7–2–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89185; File No. SR–NYSEArca-2019–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E

June 29, 2020.

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) adopt NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Active Proxy Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules; and (2) list and trade shares (''Shares'') of the Natixis U.S. Equity Opportunities ETF (''Fund'') under NYSE Arca Rule 8.601–E. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3]

On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 31, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On April 1, 2020, the Commission published Amendment No. 2 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8] On May 19, 2020, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 2.[9] On May 27, 2020, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 3.[10] On June 11, 2020, the Exchange filed Amendment No. 5 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 4.[11] On June 19, 2020, the Exchange filed Amendment No. 6 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 5.[12] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 6, from interested persons and is approving the proposed rule change, as modified by Amendment No. 6, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 6

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 add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. The Exchange also proposes to list and trade shares (''Shares'') of the following under proposed NYSE Arca Rule 8.601–E: Natixis U.S. Equity Opportunities ETF (the ''Fund'').[13]

Proposed Listing Rules

Proposed Rule 8.601–E (a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601–E.

Proposed Rule 8.601–E (b) provides that Rule 8.601–E is applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601–E, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601–E (b) provides further that Active Proxy Portfolio Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601–E(c)(1) defines the ''Active Proxy Portfolio Share'' as a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88199, 85 FR 9888 (February 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 to the proposed rule change was filed on March 26, 2020, and subsequently withdrawn on March 31, 2020. Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7015545-214987.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 88533, 85 FR 19526 (April 7, 2020).

[9] Amendment No. 3 is available on the Commission's website *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7214369-216889.pdf.*

[10] Amendment No. 4 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7245193-217209.pdf.*

[11] Amendment No. 5 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7306918-218149.pdf.*

[12] Amendment No. 6 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7329866-218548.pdf.*

[13] The Natixis U.S. Equity Opportunities ETF was referred to as the Natixis ETF in SR–NYSEArca–2019–95 as originally filed and in Amendment 2 thereto.

an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601–E(c)(2) defines the term ''Actual Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.

Proposed Rule 8.601–E(c)(3) defines the term ''Proxy Portfolio'' as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.[14]

Proposed Rule 8.601–E(c)(4) defines the term ''Reporting Authority'' in respect of a particular series of Active Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.601–E(c)(5) defines the term ''normal market conditions'' as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 8.601–E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601–E(d)(1) provides that each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 8.601–E(d)(2) provides that each series of Active Proxy Portfolio Shares shall be listed and traded subject to application of the following continued listing criteria: the Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time (proposed Rule 8.601–E(d)(2)(A)(i)), and the Proxy Portfolio will be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and will be made available to all market participants at the same time (proposed Rule 8.601–E(d)(2)(B)(i)).

Proposed Rule 8.601–E(d)(2)(C) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5–E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) if any of the continued listing requirements set forth in Rule 8.601–E are not continuously maintained;

(ii) if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

(iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iv) if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(v) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

(vi) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 8.601–E(d)(2)(D) (Trading Halt) provides that (i) The

[14] The information required in proposed Rule 8.601–E(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c–11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c-11. *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release''). The Exchange believes it is appropriate to require such information, rather than all information required under Rule 8.600–E(c)(2). In adopting this requirement for funds operating in compliance with Rule 6c–11, the Commission stated that ''a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c–11 will require an ETF to post a subset of the information required by the listing exchanges' current generic listing standards for actively managed ETFs.'' The Commission stated further that ''this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.'' See Rule 6c–11 Release, notes 249–260 and accompanying text.

Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (ii) If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18–E(d)(1); and (iii) If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time, as applicable.

Proposed Rule 8.601–E(d)(2)(E) provides that, upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.601–E(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.601–E(e) (Limitation of Exchange Liability) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Commentary .01 to Rule 8.601–E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .02 provides that transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34–E(a).

Proposed Commentary .03 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or the Proxy Portfolio or changes thereto.[15]

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange also proposes non-substantive amendments to include Active Proxy Portfolio Shares in other Exchange rules. Specifically, the Exchange proposes to amend current Rule 5.3–E to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601–E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies. Similarly, the Exchange proposes to amend Rule 5.3–E(e) to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601–E among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[16] and for which a ''Disclosed

[15] The Exchange will propose applicable NYSE Arca listing fees for Active Proxy Portfolio Shares in the NYSE Arca Equities Schedule of Fees and Charges via a separate proposed rule change.

[16] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca

Portfolio'' is required to be disseminated at least once daily,[17] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.[18] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange, after consulting with various Lead Market Makers (''LMMs'') [19] that trade exchange-traded funds (''ETFs'') on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[20] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Fund and the Trust

The Fund will be a series of Natixis ETF Trust II (''Trust''), which will be registered with the Commission as an open-end management investment company.[21]

Natixis Advisors, L.P. (''Adviser'') will be the investment adviser to the Fund. Harris Associates L.P and Loomis, Sayles & Company are sub-advisers (''Sub-Advisers'') for the Fund. ALPS Distributors, Inc. will act as the distributor and principal underwriter (''Distributor'') for the Fund.

As noted above, proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of

Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[17] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[18] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[19] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[20] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

[21] The Trust is registered under the 1940 Act. On April 24, 2020, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–235466 and 811–23500) (the ''Registration Statement''). The Trust and NYSE Group, Inc. filed a Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14870), dated October 21, 2019 (''Application''). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812–14870). On December 10, 2019, the Commission issued an order (''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33711 (December 10, 2019)). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement and the Application.

material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, proposed Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[22] Proposed Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, proposed Commentary.05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio. Harris Associates L.P. and Loomis, Sayles & Company are not registered as a broker-dealer but are affiliated with a broker-dealer. Each of the Sub-Advisers has implemented and will maintain a ''fire wall'' with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser, each Sub-Adviser or the Fund who makes decisions pertaining to the Fund's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

Natixis U.S. Equity Opportunities ETF

According to the Application, the Adviser believes the Fund would allow for efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect the Fund's performance-seeking strategies. Even though the Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the secondary market at prices that are close to their NAV.

In this regard, the Fund will utilize a proxy portfolio methodology— the ''NYSE Proxy Portfolio Methodology''— that would allow market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.[23] The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.[24]

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[25] Any foreign

[22] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[23] The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Fund. NYSE Group, Inc. is not affiliated with the Fund, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

[24] With respect to the Fund, the Fund will have in place policies and procedures regarding the construction and composition of its Proxy Portfolio. Such policies and procedures will be covered by the Fund's compliance program and other requirements under Rule 38a–1 under the 1940 Act.

[25] Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs traded on a U.S. exchange; exchange-traded notes (''ETNs'') traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange

common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term growth of capital. The Fund, under normal market conditions,[26] will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in equity securities, including exchange-traded common stocks and exchange-traded preferred stocks. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in securities of U.S. issuers.

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will offer, issue and sell Shares of the Fund to investors only in specified minimum size ''Creation Units'' through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of the Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Trust will sell and redeem Creation Units of the Fund only on a Business Day. Creation Units of the Fund may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

The ''Creation Basket'' (as defined below) for the Fund's Shares will be based on the Fund's Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating the Fund's NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of the Fund, as calculated in accordance with the policies and procedures set forth in the Registration Statement.

According to the Application, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for the Fund (collectively, the ''Creation Basket'') will be the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

While the Fund normally will issue and redeem Shares in kind, the Fund may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, the Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. The Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.[27] Each Business Day, before the open of trading on the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) A ''participating party'' (*i.e.,* a broker or other participant), in the Continuous Net Settlement (''CNS'') System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (''NAV Calculation Time''), generally 4:00 p.m. E.T. on the date the order is placed (''Transmittal Date'') in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date.

Daily Disclosures

With respect to the Fund, the following information will comprise the ''Proxy Portfolio Disclosures'' and, pursuant to the Application and Exemptive Order, will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day.
- The historical ''Tracking Error'' between the Fund's last published NAV per share and the value, on a per Share basis, of the Fund's Proxy Portfolio calculated as of the close of trading on the prior Business Day will be publicly available on the Fund's website before the commencement of trading in Shares each Business Day.
- The ''Proxy Overlap'' will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Proxy Overlap is the percentage weight overlap between the Proxy Portfolio's holdings compared to the Actual Portfolio's holdings that formed the basis for the Fund's calculation of NAV

contemporaneously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time (''E.T.'')); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (''ADRs''); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with the Fund's Shares. In addition, the Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

[26] The term ''normal market conditions'' is defined in proposed Rule 8.601–E(c)(6).

[27] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Fund on that day.

at the end of the prior Business Day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

Availability of Information

The Fund's website (*www.im.natixis.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,'' [28] and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV. The Adviser has represented that the Fund's website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.[29] Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund's SAI, Shareholder Reports, Form N–CSR, N–PORT and Form N–CEN. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to its Exemptive Order, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, equity securities and ETFs will be available via the Consolidated Tape Association (''CTA'') high-speed line or from the exchange on which such securities trade. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under proposed Rule 8.601–E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.[30]

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[31]

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[32] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18–E(d)(1). If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to proposed Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of

[28] The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[29] *See* note 18, *supra.*

[30] *See* note 25, *supra.*

[31] The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

[32] *See* NYSE Arca Rule 7.12–E.

trading in the Shares, will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio for the Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[33] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[34]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Section 6(b)(5) of the Act,[36] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 8.601–E is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Active Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities.[37]

Proposed Rule 8.601–E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601–E(d)(1)(A) provides that, for each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601–E(d)(1)(B) provides, and the Exchange represents, that the Exchange will obtain a representation from the

[33] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[34] For a list of the current members of ISG, *see www.isgportal.org.*

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

[37] The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601–E(d)(1)(C) provides that all Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions. Proposed Rule 8.601–E(d)(2) provides that each series of Active Proxy Portfolio Shares will be listed and traded subject to application of specified continued listing criteria, as set forth above.

Proposed Rule 8.601–E(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule 8.601–E(d)(2)(D)(iii) provides that, if the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time, as applicable. The Exchange believes that these proposed halt procedures will help ensure that market participants have fair and uniform access to information regarding a fund's NAV, Proxy Portfolio or Actual Portfolio and, therefore, reduce the potential for manipulation and help ensure a fair and orderly market in trading of Active Proxy Portfolio Shares.

Proposed Commentary .01 to NYSE Arca Rule 8.601–E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Actual Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or to the Proxy Portfolio and/or changes thereto.

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange believes proposed Commentary .04 and proposed Commentary .05 will act as a safeguard against any misuse and improper dissemination of non-public information related to the Fund's Actual Portfolio or Proxy Portfolio or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or Proxy Portfolio will act to prevent any individual or entity from sharing such information externally and the internal ''fire wall'' requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purpose. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The proposed addition of Active Proxy Portfolio Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3–E (Corporate Governance and Disclosure Policies) and Rule 5.3–E (e) (Shareholder/Annual Meetings) would subject Active Proxy Portfolio Shares to the same requirements currently applicable to other 1940 Act-registered investment company securities (*i.e.,* Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E. The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[38] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will

[38] *See* note 25, *supra.*

commence delisting procedures under NYSE Arca Rule 5.5–E(m).

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[39] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets[40] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Fund and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Fund, as Active Proxy Portfolio Shares, proposes to allow for efficient trading of Shares through an effective Fund portfolio transparency substitute—Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting the Fund from the potential for front-running of portfolio transactions and the potential for free-riding on the Fund's portfolio strategies, each of which could adversely impact the performance of the Fund.

The Fund will utilize the NYSE Proxy Portfolio Methodology, allowing market participants to assess the intraday value and associated risk of the Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Adviser represents that investors will also benefit because the Fund's operating costs, such as transfer agency costs, are generally lower in ETFs than in mutual funds. The Fund will have access to the identical clearing and settlement procedures now used by U.S. domiciled ETFs, and therefore, should experience many of the operational and

[39] *See* note 20, *supra.*

[40] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

cost efficiencies benefitting current ETF investors.

The Adviser represents further that in-kind Share creation/redemption orders will allow the Fund to enjoy overall transaction costs lower than those experienced by mutual funds. The Fund's in-kind Share creation and redemption process will facilitate and enhance active management strategies by generally limiting the portfolio manager's need to transact in a large volume of trades in order to maintain desired investment exposures. In addition, the Adviser represents that the Fund will receive tax efficiency benefits of the ETF structure because of in-kind Share creation and redemption activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of a series of Active Proxy Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV, Proxy Portfolio and Actual Portfolio will be made available to all market participants at the same time. With respect to the Fund, investors can also obtain the Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT and Form N–CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E (d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 6, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[41] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 6 is consistent with Section 6(b)(5) of the Act,[42] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Proposed NYSE Arca Rule 8.601–E

Pursuant to the Exemptive Order,[43] Active Proxy Portfolio Shares would not be required to disclose the actual holdings of the Investment Company on a daily basis. Instead, Active Proxy Portfolio Shares would be required to publicly disclose the Proxy Portfolio, which is designed to closely track the performance of the holdings of the Investment Company, on a daily basis. Like other registered management investment companies, Active Proxy Portfolio Shares would be required to disclose the actual holdings of the Investment Company within at least 60 days following the end of every fiscal quarter. For reasons described below, the Commission believes that NYSE Arca Rule 8.601–E is sufficiently designed to be consistent with the Act and to help prevent fraudulent and manipulative acts and practices and to maintain a fair and orderly market for Active Proxy Portfolio Shares.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Active Proxy Portfolio Shares on the Exchange. The Commission notes that the proposed listing and trading rules for Active Proxy Portfolio Shares, where appropriate, are similar to existing Exchange rules relating to exchange-traded funds, in particular, Managed Fund Shares and Managed Portfolio Shares.[44] The Commission also notes that it recently approved Cboe BZX Exchange, Inc.'s proposed listing requirements for Tracking Fund Shares that are substantively identical to the Exchange's proposal.[45] Moreover, prior to listing and/or trading on the Exchange, the Exchange must file a

[41] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78f(b)(5).

[43] *See supra* note 21.

[44] The proposed rules relating to limitation of liability (proposed NYSE Arca Rule 8.601–E(e)), termination (proposed NYSE Arca Rule 8.601–E(d)(2)(E)), and voting (proposed NYSE Arca Rule 8.601–E(d)(2)(F)) are substantively similar or identical to existing provisions for Managed Fund Shares and Managed Portfolio Shares. *See* NYSE Arca Rule 8.600–E(e) and NYSE Arca Rule 8.900–E(e), NYSE Arca Rule 8.600–E(d)(2)(E) and NYSE Arca Rule 8.900–E(d)(2)(D), and NYSE Arca Rule 8.600–E(d)(2)(F) and NYSE Arca Rule 8.900–E(d)(2)(E), respectively.

[45] *See* Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX–2019–107).

separate proposed rule change pursuant to Section 19(b) of the Act for each series of Active Proxy Portfolio Shares.[46] All such shares listed and/or traded under proposed NYSE Arca Rule 8.601–E will be subject to the full panoply of NYSE Arca rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Active Proxy Portfolio Shares under proposed NYSE Arca Rule 8.601–E, the Exchange must establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio will be made publicly available to all market participants at the same time. Moreover, all Active Proxy Portfolio Shares must have a stated investment objective, which must be adhered to under normal market conditions.[47]

Although the actual portfolio holdings of the Active Proxy Portfolio Shares are not publicly disclosed on a daily basis, the Commission believes that the proposed listing standards under proposed NYSE Arca Rule 8.601–E, along with the required dissemination of the Proxy Portfolio, are adequate to ensure transparency of key information regarding the Active Proxy Portfolio Shares and that such information is made available to market participants at the same time. Namely, the Proxy Portfolio would be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and would be made available to all market participants at the same time.[48] In addition, like all other registered management investment companies, each series of Active Proxy Portfolio Shares would be required to publicly disclose its portfolio holdings information on a quarterly basis, within at least 60 days following the end of every fiscal quarter.[49] If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio is not being made available to all market participants at the same time, then the Exchange will halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time, as applicable.[50] Further, if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time, the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Active Proxy Portfolio Shares.[51] Moreover, the Exchange represents that a series of Active Proxy Portfolio Shares' Statement of Additional Information and shareholder reports will be available for free upon request from the Investment Company, and that those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

The Commission also finds that the Exchange's rules with respect to trading halts and suspensions under proposed NYSE Arca Rule 8.601–E are designed to help maintain a fair and orderly market. According to the proposal, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Further, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Proxy Portfolio and/or Actual Portfolio, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[52]

Other provisions of the Exchange's rule pertaining to suspension are substantially consistent with provisions that currently exist for Managed Fund Shares and Managed Portfolio Shares. Those provisions state that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under NYSE Arca Rule 5.5–E(m) for, a series of Active Proxy Portfolio Shares if: (1) Any of the continued listing requirements set forth in NYSE Arca Rule 8.601–E are not continuously maintained; (2) following the initial twelve-month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Active Proxy Portfolio Shares; (3) the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Active Proxy Portfolio Shares; (4) any of the statements or representations regarding the description of the portfolio, limitations on portfolio holdings, or the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or (5) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Active Proxy Portfolio Shares on the Exchange inadvisable.[53]

Finally, the Commission believes that the requirements of proposed NYSE Arca Rule 8.601–E are consistent with the Act and, more specifically, are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Actual Proxy Portfolio Shares would not publicly disclose on a daily basis information about the holdings of the Actual Portfolio, it is vital that such information be kept confidential and not be subject to misuse. Accordingly, to help ensure that the portfolio information be kept confidential and the shares not be susceptible to fraud or manipulation, proposed NYSE Arca Rule 8.601–E, Commentary .04 requires that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser must erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Further, proposed Commentary .04 also requires that any person related to the

[46] *See* proposed NYSE Arca Rule 8.601–E, Commentary .01.

[47] *See* proposed NYSE Arca Rule 8.601–E(d)(1).

[48] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(B)(i).

[49] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(A)(i). *See also* Rules 30e–1, 30d–1, and 30b1–5 under the 1940 Act.

[50] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(D)(iii).

[51] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(C)(ii).

[52] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(D)(i). In addition, if a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in NYSE Arca Rule 7.18–E(d)(1) (Trading Halts for UTP Derivative Securities Products). *See* proposed NYSE Arca Rule 8.601–E(d)(2)(D)(ii).

[53] *See* proposed NYSE Arca Rule 8.601–E(d)(2)(C). *See also supra* note 51 and accompanying text.

investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or the Proxy Portfolio or changes thereto. In addition, proposed NYSE Arca Rule 8.601–E, Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio. The proposed rules also require that the Exchange implement and maintain written surveillance procedures for Active Proxy Portfolio Shares.[54] Finally, to ensure that the Exchange has the appropriate information to monitor and surveil its market, proposed NYSE Arca Rule 8.601–E, Commentary .03 also requires that the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

For the reasons discussed above, the Commission finds that proposed NYSE Arca Rule 8.601–E for Active Proxy Portfolio Shares is consistent with Section 6(b)(5) of the Act.

Further, the Commission finds that the proposed amendments to NYSE Arca Rule 5.3–E and NYSE Arca Rule 5.3–E(e) to include Active Proxy Portfolio Shares among the list of derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies, and among the derivative or special purpose securities to which the requirements concerning shareholder annual meetings do not apply, are consistent with Section 6(b)(5) of the Act because these amendments will provide that Active Proxy Portfolio Shares will be treated in a manner consistent with other derivative securities listed and traded on the Exchange.

B. Listing and Trading of Natixis U.S. Equity Opportunities ETF

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio of the Fund will be made available to all market participants at the same time.[55] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares, equity securities, and ETFs will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Moreover, the Fund's website will include additional information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Portfolio compared to the Actual Portfolio holdings for the prior business day, and any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act. The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio;
- The Fund's Sub-Advisers are not registered as a broker-dealer but are affiliated with a broker-dealer, and each Sub-Adviser has implemented and will maintain a ''fire wall'' with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio;
- Any person related to the Adviser, each Sub-Adviser, or the Fund who makes decisions pertaining to the Fund's Actual Portfolio or Proxy Portfolio or who has access to non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto;
- In the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its

[54] *See* proposed NYSE Arca Rule 8.601–E, Commentary .03.

[55] *See* NYSE Arca Rule 8.601–E(d)(1)(B).

broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and

• Any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund's Actual Portfolio or the Proxy Portfolio or changes thereto will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto, and if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange,[56] and that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.

(2) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.[57]

(6) The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

(7) With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

The Exchange also represents that all statements and representations made in the filing regarding: (1) The description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the Adviser will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor[58] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

IV. Solicitation of Comments on Amendment No. 6 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 6, is consistent with the Exchange 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–NYSEArca–2019–95 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–95. 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

[56] *See* NYSE Arca Rule 8.601–E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, the Fund's investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

[57] *See* 17 CFR 240.10A–3.

[58] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2019–95, and should be submitted on or before July 27, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 6

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 6, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 6 in the **Federal Register**. In Amendment No. 6, the Exchange amended proposed Rule 8.601–E to, among other things, (i) revise the circumstances under which it would consider the suspension of trading in, and commence delisting proceedings for, a series of Active Proxy Portfolio Shares; (ii) require that any person or entity who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, (a) be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto, and (b) if such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, to erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio; and (iii) remove unnecessary discussion about an information bulletin to be provided to the Exchange's members regarding trading in the Shares. Amendment No. 6 also provides other clarifications and additional information related to the Fund.[59] The changes and additional information in Amendment No. 6 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[60] to approve the proposed rule change, as modified by Amendment No. 6, on an accelerated basis.

[59] *See* Amendment No. 6, *supra* note 12.

[60] 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[61] that the proposed rule change (SR–NYSEArca-2019–95), as modified by Amendment No. 6, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14388 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[61] *Id.*

[62] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89196; File No. SR–BOX–2020–25]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility

June 30, 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 22, 2020, BOX Exchange LLC (''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 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

[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).

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 amend the Fee Schedule on BOX facility to make non-substantive, clerical changes in order to conform the Fee Schedule with the Exchange's adoption of the new Penny Interval Program.[5] Specifically, the Exchange proposes to delete references to the Penny Pilot Program[6] and Non-Penny Pilot Program and replace those references with Penny Interval Program or Non-Penny Interval Program throughout the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change would 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 the proposed conforming non-substantive changes would add clarity, transparency and consistency to the Exchange's Fee

[5] *See* Securities Exchange Act Release No. 88959 (May 27, 2020), 85 FR 33769 (June 2, 2020) (SR–BOX–2020–17).

[6] *See* BOX Rule 7260.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Schedule. The Exchange believes that market participants would benefit from the increased clarity, and thereby reduce any potential for investor confusion. The Exchange notes, it is not proposing to modify any amount of fees assessed or change the application of any fees; the Exchange is simply making non-substantive, clerical updates to the wording of its Fee Schedule.

Effective date

The Exchange's Penny Interval Program [9] will not become operative until July 1, 2020, therefore, the Exchange proposes to implement the changes pursuant to this filing on same day—July 1, 2020.

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 change is not designed to address any competitive issue but rather to make non-substantive changes to the BOX Fee Schedule, thereby reducing confusion and making the Exchange's Fee Schedule easier to understand. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. As such, 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.

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 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 [10] and Rule 19b–4(f)(6) [11] thereunder. The Exchange believes that the proposal is non-controversial, does not pose an undue burden on competition, and does not raise any novel issues because the proposed changes are designed to conform the language in BOX's Fee Schedule to the recently adopted (and soon to be operative) Penny Interval Program. According to the Exchange, the proposal would allow the Exchange to maintain uniform language between its Rulebook and Fee Schedule, which the Exchange believes would benefit market participants because it would provide consistency and clarity in these documents. Further, the proposal does not make any substantive changes to the amount or application of any fee.

The Exchange has proposed to implement the Penny Interval Program on July 1, 2020 and has asked the Commission to waive the 30-day operative delay for this filing, so that the proposed changes will become operative on the same date that the Penny Interval Program becomes operative.[12] 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 the BOX Fee Schedule to align the terminology used therein to reflect the terminology of the Penny Interval Program, which will be operative on July 1, 2020. Accordingly, the Commission designates the proposed rule change as operative on July 1, 2020 to correspond with the operative date of the Penny Interval Program.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-BOX–2020–25 on the subject line

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–25 and should be submitted on or before July 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14493 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See supra* note 5.

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89189; File No. SR–CBOE–2020–058]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

June 30, 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 24, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its fees schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://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.

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Footnote 24 of the Fees Schedule to govern pricing changes that apply for the duration of time the Exchange trading floor is being operated in a modified manner in connection with the COVID–19 pandemic.[3] By way of background, on March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID–19[4] and has been operating in an all-electronic configuration since then. The Exchange intends to reopen its trading floor on June 15, 2020, but with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor. As a result, the Exchange is relocating and modifying the physical area of certain trading crowds and will also be determining and reducing how many floor participants may access the trading floor, along with determining where floor participants may stand.

Proposed Changes

The Exchange first proposes to amend how floor trading permit fees are assessed during the time the Exchange is operating in a modified state in connection with COVID–19. Pursuant to the Fees Schedule, in order to act as a Market-Maker on the floor, a Trading Permit Holder (''TPH'') must purchase a Market-Maker Floor Permit (''MM Floor Permit), and in order to act as a Floor Broker on the floor, a TPH must purchase a Floor Broker Permit (''FB Permit''). Fees for MM Floor Permits and FB Permits (collectively, ''trading floor permits'') are assessed based on the Floor Trading Permit Sliding Scales. As noted above, in order to help protect the safety and welfare of individuals that may access the trading floor, upon reopening on June 15, 2020, the Exchange will regulate how many individuals, including TPH nominees, may access the trading floor. As such, the Exchange does not wish to assess floor trading permit fees for trading permits that the TPH may hold but cannot use to access the trading floor. The Exchange therefore proposes to instead assess floor trading permit fees based on the number of trading permits that are ''used'' (*i.e.,* based on the maximum number of nominees a TPH can, and does have, on the floor on a given day).[5] More specifically, the Exchange proposes to provide that while operating in a modified state in connection with COVID–19, the Exchange will calculate floor trading permit fees by using the following formula: (i) The number of floor trading permits that have a nominee assigned to it in the Customer Web Portal system (''Portal'') in a given month, multiplied by the number of trading days that the floor is open and that a nominee is assigned to each respective trading permit in that month, divided by (ii) the total number of trading days in a month. The Exchange will round up to determine the total number of trading permits assessed fees using the Floor Trading Permit Sliding Scales. The Exchange also proposes to make clear that if the trading floor becomes fully operational mid-month, trading floor permit fees will continue to be assessed using the foregoing formula. The following is an example of how the proposed change in floor trading permit fees would be applied during a month where the trading floor is operating in a modified manner:

Example: A SPX Market-Maker TPH holds a total of 6 Market-Maker Floor Permits (''MM Floor Permits'') and is assigned 3 trading spaces on the trading floor in its modified configuration (*i.e.,* may have up to 3 nominees on the floor at a time). In a month with 22 trading days, 2 of the MM Floor Permits are assigned to a nominee in the Customer Web Portal for 17 trading days and 1 of the permits is assigned to a nominee in the Customer Web Portal for 7 trading days that over laps with the other 2 nominees (*i.e.,* for 7 days in the month, the TPH has 3 nominees on the floor). The Exchange would calculate the trading floor permit fees as follows: (i) 2 permits × 17 days + 1 permit × 7 days

[3] The Exchange initially filed the proposed fee changes on June 15, 2020 (SR–CBOE–2020–056). On business date June 24, 2020, the Exchange withdrew that filing and submitted this filing. The Exchange also notes that pricing changes governed by Footnote 12 would not apply when the Exchange operates in a modified state.

[4] On March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

[5] For example, if a TPH organization that normally has 5 floor Trading Permits is only allowed to have no more than 2 individuals on the trading floor when the floor is operated in a modified manner, that TPH organization will only be assessed for 2 trading permit fees if both trading permits are used, even if the TPH organization rotates which associated individuals are on the trading floor.

(*i.e.,* total 41 days), divided by (ii) 22 trading days, which equals = 1.9 permits. Rounding up, the Exchange would apply the Floor Trading Permit Sliding Scale to 2 MM Floor Permits. Based on the Market-Maker Floor Trading Permit Sliding Scale, the TPH's total MM Floor Permit Fees for the month would be $10,500 (*i.e.,* 1 @$6,000 + 1 @$4,500).[6]

The Exchange next proposes to include language in Footnote 24 of the Fees Schedule to provide that certain registration fees will not be assessed when the trading floor is operating in a modified manner. By way of background, every TPH organization must designate an individual nominee to represent the organization with respect to each Floor Broker Trading Permit or Market-Maker Floor Trading Permit in all matters relating to the Exchange.[7] An ''inactive nominee'' of a TPH organization is an individual who is eligible to become an effective nominee of that organization with respect to any Floor Broker Trading Permit or Market-Maker Floor Trading Permit which the organization holds.[8] Only active nominees are permitted to act as a Market-Maker or Floor Broker on the trading floor. In order for an inactive nominee to act as a Market-Maker or Floor Broker on the trading floor, the TPH organization it is associated with must purchase an additional Floor Trading Permit or must swap places with an active nominee on a Trading Permit, which nominee would then become inactive. The Exchange currently assesses a monthly fee of $300 for any nominee that retains inactive status (*i.e.,* ''Inactive Nominee Status Fee (Parking Space)''). The Exchange also assesses $100 each time an inactive nominee swaps places with a nominee on a Trading Permit (''Inactive Nominee Status Change (Trading Permit Swap)'' fee). As TPH organizations will not purchase additional floor Trading Permits while the trading floor is operating in a modified manner, and as the Exchange will be regulating how many nominees may access the trading floor, the Exchange believes the Inactive Nominee Status fee (Parking Space) and Inactive Nominee Status Change (Trading Permit Swap) fee should not apply during a month that the Exchange operates in a modified manner. The Exchange notes these fees also did not apply when the Exchange operated in an electronic-only configuration.[9]

The Exchange next proposes to amend the Floor Broker ADV Discount. Under this discount program, FB Trading Permit fees are eligible for rebates based on the average customer (''C'') open-outcry contracts executed per day over the course of a calendar month in all underlying symbols. As the trading floor was closed from June 1 through June 12, 2020 (and therefore there were no open-outcry contracts executed during this time), the Exchange proposes that for the month of June 2020, ADV will be based on June 15–June 30, 2020 volume.

The Exchange next proposes to increase the floor SPX/SPXW Market-Maker Tier Appointment fee from $3,000 per permit to $5,000 per permit when the Exchange is operating in a modified state. As noted above, Market-Maker Floor Tier Appointment Fees will continue to be assessed based on the number of trading permits ''used'' during a given month (*i.e.,* the number of Tier Appointment Fees assessed will be determined by the highest number of trading permits used in the respective class on any particular day during the month, subject to any applicable thresholds being met).

The Exchange also proposes to increase the Floor Brokerage fees for SPX and SPXW transactions. Specifically, the Exchange proposes to modestly increase the fee for non-crossed orders from $0.04 per contract to $0.05 per contract and the fee for crossed orders from $0.02 per contract to $0.03 per contract when the Exchange is operating in a modified state.

The Exchange next proposes to waive the following facilities fees for as long as the trading floor is operating in a modified manner as such services and products cannot be utilized during such time; provided however that such fees will be pro-rated based on the remaining trading days in the calendar month if the trading floor becomes fully operational mid-month:

Description	Fee
Standard Booth Rental Fees	$195/month (Perimeter); $550/month (OEX, Dow Jones/MNX/VIX).
Non-Standard Booth Rental Fees	$1,250/month; $1.70 per sq ft./month.
Wireless Phone Rental	$110/month.
Arbitrage Phone Positions	$550/month.
Satellite TV	$50/month.

Lastly, the Exchange proposes to eliminate an obsolete footnote reference in the Floor Brokerage Fees table. Particularly, the Exchange proposes to eliminate the reference to Footnote ''(40)''. The Exchange notes that although it recently eliminated Footnote 40 in its entirety (which is now ''reserved''), it inadvertently omitted eliminating the appended reference in the Floor Brokerage Fees table.[10] The proposed deletion maintains clarity in the Fees Schedule and alleviates potential confusion.

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] 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

[6] The Exchange notes that Market-Maker Floor Tier Appointment Fees will continue to be assessed based on the number of trading permits ''used'' during a given month (*i.e.,* the number of Tier Appointment Fees assessed will be determined by the highest number of trading permits used in the respective class on any particular day during the month, subject to any applicable thresholds being met). As such, in this example, the Market-Maker TPH would also be assessed 3 SPX Market-Maker Floor Tier Appointment Fees.

[7] *See* Cboe Options Rule 3.9(b).

[8] *See* Cboe Options Rule 3.9(e).

[9] *See* Cboe Options Fees Schedule, Footnote 12.

[10] *See* Securities and Exchange Act Release No. 88341 (March 6, 2020), 85 FR 14513 (March 12, 2020) (SR–CBOE–2020–006).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

Section 6(b)(4) of the Act,[13] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to assess fees to only those floor Trading Permits that are ''used'' to access the trading floor when the trading floor is operated in a modified manner is reasonable because TPHs will not be assessed fees for floor Trading Permits that cannot be used to use to access the trading floor. The Exchange believes the proposed formula is reasonable as it assesses fees based on the number of nominees that can, and do, access the trading floor and on the dates that such nominee is assigned to a Trading Permit. The Exchange believes using the number of days a nominee is assigned to a permit to calculate the floor trading permit fees is appropriate as there may be instances in which a TPH does not have a nominee available to occupy one of its assigned trading spaces (*e.g.,* if a nominee must avoid the Exchange's facilities for a reason enumerated in the Covid-19 Policy).[14] The Exchange believes the proposed rule change relating to floor trading permit fees is also reasonable, equitable and not unfairly discriminatory as it applies to all floor TPHs equally.

The Exchange believes the proposal to waive the Inactive Nominee Status fee and Inactive Nominee Status Change fee is reasonable, equitable and not unfairly discriminatory as TPHs would not be subject to such fees and it would apply uniformly to all nominees and inactive nominees. Also as discussed above, the Exchange does not believe it's appropriate to apply such fees, as TPH organizations will not be purchasing additional floor Trading Permits while the trading floor is operating in a modified manner, and as the Exchange is regulating how many nominees may access the trading floor. Moreover, as noted above, the Exchange already waives both fees when the trading floor is fully inoperable.[15]

The Exchange also believes its proposal to base the ADV thresholds for the Floor Broker ADV Discount program on volume from June 15 through June 30, 2020 is reasonable as such discount is based on open-outcry volume only and the Exchange floor was closed between June 1–June 12, 2020. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it applies uniformly to all Floor Brokers.

The Exchange believes the proposal to increase the floor SPX/SPXW Market-Maker Tier Appointment fee is reasonable because floor Market-Makers trading SPX/SPXW will still be paying similar trading permit-related fees as compared to when the trading floor was fully operational. Particularly, the Exchange notes that because it intends to limit the amount of Market-Makers in SPX/SPXW allowed on the trading floor when the trading floor is operated in a modified manner, Market-Makers will be saving on trading permit fees it would otherwise incur if the trading floor were fully operational.[16] The Exchange also notes that it has not increased the SPX/SPXW Market-Maker Tier Appointment fee amount since it was adopted ten years ago.[17] The Exchange also believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it applies to all floor Market-Makers trading SPX/SPXW equally. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee when the floor is operating in a modified state, as electronic Market-Makers pay the same trading permit fees regardless of whether the floor is open, closed or partially open, as compared to floor Market-Makers who are otherwise paying lower trading permit fees when the floor is partially open, as discussed above.

The Exchange similarly believes it's reasonable to increase the SPX/SPXW floor brokerage fees as it's a modest increase and as Floor Brokers in SPX are also expected to pay less in FB Permit fees when the Exchange is operating in a modified manner.[18] The Exchange also notes that it has not increased the SPX/SPXW Floor Brokerage fee amounts in well over fourteen years.[19] The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it applies to all Floor Brokers equally.

The Exchange believes the proposal to waive the identified facility fees is reasonable as market participants won't be subject to such fees. The listed facility fees each apply to a product or service that may only be utilized when the trading floor is operating at fully capacity and will not be available when the Exchange is operating in a modified manner. The Exchange believes it's therefore appropriate to waive such fees while the Exchange is operating in a modified manner. The Exchange also believes it's appropriate to pro-rate such fees if the trading floor reopens mid-month as market participants will have the benefit of using such services/products for the remainder of the month. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory as it applies equally to all market participants.

The Exchange lastly believes the proposed deletion of an obsolete footnote reference maintains clarity in the Fees Schedule and alleviates potential confusion, thereby reducing impediments to, and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes relating to Footnote 24 are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable because the trading floor is reopening, but must be operated in a modified manner in connection with COVID–19 in order to help protect the safety and welfare of individuals access the trading floor. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply equally to all

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Cboe Trade Notice ''Standards of Conduct related to the Reopening of the Cboe Options Trading Floor and COVID–19'', Reference ID C2020052601, available at *https://cdn.cboe.com/resources/release_notes/2020/Standards-of-Conduct-related-to-the-Reopening-of-the-Cboe-Options-Trading-Floor-Notice-Final.pdf.*

[15] *See* Cboe Options Fees Schedule, Footnote 12.

[16] The Exchange notes that it intends to allow Market-Maker TPH organizations in SPX to assign nominees to approximately half of the floor MM Floor Permits each TPH organization holds to access the trading floor. As discussed above, Market-Makers would not be assessed fees for the MM Floor Permits it is not allowed to use to access the trading floor.

[17] *See* Securities Exchange Act Release No. 62386 (June 25, 2010) 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[18] The Exchange notes that it intends to allow Floor Broker TPH organizations in SPX to assign nominees to approximately half of the floor FB Floor Permits each TPH organization holds to access the trading floor. As discussed above, Floor Brokers would not be assessed fees for the FB Floor Permits it is not allowed to use to access the trading floor.

[19] *See* Securities Exchange Act Release No. 53372 (February 24, 2006) 71 FR 11003 (March 3, 2006) (SR–CBOE–2006–10).

similarly situated market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on the Exchange in limited circumstances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–058 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–2020–058. 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–2020–058 and should be submitted on or before July 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14488 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89172; File No. SR–NYSE–2020–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Waiver of the Co-Location Hot Hands Fee

June 29, 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 17, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary waiver of the co-location ''Hot Hands'' fee. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend of the temporary waiver of the co-location [4] ''Hot Hands'' fee through the earlier of August 31, 2020 and the reopening of the Mahwah, New Jersey data center (''Data Center''). The waiver of the Hot Hands fee is scheduled to expire on June 30, 2020.[5]

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56).

[5] *See* Securities Exchange Act Release No. 88955 (May 27, 2020), 85 FR 33758 (June 2, 2020) (SR–NYSE–2020–44).

to Users.[6] Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[7] The Hot Hands fee is $100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID–19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE Rule 7.1 to close the co-location facility of the Exchange to third parties. The closure period was extended twice, through June 30, 2020 (the ''Initial Closure'').[8]

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rule 7.1 closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.[9] Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Price List as follows (deletions bracketed, additions italicized):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the earlier of [June 30]*August 31,* 2020 and the reopening of the Mahwah, New Jersey data center.

The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rule 7.1 closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.

The Proposed Change is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rule 7.1 closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2020–46, SR–NYSEArca–2020–58, SR–NYSECHX–2020–19, and SR–NYSENAT–2020–20.

[7] *See* Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37).

[8] *See* Securities Exchange Act Release Nos. 88397 (March 17, 2020), 85 FR 16406 (March 23, 2020) (SR–NYSE–2020–18), and 88518 (March 31, 2020), 85 FR 19187 (April 6, 2020) (SR–NYSE–2020–25).

[9] *See* 85 FR 33758, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–53 and should be submitted on or before July 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14384 Filed 7–2–20; 8:45 am]

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[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89174; File No. SR–NYSEARCA–2020–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Waiver of the Co-location Hot Hands Fee

June 29, 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 17, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary waiver of the co-location ''Hot Hands'' fee. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend of the temporary waiver of the co-location [4] ''Hot Hands'' fee through the earlier of August 31, 2020 and the reopening of the Mahwah, New Jersey data center (''Data Center''). The waiver of the Hot Hands fee is scheduled to expire on June 30, 2020.[5]

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[6] Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[7] The Hot Hands fee is $100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID–19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE Arca Rules 7.1–E and 7.1–O to close the co-location facility of the Exchange to third parties. The closure period was extended twice, through June 30, 2020 (the ''Initial Closure'').[8]

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rules 7.1–E and 7.1–O closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.[9] Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Fee Schedules as follows (deletions bracketed, additions italicized):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the earlier of [June 30]*August 31,* 2020 and the reopening of the Mahwah, New Jersey data center.

The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rules 7.1–E and 7.1–O closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca-2010–100).

[5] *See* Securities Exchange Act Release No. 88961 (May 27, 2020), 85 FR 33755 (June 2, 2020) (SR–NYSEArca–2020–47).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the ''Fee Schedules''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca-2013–80). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–53, SR–NYSEAmer-2020–46, SR–NYSECHX–2020–19, and SR–NYSENAT–2020–20.

[7] *See* Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca-2014–81).

[8] *See* Securities Exchange Act Release Nos. 88398 (March 17, 2020), 85 FR 16398 (March 23, 2020) (SR–NYSEArca-2020–22), and 88520 (March 31, 2020), 85 FR 19208 (April 6, 2020) (SR–NYSEArca-2020–26).

[9] *See* 85 FR 33755, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.

The Proposed Change is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rules 7.1–E and 7.1–O closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rules 7.1–E and 7.1–O closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *mailto:rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–58 and should be submitted on or before July 27, 2020.

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14386 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89173; File No. SR–NYSEAMER–2020–46]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Extend the Temporary Waiver of the Co-Location Hot Hands Fee

June 29, 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 17, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary waiver of the co-location ''Hot Hands'' fee. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to extend of the temporary waiver of the co-location[4] ''Hot Hands'' fee through the earlier of August 31, 2020 and the reopening of the Mahwah, New Jersey data center (''Data Center''). The waiver of the Hot Hands fee is scheduled to expire on June 30, 2020.[5]

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[6] Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[7] The Hot Hands fee is $100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID–19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE American Rules 7.1E and 901NY to close the co-location facility of the Exchange to third parties. The closure period was extended twice, through June 30, 2020 (the ''Initial Closure'').[8]

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rules 7.1E and 901NY closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.[9] Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Price List and Fee Schedule as follows (deletions bracketed, additions italicized):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the earlier of [June 30]*August 31,* 2020 and the reopening of the Mahwah, New Jersey data center.

The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex-2010–80).

[5] *See* Securities Exchange Act Release No. 88956 (May 27, 2020), 85 FR 33760 (June 2, 2020) (SR–NYSEAmer-2020–39).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the ''Price List and Fee Schedule''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–53, SR–NYSEArca–2020–58, SR–NYSECHX–2020–19, and SR–NYSENAT–2020–20.

[7] *See* Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61).

[8] *See* Securities Exchange Act Release Nos. 88403 (March 17, 2020), 85 FR 16400 (March 23, 2020) (SR–NYSEAMER–2020–19), and 88523 (March 31, 2020), 85 FR 19179 (April 6, 2020) (SR–NYSEAMER–2020–23).

[9] *See* 85 FR 33760, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rules 7.1E and 901NY closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.PHD3≤The Proposed Change is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rules 7.1E and 901NY closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rules 7.1E and 901NY closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to HYPERLINK ''mailto:*rule-comments@sec.gov*'' *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–46 on the subject line.

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–46 and should be submitted on or before July 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14385 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, July 8, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 1, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–14565 Filed 7–1–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89175; File No. SR–NYSENAT–2020–20]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Waiver of the Co-location Hot Hands Fee

June 29, 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 17, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary waiver of the co-location ''Hot Hands'' fee. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend of the temporary waiver of the co-location[4] ''Hot Hands'' fee through the earlier of August 31, 2020 and the reopening of the Mahwah, New Jersey data center (''Data Center''). The waiver of the Hot Hands fee is scheduled to expire on June 30, 2020.[5]

The Exchange is an indirect subsidiary of Intercontinental Exchange,

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07).

[5] *See* Securities Exchange Act Release No. 88958 (May 27, 2020), 85 FR 33764 (June 2, 2020) (SR–NYSENAT–2020–18).

Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[6] Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).[7] The Hot Hands fee is $100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID–19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE National Rule 7.1 to close the co-location facility of the Exchange to third parties. The closure period was extended twice, through June 30, 2020 (the ''Initial Closure'').[8]

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rule 7.1 closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.[9] Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Price List as follows (deletions bracketed, additions italicized):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the earlier of [June 30]*August 31,* 2020 and the reopening of the Mahwah, New Jersey data center.

The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rule 7.1 closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.

The Proposed Change is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rule 7.1 closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* 83 FR 26314, *supra* note 4, at note 9. As specified in the Exchange's Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the ''Affiliate SROs''). *See id.* at note 11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–53, SR–NYSEAmer-2020–46, SR–NYSEArca-2020–20, and SR–NYSECHX–2020–19.

[7] *See* 83 FR 26314, *supra* note 4.

[8] *See* Securities Exchange Act Release Nos. 88399 (March 17, 2020), 85 FR 16428 (March 23, 2020) (SR–NYSENAT–2020–10), and 88521 (March 31, 2020), 85 FR 19194 (April 6, 2020) (SR–NYSENAT–2020–14).

[9] *See* 85 FR 33764, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov'' rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–20 and should be submitted on or before July 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14379 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89184]

Order Under Section 17(h)(4) of the Securities Exchange Act of 1934 Granting Exemption from Rule 17h–1T and Rule 17h–2T for Certain Broker-Dealers Maintaining Capital, Including Subordinated Debt of Greater Than $20 Million But Less Than $50 Million

June 29, 2020.

I. Introduction

Section 17(h) was added to the Securities Exchange Act of 1934 (''Exchange Act'') to address the concern that financial problems of a broker-dealer's affiliate could cause the broker-dealer to fail or experience significant financial difficulties.[1] The Securities and Exchange Commission (''Commission'') adopted Rules 17h–1T and 17h–2T under Section 17(h) of the Exchange Act.[2] As discussed below, these rules contain provisions that exempt certain broker-dealers from the requirements of the rules. This order exempts from the requirements of the rules broker-dealers that do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule, and that maintain total assets of less than $1 billion and capital, including debt subordinated in

[1] *See Final Temporary Risk Assessment Rules,* Exchange Act Release No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992).

[2] *See* 15 U.S.C. 78q(h) (''Section 17h of the Exchange Act''); 17 CFR 240.17h–1T (''Rule 17h–1T''); 17 CFR 240.17h–2T (''Rule 17h–2T'').

accordance with appendix D of Rule 15c3–1 under the Exchange Act (''Rule 15c3–1d''), of less than $50 million.[3]

Rule 17h–1T requires a broker-dealer that is not exempt under paragraph (d) of the Rule to maintain and preserve certain records, including: (1) An organizational chart that includes the broker-dealer and its affiliates; (2) policies, procedures, or systems concerning methods for monitoring and controlling financial and operational risks to the broker-dealer resulting from the activities of its affiliates; (3) a description of material pending legal and arbitration proceedings involving the broker-dealer or its affiliates; (4) consolidating and consolidated financial statements; and (5) the broker-dealer's securities and commodities position records. Rule 17h–2T requires a broker-dealer that is not exempt under paragraph (b) of the Rule to file Form 17–H with the Commission on a quarterly basis. The form elicits information concerning certain of the broker-dealer's affiliates.[4] Paragraph (d) of Rule 17h–1T and paragraph (b) of Rule 17h–2T exempt from their respective requirements certain categories of broker-dealers, as long as the broker-dealers maintain capital of less than $20 million (''$20 million exemption''). These categories of broker-dealers include: (1) broker-dealers that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule; and (2) broker-dealers that do not hold funds or securities for customers, owe money or securities to customers, or carry the accounts of customers.

II. Discussion

Section 17(h)(4) of the Exchange Act provides that the Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of Section 17(h) of the Exchange Act, and the rules thereunder. The statute further provides that, in granting such exemptions, the Commission shall consider, among other factors:

- Whether information of the type required under section 17(h) of the Exchange Act is available from a supervisory agency (as defined in section 3401(6)of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission (''CFTC''), or a similar foreign regulator;
- The primary business of any associated person;
- The nature and extent of domestic or foreign regulation of the associated person's activities;
- The nature and extent of the registered person's securities activities; and
- With respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

The Commission has administered the risk assessment program under Section 17(h) of the Exchange Act for 28 years. Based on this experience, the Commission believes it is appropriate to raise by order the threshold for the $20 million exemption to $50 million, provided the broker-dealer maintains less than $1 billion in total assets.

In adopting the $20 million exemption (rather than a $5 million exemption, which was proposed),[5] the Commission stated that the number of broker-dealers subject to Rules 17h–1T and 17h–2T would be reduced without a corresponding trade-off in risk.[6] Moreover, the Commission stated that its staff intended to focus its efforts on the largest 50 to 75 broker-dealers.[7] Thus, from the outset, the Commission's risk assessment program under Section 17(h) of the Exchange Act sought to be risk-based and to focus on larger broker-dealers. Information filed by broker-dealers on Form X–17A–5 (''FOCUS Report'') indicates that for the subset of firms subject to Rules 17h–1T and 17h–2T, those maintaining $50 million or more in capital currently account for over 98% of total capital of subject broker-dealers. Similarly, for all broker-dealers, those maintaining $50 million or more in capital account for nearly 97% of the total capital of all broker-dealers. Based upon the current record of broker-dealers subject to Rules 17h–1T and 17h–2T maintained by Commission staff and information filed by broker-dealers in the FOCUS Reports and other information known to Commission staff, the Commission believes exempting certain broker-dealers that maintain total assets of less than $1 billion and maintain capital of greater than $20 million but less than $50 million will provide relief to approximately 59 broker-dealers or approximately 21% of the approximately 275 broker-dealers currently subject to Rules 17h–1T and 17h–2T.

Exempting certain firms that maintain total assets of less than $1 billion and maintain capital, including subordinated debt, of greater than $20 million but less than $50 million from Rules 17h–1T and 17h–2T is intended to reduce the number of broker-dealers subject to the rules without materially increasing risk, given that firms continuing to be subject to the rules account for over 98% of the total capital of firms subject to the rules prior to the issuance of this Order and nearly 97% of the total capital of all broker-dealers. The Commission is setting the ceiling for this exemption at $50 million with this goal in mind. Moreover, limiting the availability of this exemption to firms with total assets of less than $1 billion will prevent highly leveraged firms with relatively small levels of capital from availing themselves of the exemption. A broker-dealer with a high level of leverage and a small level of capital can pose heightened risks because it has less capital to absorb losses and, therefore, poses greater credit risk to its customers, counterparties, and other creditors. Thus, the Commission's risk assessment program will continue to focus on those broker-dealers and affiliates that conduct a substantial securities business and thus are in a position to potentially pose significant risk to investors and to the orderly, fair, and efficient functioning of the markets.[8] Moreover, increasing the exemption to $50 million will reduce the regulatory burden for a cohort of smaller broker-dealers that pose less risk to the orderly, fair, and efficient functioning of the markets relative to broker-dealers that will continue to be subject to the rules.

In considering this Order, the Commission focused on the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.,* the nature and extent of the person's securities activities).[9] Although the other four factors included

[3] For the purposes of the exemptions in Rule 17h–1T and Rule 17h–2T and this order, capital must be calculated pursuant to paragraph (d)(3) of Rule 17h–1T and paragraph (b)(3) of Rule 17h–2T.

[4] *See* Form 17–H, *available at* https://www.sec.gov/about/forms/form17-h.pdf.

[5] *See Proposed Temporary Risk Assessment Rules,* Exchange Act Release No. 29635 (Aug. 30, 1991), 56 FR 44016 (Sep. 6, 1991).

[6] *See Final Temporary Risk Assessment Rules,* 57 FR at 32164–65.

[7] *See Final Temporary Risk Assessment Rules,* 57 FR at 32165.

[8] Many of the largest broker-dealers, which use alternative methods of computing their net capital under Appendix E of Rule 15c3–1, are exempt from Rules 17h–1T and 17h–2T but are subject to heightened monitoring as part of the Commission's Risk Supervised Broker-Dealer Program. *See* 17 CFR 17h–1T(d)(4) and 17 CFR 17h–2T(b)(4). *See also* 17 CFR 240.15c3–1e.

[9] 15 U.S.C. 78q(h)(4). Section 17(h)(4) of the Exchange Act states that the HYPERLINK Commission by HYPERLINK rule or order may exempt any HYPERLINK person or class of HYPERLINK persons, under such terms and conditions and for such periods as the HYPERLINK

Continued

in Section 17(h)(4) of the Exchange Act were considered, the Commission determined they did not inform the exemption as the exemption does not alter the type of information required to be reported or preserved, does not vary in applicability based upon the business activities of or the extent of regulatory oversight over a broker-dealer's affiliate, and applies regardless of the extent of a broker-dealer and its affiliate conducting business in the United States.[10] More specifically, the cohort of broker-dealers that will be able to rely on this exemption maintains total assets of less than $1 billion and maintains capital, including subordinated debt, of greater than $20 million but less than $50 million, and do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule. These firms are relatively small in size, as measured by the amount of total assets and by the amount of capital (including subordinated debt) that they maintain. The Commission believes these exempted firms—because of their relative size and the fact that they do not hold customer funds or securities, or owe money or securities to, customers and do not carry customer accounts, or are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule—present less risk to the financial markets. Consequently, the objectives of this exemption align most closely with the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.,* the nature and extent of the registered person's securities activities).

In light of changes in the financial services industry, including consolidation among financial services institutions, the Commission believes that this Order strikes an appropriate balance in terms of relieving certain broker-dealers—those that maintain total assets of less than $1 billion and maintain capital, including subordinated debt, of greater than $20 million but less than $50 million and that do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule —from the requirements of Rules 17h–1T and 17h–2T while continuing to subject to the rules those broker-dealers that pose greater risk to the financial markets, investors, and other market participants.

III. Conclusion

It is hereby ordered pursuant to section 17(h)(4) of the Exchange Act that any broker-dealer that does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers, or that is exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule, is hereby exempt from Rule 17h–1T and Rule 17h–2T, if it maintains total assets of less than $1 billion and capital, including debt subordinated in accordance with Rule 15c3–1d, of less than $50 million.[11]

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14371 Filed 7–2–20; 8:45 am]

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Commission shall provide in such HYPERLINK rule or order, from the provisions of this subsection, and the HYPERLINK rules thereunder. In granting such exemptions, the HYPERLINK Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory HYPERLINK agency (as defined in section 3401(6) of title 12), a HYPERLINK State insurance HYPERLINK commission or similar HYPERLINK State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated HYPERLINK person;

(C) the nature and extent of domestic or foreign regulation of the associated HYPERLINK person's activities;

(D) the nature and extent of the registered HYPERLINK person's HYPERLINK securities activities; and

(E) with respect to the registered HYPERLINK person and its associated HYPERLINK persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United HYPERLINK States securities markets.

[10] 15 U.S.C. 78q(h)(4)(A)–(C) & (E).

[11] *See supra* note 3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89191; File No. SR–NYSEArca-2019–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under NYSE Arca Rule 8.601–E

June 30, 2020

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF (''Funds'').[3] The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4]

On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[7] On April 1, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.[9] On May 2020, 2020, the Exchange filed Amendment No. 2 to the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Managed Portfolio Securities, and to list and trade Shares of the Funds under proposed Exchange Rule 8.601–E (Managed Portfolio Securities). In Amendment No. 1, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.601–E (Managed Portfolio Securities) and revised the proposal to seek to list and trade Shares of the Funds under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 1, *infra* note 7. *See also* Amendment No. 6 to SR–NYSEArca-2019–95 (proposing to adopt NYSE Arca Rule 8.601–E to list and trade Active Proxy Portfolio Shares, available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7329866-218548.pdf.* The Commission recently approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares. *See* Securities Exchange Act Release No. 89185 (June 29, 2020) (SR–NYSEArca-2019–95) (''Active Proxy Portfolio Shares Order'').

[4] *See* Securities Exchange Act Release No. 87865 (Dec. 30, 2019), 85 FR 380.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88197, 85 FR 9887 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7015540-214975.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 88535, 85 FR 19554 (April 7, 2020).

proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 1.[10] On June 19, 2020, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 2.[11] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 3

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has proposed to add new NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[12] Proposed Commentary .01 to Rule 8.601–E would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of the T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price Equity Income ETF (each a ''Fund'' and, collectively, the ''Funds'') under proposed Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[13] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[14] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.[15] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined net asset value (''NAV'').

A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange, after consulting with various Lead Market Makers (''LMMs'') that trade exchange-traded funds (''ETFs'') on the Exchange,[16] believes that market makers will be able to make efficient and liquid markets priced near

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[10] Amendment No. 2 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7220751-216933.pdf.*

[11] Amendment No. 3 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7329868-218550.pdf.*

[12] *See* Amendment 6 to SR–NYSEArca–2019–95, filed on June 19, 2020. *See also,* Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357 (January 3, 2020) (SR–NYSEArca–2019–95). Proposed Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Proposed Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Proposed Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.''

[13] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca-2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca-2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca-2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca-2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR–NYSEArca-2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[14] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[15] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[16] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[17] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The Shares of each Fund will be issued by T. Rowe Price Exchange-Traded Funds, Inc. (''Issuer''), a corporation organized under the laws of the State of Maryland, which may be comprised of multiple separate series, and registered with the Commission as an open-end management investment company.[18] The investment adviser for the Funds will be T. Rowe Price Associates, Inc. (''Adviser''). State Street Bank and Trust Co. will serve as the Funds' transfer agent, custodian, and will conduct certain administrative functions (the ''Transfer Agent'' or ''Custodian''). T. Rowe Price Investment Services, Inc., a registered broker dealer and an affiliate of the Adviser, will serve as the distributor (''Distributor'') of the Shares.

Proposed Commentary.04 to Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio.[19] Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, proposed Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[20] Proposed Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, proposed Commentary.05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto.[21] Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or

[17] Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

[18] The Issuer is registered under the 1940 Act. On December 11, 2019, the Issuer filed an initial registration statement on Form N–1A under the Securities Act of 1933 Act (''1933 Act'') (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333–235450 and 811–23494) (the ''Registration Statement''). The Issuer filed a seventh amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14214), dated October 16, 2019 (''Application''). On December 10, 2019, the Commission issued an order (''Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33713, December 10, 2019). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application.

[19] The text of proposed Commentary .04 to Rule 8.601–E is contained in Amendment 6 to SR–NYSEArca-2019–95. *See* note 4, *supra.*

[20] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[21] The text of proposed Commentary .05 to NYSE Arca Rule 8.601–E is included in Amendment 6 to SR–NYSEArca-2019–95. *See* note 4, *supra.*

changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser or a Fund who makes decisions pertaining to a Fund's Actual Portfolio or Proxy Portfolio or has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto is subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for a Fund, who has access to non-public information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

Description of the Funds

According to the Application, for each Fund, the Adviser will identify its Proxy Portfolio, which could be a broad-based securities index (*e.g.,* the S&P 500) or a Fund's recently disclosed portfolio holdings. The Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of a Fund. Although the Adviser may change a Fund's Proxy Portfolio at any time, the Adviser currently does not expect to make such changes more frequently than quarterly (for example, in connection with the release of a Fund's portfolio holdings). The Adviser will publish a new Proxy Portfolio for a Fund only before the commencement of trading of such Fund's Shares on that ''Business Day,'' [22] and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio. For the reasons described herein, the Adviser believes that each Fund's Proxy Portfolio will be a high-quality hedging vehicle, the value of which will provide arbitrageurs with a high quality pricing signal.

In addition, on each Business Day, before commencement of trading of Shares, the ''Portfolio Overlap'' will be published on the Funds' website. The Portfolio Overlap will be the percentage weight overlap between the prior Business Day's Proxy Portfolio's holdings compared to the holdings of a Fund that formed the basis for that Fund's calculation of NAV at the end of the prior Business Day.[23] In addition, each Fund will disclose the ''Daily Deviation'' [24] between the Proxy Portfolio and a Fund daily, as well as ''Empirical Percentiles,'' [25] which are quantitative summaries of the Daily Deviation data for the last year. Each Fund will also disclose its ''Tracking Error.'' [26]

According to the Application and Exemptive Order, the Adviser expects that the Proxy Portfolio, the Portfolio Overlap, the Daily Deviations and related information will provide a set of high-quality proxy information that arbitrageurs will use to construct a hedging basket. The Portfolio Overlap, Daily Deviation, and Empirical Percentile data, which will be disclosed daily on the Funds' website, will help arbitrageurs by describing the market behavior of the Proxy Portfolio and how it relates to a Fund's portfolio holdings, and by providing historical valuation data and analysis.

The Proxy Portfolio will not include any asset that is ineligible to be in the Actual Portfolio of the applicable Fund.

T. Rowe Price Blue Chip Growth ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[27] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The investment objective of the T. Rowe Price Blue Chip Growth ETF will be to seek to provide long-term capital growth. Income will be a secondary objective.

The Fund will normally invest at least 80% of its net assets in the common stocks of large and medium-sized blue-chip growth companies that are listed in the United States. These are companies that, in the Adviser's view, are well established in their industries and have the potential for above-average earnings growth. The Fund will primarily invest in U.S. exchange-traded securities, cash, and cash equivalents.

T. Rowe Price Dividend Growth ETF

The Fund's holdings will conform to the permissible investments as set forth

[22] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when a Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

[23] According to the Registration Statement, ''Portfolio Overlap'' indicates how much of a Fund's portfolio securities overlap with a Fund's Proxy Portfolio as of the end of the prior business day.

[24] According to the Registration Statement, the Daily Deviation shows the difference in performance between the NAV of a Fund and the NAV of the Proxy Portfolio.

[25] According to the Registration Statement, the Empirical Percentiles shows frequency and magnitude of performance differences between a Fund and the Proxy Portfolio over time.

[26] According to the Registration Statement, ''Tracking Error'' is the deviation over the past three months of the daily proxy spread (*i.e.,* the difference, in percentage terms, between the Proxy Portfolio's per share NAV and that of the fund at the end of the trading day).

[27] According to the Application and Exemptive Order, each Fund will only invest in exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange synchronously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern time (''E.T.'')), ETFs traded on a U.S. exchange, exchange-traded notes (''ETNs'') traded on a U.S. exchange, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts (''ADRs''), U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts and U.S. exchange-traded futures contracts (collectively, ''exchange-traded instruments'') that trade synchronously with a Fund's Shares, as well as cash and cash equivalents. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements. The Funds will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[28] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The investment objective of the T. Rowe Price Dividend Growth ETF will be to seek dividend income and long-term capital growth.

The Fund normally will invest at least 65% of the Fund's total assets in stocks listed in the United States, with an emphasis on stocks that have a strong track record of paying dividends or that are expected to increase their dividends over time. The Fund will primarily invest in U.S. exchange-traded securities, cash, and cash equivalents.

T. Rowe Price Growth Stock ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[29] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The investment objective of the T. Rowe Price Growth Stock ETF will be to seek long-term capital growth.

The Fund will normally invest at least 80% of its net assets in the common stocks of a diversified group of growth companies. While it may invest in companies of any market capitalization, the Fund generally seeks investments in stocks of large-capitalization companies with one or more of the following characteristics: strong cash flow and an above-average rate of earnings growth; the ability to sustain earnings momentum during economic downturns; and occupation of a lucrative niche in the economy and the ability to expand even during times of slow economic growth. The Fund will primarily invest in U.S. exchange-traded securities, cash, and cash equivalents.

T. Rowe Price Equity Income ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order. [30] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The investment objective of the T. Rowe Price Equity Income ETF will be to seek a high level of dividend income and long-term capital growth.

The Fund will normally invest at least 80% of its net assets in common stocks listed in the United States, with an emphasis on large-capitalization stocks that have a strong track record of paying dividends or that are believed to be undervalued. The Fund typically will employ a ''value'' approach in selecting investments. The Fund generally will invest in U.S. exchange-traded securities, cash, and cash equivalents.

Investment Restrictions

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.601–E. Each Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.[31]

Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

Purchases and Redemptions

The Issuer will offer, issue and sell Shares of each Fund to investors only in specified minimum size ''Creation Units'' through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of each Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Issuer will sell and redeem Creation Units of each Fund only on a Business Day. A Creation Unit will consist of at least 5,000 Shares.

Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') will be the same as a Fund's designated Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis, as described below.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of baskets that are in the best interests of a Fund, including the process for any revisions to or deviations from, those parameters.

A Fund that normally issues and redeems Creation Units in-kind may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a Fund will announce, before the open of trading in the Core Trading Session on a given Business Day, that all purchases, all redemptions or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), to have the purchase or redemption, as applicable, be made entirely or in part in cash.[32]

Each Business Day, before the open of trading on the Exchange, a Fund will cause to be published through the National Securities Clearing Corporation (''NSCC'') the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any) for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Proxy Portfolio will be published each Business Day regardless of whether a Fund decides to issue or

[28] *See* note 27, *supra.*

[29] *See* note 27, *supra.*

[30] *See* note 27, *supra.*

[31] *See* note 27, *supra.*

[32] The Adviser represents that, to the extent that a Fund allows creations and redemptions to be conducted in cash, such transactions will be effected in the same manner for all Authorized Participants transacting in cash.

redeem Creation Units entirely or in part on a cash basis.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is a member or participant of a clearing agency registered with the Commission, which has a written agreement with a Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase and redemption of Creation Units. Except as otherwise permitted, no promoter, principal underwriter (*e.g.,* the Distributor) or affiliated person of a Fund, or any affiliated person of such person, will be an Authorized Participant in Shares.

Validly submitted orders to purchase or redeem Creation Units on each Business Day will be accepted until the end of the Core Trading Session (the ''Order Cut-Off Time''), generally 4:00 p.m. E.T., on the Business Day that the order is placed (the ''Transmittal Date''). All Creation Unit orders must be received by the Distributor no later than the Order Cut-Off Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds' website (*www.troweprice.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,'' [33] and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV [34]. The Adviser has represented that the Funds' website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge. The Funds' website also will disclose the information required under proposed Rule 8.601–E(c)(3).[35]

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

The website also will include information relating to Portfolio Overlap, Daily Deviation, Empirical Percentile and Tracking Error for each Fund, as discussed above.

The Exchange notes that the Application provides that the Issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis. [36] Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis within at least 60 days following the end of every fiscal quarter.

Investors interested in a particular Fund can also obtain its prospectus, statement of additional information (''SAI''), shareholder reports, Form N–CSR, Form N–PORT and Form N–CEN. Investors may access complete portfolio schedules for the Funds on Form N–CSR and Form N–PORT. The prospectus, SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *http://www.sec.gov.*

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Updated price information for U.S. exchange-listed equity securities is available through major market data vendors or securities exchanges trading such securities. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the Consolidated Tape Association (''CTA'') high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[37] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, proposed Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

In addition, if the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series

[33] The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[34] The ''premium/discount'' refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

[35] *See* note 12, *supra.* Proposed Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

[36] *See* note 15, *supra.*

[37] *See* NYSE Arca Rule 7.12–E.

of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to proposed Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio for each Fund will be made available to all market participants at the same time.

With respect to the Funds, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[38] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, or the Exchange or both will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, or the Exchange or both may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[39]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Funds, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor a Fund's compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of proposed Rule 8.601–E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

[38] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[39] For a list of the current members of ISG, *see www.isgportal.org.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[40] in general, and furthers the objectives of Section 6(b)(5) of the Act,[41] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[42]

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in proposed NYSE Arca Rule 8.601–E. One-hundred percent of the value of a Fund's Actual Portfolio (except for cash, cash equivalents and Treasury securities) at the time of purchase will be listed on U.S. or foreign securities exchanges (or, in the limited case of futures contracts, U.S. futures exchanges). The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission.

With respect to the proposed listing and trading of Shares of a Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E. Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[43] The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[44] For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being ''long'' or ''short'' shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets[45] or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Funds and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(5).

[42] The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

[43] *See* note 27, *supra*

[44] *See* note 17, *supra.*

[45] Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Funds, as Active Proxy Portfolio Shares, will allow for efficient trading of Shares through an effective Fund portfolio transparency substitute—Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting a Fund from the potential for front-running of portfolio transactions and the potential for free-riding on a Fund's portfolio strategies, each of which could adversely impact the performance of a Fund.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

With respect to the Funds, the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Issuer, prior to commencement of trading in the Shares, that the NAV per Share of a Fund will be calculated daily and that the NAV, Proxy Portfolio and Actual Portfolio will be made available to all market participants at the same time. Investors can also obtain a Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT and Form N–CEN. A Fund's SAI and shareholder reports will be available free upon request from the applicable Fund, and those documents and the Form N–CSR, Form N–PORT and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Proposed Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Funds, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of a Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with proposed Rule 8.601–E. The Exchange notes that proposed Commentary .01 to Rule 8.601–E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of proposed Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of proposed Rule 8.601–E.

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the CTA high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The website for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to proposed NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio, and quotation and last sale information for the Shares. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601–E.

Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.[46] Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The components of a Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34–E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that it will advise the Exchange of any failure

[46] *See* note 26, *supra.*

by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, with respect to the Funds, the Exchange has in place surveillance procedures relating to trading in the Funds' Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, with respect to the Funds, investors will have ready access to information regarding the Proxy Portfolio and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[47] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, including that the portfolio is disclosed at least once quarterly as opposed to daily, and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[48] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3 is consistent with Section 6(b)(5) of the Act,[49] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that in a separate order, it approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares.[50]

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time.[51] Information regarding the market price of Shares and trading volume in Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks, and ADRs will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the prior business day's Proxy Portfolio's holdings compared to the holdings of a Fund that formed the basis for that Fund's calculation of NAV at the end of the prior business day, and any other information regarding premiums and discounts and the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day and the Funds' website will disclose the information required under Rule 8.601–E(c)(3).[52] The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also notes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares and will halt trading in the Shares under the conditions specified in NYSE Arca Rule 7.12–E. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (2) whether other unusual conditions

[47] 15 U.S.C. 78f(b)(8).

[48] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

[50] *See* note 3 *supra.*

[51] *See* NYSE Arca Rule 8.601–E(d)(1)(B).

[52] *See* Rule 8.601–E(c)(3), which requires that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable: (i) ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

or circumstances detrimental to the maintenance of a fair and orderly market are present.[53] Trading in the Shares also will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio;
- Any person related to the Adviser or a Fund who makes decisions pertaining to the Fund's Actual Portfolio or Proxy Portfolio or who has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto;
- In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and
- Any person or entity, including any service provider for a Fund, who has access to non-public information regarding a Fund's Actual Portfolio or the Proxy Portfolio or changes thereto will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto, and if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio.

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange,[54] and that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.

(2) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(3) FINRA, on behalf of the Exchange, or the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[55]

(6) Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

(7) With respect to the Funds, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

The Exchange also represents that all statements and representations made in the filing regarding: (1) the description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that the Adviser will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [56] for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

[53] *See* NYSE Arca Rule 8.601–E(d)(2)(D)(i).

[54] *See* NYSE Arca Rule 8.601–E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, a Fund's investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

[55] *See* 17 CFR 240.10A–3.

[56] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–92 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–92, and should be submitted on or before July 27, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. In Amendment No. 3, the Exchange modified the description of each Fund and conformed the description of NYSE Arca Rule 8.601–E to the final rule approved in the Active Proxy Portfolio Shares Order.[57] Amendment No. 3 also provides other clarifications and additional information related to the Funds.[58] The changes and additional information in Amendment No. 3 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[59] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[60] that the proposed rule change (SR–NYSEArca–2019–92), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.[61]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14489 Filed 7–2–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89186; File No. SR–ICEEU–2020–007]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Auction Terms for CDS Default Auctions and CDS Default Management Policy

June 29, 2020.

I. Introduction

On May 12, 2020, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4,[2] a proposed rule change to amend its Auction Terms for CDS Default Auctions (the ''CDS Auction Terms'') and CDS Default Management Policy (the ''Policy''). On May 20, 2020, ICE Clear Europe filed Partial Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Partial Amendment No. 1, was published for comment in the **Federal Register** on May 28, 2020.[4] The Commission did not receive comments regarding the proposed rule change, as modified by Partial Amendment No. 1. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter the ''proposed rule change'').

II. Description of the Proposed Rule Change

As discussed below, the proposed rule change would amend the CDS Auction Terms and the Policy.[5] The CDS Auction Terms explain how ICE Clear Europe would auction one or more lots of a defaulting Clearing Member's CDS Contracts, and the Policy describes the processes that ICE Clear Europe would use to close a defaulting Clearing Member's CDS Contracts, including by auction.

A. Amendments to the CDS Auction Terms

Currently, the CDS Auction Terms contain provisions that apply to Primary CDS Auctions (meaning initial auctions of CDS contracts) and Secondary CDS Auctions (meaning auctions conducted under part two of the CDS Auction Terms and in accordance with ICE Clear Europe Rule 905(d)(i)(B).[6] The provisions of the CDS Auction Terms applicable to Primary CDS Auctions are substantially the same as those applicable to Secondary CDS Auctions, and the proposed rule change would make the changes described below to

[57] *See supra* note 3.

[58] *See* Amendment No. 3, *supra* note 11.

[59] 15 U.S.C. 78s(b)(2).

[60] *Id.*

[61] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Partial Amendment Number 1 amended Exhibit 5A of the filing to correct the paragraph numbering in Part 2 of the CDS Auction Terms.

[4] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICE Clear Europe Auction Terms for CDS Default Auctions and CDS Default Management Policy (formerly the CDS Default Management Framework), Exchange Act Release No. 88928 (May 21, 2020); 85 FR 32075 (May 28, 2020) (SR–ICEEU–2020–007) (''Notice'').

[5] Capitalized terms not otherwise defined herein have the meanings assigned to them in the CDS Auction Terms, the Policy, or the ICE Clear Europe Rulebook, as applicable. The description that follows is excerpted from the Notice, 85 FR at 32075.

[6] A Secondary CDS Auction is an auction that ICE Clear Europe may conduct if ICE Clear Europe does not terminate, transfer, or close out all of the CDS Contracts of a Defaulter pursuant to a Primary CDS Auction and the other actions permitted under ICE Clear Europe Rule 905(a)–(c). Moreover, in the event of the failure of one or more Secondary CDS Auctions to eliminate or replace all remaining risk of the open contracts of a defaulting Clearing Member, ICE Clear Europe may employ its ability to engage in reduced gains distributions under Rule 914 and to partially terminate open contracts under Rule 915.

both sets of provisions. Thus, for the sake of brevity, the description below refers collectively to changes to the CDS Auction Terms and to an ''Auction,'' rather than a Primary CDS Auction and Secondary CDS Auction, unless needed to distinguish between the two terms.

As described below, the proposed rule change would make changes primarily related to (i) updating and revising defined terms of the CDS Auction Terms; (ii) interpretation and application of the CDS Auction Terms; (iii) the operation of an Auction; (iv) Minimum Bid Requirements; (v) use of the Default Management System; (vi) introducing All or Nothing Bids; and (vii) adding provisions to cover the EU Market Abuse Regulation.

i. Amendments to the Defined Terms

The proposed rule change would amend a number of the defined terms found in Section 1 of the CDS Auction Terms. First, the proposed rule change would update the names of certain defined terms to refer to an ''Auction Lot'' rather than a ''Lot.'' For example, the proposed rule change would re-title the term ''Failed Lot'' to ''Failed Auction Lot.'' ICE Clear Europe is making this change to be more specific and distinguish the term Auction Lot from the more general term Lot. Moreover, this change is consistent with ICE Clear Europe's current authority under the CDS Auction Terms, which permit ICE Clear Europe to divide a Clearing Member's portfolio into one or more Auction Lots and auction off each Auction Lot separately, as ICE Clear Europe considers appropriate.

Similarly, the proposed rule change would rename and amend certain defined terms to clarify that they apply to Primary CDS Auctions rather than Secondary CDS Auctions. The CDS Auction Terms contain one set of defined terms that contain definitions that are applicable to both Primary CDS Auctions and Secondary CDS Auctions. To clarify the terms applicable only to Primary CDS Auctions and better distinguish them from Secondary CDS Auctions, the proposed rule change would re-name the terms that currently only refer to a ''CDS Auction'' to specify that they apply to a Primary CDS Auction. For example, the proposed rule change would change the name of the terms ''CDS Auction'' and ''CDS Auction Participant'' to ''Primary CDS Auction'' and ''Primary CDS Auction Participant.'' With respect to Secondary CDS Auctions, no change is necessary because the CDS Auction Terms already contain terms specific to Secondary CDS Auctions. For example, the CDS Auction Terms already have a term called ''Secondary CDS Auction Participant.''

The proposed rule change would also amend the defined term ''Second CDS Auction.'' A Second CDS Auction is a Primary CDS Auction that ICE Clear Europe may hold to sell an Auction Lot if it fails to sell all of the contracts in that Auction Lot via an initial Primary CDS Auction. A Second CDS Auction is an additional Primary CDS Auction, rather than a Secondary CDS Auction, as described above, and would therefore be subject to the rules for a Primary CDS Auction. To better clarify that point, the proposed rule change would rename the term ''Second CDS Auction'' to ''Repeat CDS Auction.''

Moreover, the proposed rule change would revise the terms ''Split Bidder'' and ''Subordinate Bidder'' to note that they could apply to either a Primary CDS Auction Participant or a Secondary CDS Auction Participant, as applicable for the relevant auction. ICE Clear Europe represents that this amendment does not reflect a change in substance but would make the drafting consistent with the distinction between Primary and Secondary CDS Auctions discussed above.

Next, the proposed rule change would make changes to defined terms that affect the specifics of how ICE Clear Europe conducts an Auction. Specifically, the proposed rule change would change the name of the term ''Closing Time'' to ''Bidding Close Time'' to be more precise. The proposed rule change would not alter the substance of this definition, however.

Similarly, the proposed rule change would slightly revise the definitions of ''Primary CDS Auction Priority AC Sequence'', ''Secondary CDS Auction Priority AC Sequence'', ''Primary CDS Auction Priority GF Sequence,'' and ''Secondary CDS Auction Priority GF Sequence''. These defined terms specify the order in which ICE Clear Europe would use non-defaulting Clearing Members' Guaranty Fund Contributions and Assessment Contributions if needed as additional financial resources to resolve the default of a Clearing Member under ICE Clear Europe Rule 908(i). Generally, under the current definitions, ICE Clear Europe would first apply the contributions of those Clearing Members whose bids in an Auction were the least competitive, starting with Non-Bidding CDS Clearing Members, and would then apply the contributions of those Clearing Members whose bids in an Auction were more competitive. The proposed rule change would not alter this order of priority. The proposed rule change would require, however, that ICE Clear Europe take each amount in the sequence pro rata for the relevant Auction Lot by applying the Auction Lot Guaranty Fund Weighting. The Auction Lot Guaranty Fund Weighting would be a percentage equal to the Initial Margin requirement associated with the contracts in the Auction Lot divided by the Initial Margin requirement associated with all of the contracts in all of the Auction Lots comprising the defaulting Clearing Member's portfolio. Thus, under this change, ICE Clear Europe would determine the amounts in the sequence by Auction Lot, taking into account the Initial Margin requirement associated with each Auction Lot versus all Auction Lots. ICE Clear Europe represents that this change is consistent with, and does not represent an alteration to, its current practices because the CDS Auction Terms already permit ICE Clear Europe to divide a Clearing Member's portfolio into one or more Auction Lots and auction off each Auction Lot separately, as ICE Clear Europe considers appropriate.

Finally, consistent with the changes described below, the proposed rule change would add new defined terms. For example, the proposed rule change would add the terms ''All or Nothing Bid'', ''DMS'', and ''Standard Bid.'' The definitions of those new terms are discussed further below as part of the discussion of the specific changes related to those terms.

ii. Interpretation and Application of CDS Auction Terms

The proposed rule change would add several paragraphs regarding interpretation and application of the CDS Auction Terms. For example, the proposed rule change would add paragraphs to define the governing law for the CDS Auction Terms, to identify which courts shall have jurisdiction over disputes, and to provide for submission of matters to arbitration. ICE Clear Europe represents that these provisions are substantially similar to existing provisions in the Rulebook and the other Procedures, and ICE Clear Europe is proposing to add them to the CDS Auction Terms for consistency across its documentation.

Similarly, the proposed rule change would clarify that nothing in the CDS Auction Terms would prevent ICE Clear Europe from administering a sale or entering into offsetting transactions without holding an Auction and that the CDS Auction Terms are subject to ICE Clear Europe's Rulebook. These changes reflect ICE Clear Europe's existing authority under its Rulebook, and ICE Clear Europe is adding these clarifications to avoid any potential

confusion as to the scope of the CDS Auction Terms.

The proposed rule change would also clarify that references to CDS Contracts, for purposes of the CDS Auction Terms, include (i) CDS Contracts terminated via automatic early termination or notional amounts representing such terminated CDS Contracts and (ii) CDS Contracts that have arisen from hedging transactions executed by ICE Clear Europe. ICE Clear Europe is making these changes to clarify that it may auction such CDS Contracts to establish replacement contracts with non-defaulting Clearing Members and to determine a price for calculating ICE Clear Europe's loss from closing the defaulting Clearing Member's positions.

iii. Operation of an Auction

The proposed rule change would also make certain changes regarding the operation of an Auction, specifically relating to the Bidding Close Time for an Auction, the treatment of Bids, and participation of customers of Clearing Members in an Auction.

Currently, the CDS Auction Terms provide that Clearing Members may only submit Bids for an Auction prior to the Bidding Close Time for that Auction. The proposed rule change would not alter this provision, but it would further specify that ICE Clear Europe could postpone the Bidding Close Time for up to one hour by giving notice of such postponement to all participants and following consultation to the extent practicable with the CDS Default Committee. Similarly, the CDS Auction Terms permit ICE Clear Europe to withdraw an Auction Lot prior to the Bidding Close Time. The proposed rule change would expand this authority to permit ICE Clear Europe to withdraw an Auction Lot after the Bidding Close Time. ICE Clear Europe believes these changes would provide it additional flexibility to deal with any potential operational issues that could arise during an Auction.

The proposed rule change would update provisions related to the treatment of Bids in an Auction. First, the proposed rule change would revise the wording of a number of provisions to specify that in certain circumstances ICE Clear Europe would treat Clearing Members as having not made a Bid in Auction rather than not participating in an auction, as currently stated. This is not a substantive change because in either case, whether not participating in the Auction or not making a Bid in the Auction, the CDS Auction Terms as amended would treat the Clearing Member as a Non-Bidding CDS Clearing Member. This designation is important because under the CDS Auction Terms and ICE Clear Europe Rule 908(i), in the event that ICE Clear Europe needs to use non-defaulting Clearing Members' Guaranty Fund Contributions or Assessment Contributions to resolve the default of a Clearing Member, ICE Clear Europe would use Non-Bidding CDS Clearing Members' Contributions first. Thus, under the proposed rule change, the CDS Auction Terms would treat a Clearing Member that submits a referential Bid (meaning a Bid that is one Euro higher or lower than the highest or lowest bidder), an invalid Bid, a void Bid, a Bid after the Bidding Close Time, a Bid in breach of the CDS Auction Terms, position limits, or other risk policies of ICE Clear Europe, or that submits a Bid while a Defaulter, as having not made a Bid in an Auction and as a Non-Bidding Clearing Member. Although effectively this treatment is the same as under the current CDS Auction Terms (designation as a Non-Bidding CDS Clearing Member), ICE Clear Europe is making this change because its believes that it is more accurate to describe the Clearing Member as having not made a Bid rather than not participating.

Relatedly, the CDS Auction Terms currently permit ICE Clear Europe to exclude certain Bids for purposes of calculating the CDS Auction Clearing Price (as defined below). Specifically, the CDS Auction Terms permit ICE Clear Europe to exclude a Bid that is invalid because ICE Clear Europe reasonably believes that if it accepted such Bid, the Clearing Member would not clear the resulting CDS Contract. The proposed rule change would expand this provision to include Bids that are invalid for other reasons under the CDS Auction Terms, like Bids submitted below the minimum bid size, if any, Bids submitted after the Bidding Close Time, and Bids that do not comply with the requirements of the CDS Auction Terms.

In addition, under the current CDS Auction Terms, each Bid constitutes an offer from a CDS Clearing Member to ICE Clear Europe to enter into CDS Contracts. The proposed rule change would not change this provision. The proposed rule change would clarify, however, that the offer would be an offer to enter into CDS Contracts pursuant to a Transfer governed by ICE Clear Europe Rule 904(b) and Part 4 of the ICE Clear Europe Rulebook. This change would not alter the substance of this provision. Rather, ICE Clear Europe is making this change to provide additional specificity by referencing the existing process for entering into CDS Contracts under the ICE Clear Europe Rulebook.

Finally, the CDS Auction Terms currently permit customers of Clearing Members to participate in Auctions by becoming Direct Participating Customers. To become a Direct Participating Customer, a customer must meet certain requirements, including making a deposit and entering into an agreement with ICE Clear Europe regarding its participation. The proposed rule change would further require that that each Direct Participating Customer enter into a CDS Auction Participation Agreement with its CDS Clearing Member. ICE Clear Europe is making this change to establish a clearer and stronger basis for enforcement of the CDS Auction Terms against the Direct Participating Customer.

iv. Minimum Bid Requirements

Currently, the CDS Auction Terms require each CDS Clearing Member to bid in every CDS Auction and for every lot in a CDS Auction unless its membership privileges permit it not to participate and it elects not to participate, with this obligation referred to as a CDS Clearing Member's Minimum Bid Requirement. The CDS Auction Terms provide further, however, that a Minimum Bid Requirement would not apply to the extent: (i) it would breach applicable law or the ICE Clear Europe Rulebook; (ii) it would result in a self-referencing CDS; or (iii) where ICE Clear Europe, after being notified in writing by the Clearing Member that it would be inappropriate, reasonably determines that the Minimum Bid Requirement does not apply. In that case, the Clearing Member must notify ICE Clear Europe promptly and in any event at least 12 hours prior to the opening of the relevant Auction.

The proposed rule change would make a number of amendments to these provisions. First, to acknowledge the fact there may be circumstances where a minimum Bid is not required, the proposed rule change would amend the requirement that each CDS Clearing Member bid in every CDS Auction for every lot in a CDS Auction to make it subject to a zero Minimum Bid Requirement being established under the conditions described further below.

Next, the proposed rule change would delete the qualification that the Minimum Bid Requirement does not apply to a CDS Clearing Member whose membership privileges permit it not to participate. ICE Clear Europe is deleting that particular provision because there are no Clearing Members whose

membership privileges permit them not to participate in CDS Auctions. Relatedly, the proposed rule change would also delete the term ''Elective CDS Auction Participant,'' which refers to a CDS Clearing Member whose membership privileges permit it not to participate.

Moreover, with respect to the circumstances in which a Minimum Bid Requirement does not apply, the proposed rule change would amend the portion of the CDS Auction Terms regarding a Clearing Member's notification to ICE Clear Europe that the Minimum Bid Requirement should not apply. Under the proposed rule change, a Clearing Member would still be required to notify ICE Clear Europe, and ICE Clear Europe still would have to reasonably determine that the Minimum Bid Requirement would be inappropriate. The Clearing Member would be required to provide the notice, however, within one hour of ICE Clear Europe publishing details of the CDS Contracts comprising the relevant Auction Lot, and ICE Clear Europe would need to confirm that it agrees with the Clearing Member's assessment. ICE Clear Europe is making this particular change because ICE Clear Europe does not believe the current 12-hour period is feasible given that it may need to conduct an Auction with less than 12 hours' notice.

Finally, the CDS Auction Terms currently provide that a Clearing Member can satisfy its Minimum Bid Requirement by submitting multiple Bids with differing Bid prices and Bid sizes provided that, in the aggregate, its submitted Bids equal or exceed the Minimum Bid Requirement and any individual Bid is larger than any applicable minimum Bid size imposed for that particular Auction, consistent with the CDS Auction Terms. The proposed rule change would clarify this provision by providing that any individual Bid must be equal to or larger than any applicable minimum Bid size.

Additionally, the CDS Auction Terms currently allow affiliated Clearing Members to transfer, outsource, or aggregate their Minimum Bid Requirements to apply to a single one of them, subject to notifying ICE Clear Europe prior to a CDS Auction. The CDS Auction Terms further provide that a Clearing Member that transfers or outsources its Minimum Bid Requirement to an Affiliate remains liable for any breach by its Affiliate in respect of such Clearing Member's Minimum Bid Requirement (in addition to the liability on the part of its Affiliate for such breach) and is subject to the CDS Auction Priority as if such Bid were its own. Under the proposed rule change, the CDS Auction Terms would continue to allow a Clearing Member to transfer its Minimum Bid Requirement to an Affiliate but would further require that the Affiliate also be a Clearing Member and that both Clearing Members execute an agreement provided by ICE Clear Europe for this purpose. The proposed rule change also would allow Clearing Members to outsource the operational processing of any of their obligations under the CDS Auction Terms pursuant to ICE Clear Europe Rule 102(w), which permits Clearing Members to outsource the performance of their obligations under the ICE Clear Europe Rulebook. Thus, this change would expand a Clearing Member's ability to outsource the operational processing of any of its obligations under the CDS Auction Terms (not just the Minimum Bid Requirement) and would reference the applicable ICE Clear Europe Rule. Moreover, the proposed rule change, as under the current CDS Auction Terms, would provide that a Clearing Member that transfers its Minimum Bid Requirement to an Affiliate remains liable with respect to that Minimum Bid Requirement. The proposed rule change also would expand this liability to make a Clearing Member liable for any breach of the CDS Auction Terms by the person to whom the Clearing Member has outsourced its operational obligations, consistent with the expansion discussed above. Finally, the proposed rule change would further specify that a Clearing Member that transfers or outsources its Minimum Bid Requirement to an Affiliate would assume the same position as the Affiliate for the purposes of determining the order of application of non-defaulting Clearing Members' Guaranty Fund Contributions and Assessment Contributions under ICE Clear Europe Rule 908(i) and for designation as a Non-Bidding CDS Clearing Member. ICE Clear Europe is making this particular change to better specify the consequences of transfer of a CDS Clearing Member's obligations to an Affiliate.

Finally, to clarify the extent of the Minimum Bid Requirements, the proposed rule change would add a provision to state that only those Bids that count toward the Minimum Bid Requirement would be taken into account in determining the order of application of Guaranty Fund Contributions and Assessment Contributions under the Primary and Secondary CDS Auction Priority AC Sequence, Primary and Secondary CDS Auction Priority GF Sequence, and ICE Clear Europe Rule 908(i) (as discussed above). Thus, for example, a Clearing Member that submits a Bid despite having a Minimum Bid Requirement of zero (for one of the reasons discussed above), would not see that Bid considered in determining where the Clearing Member stands in the CDS Auction Priority GF Sequence.

v. Use of the Default Management System

As mentioned above, the proposed rule change would add a new defined term, ''DMS.'' The proposed rule change would define DMS as the Default Management System operated by ICE Clear Europe. The Default Management System would be the system used by ICE Clear Europe to communicate information to, and receive information from, CDS Clearing Members regarding Auctions. The proposed rule change would make changes to various aspects of the CDS Auction Terms to reflect use of this new defined term. With respect to the defined terms, the proposed rule change would make amendments to reflect the use of the DMS rather than the currently specified forms of communication, which usually require some form of manual delivery. For example, the proposed rule change would rename the term ''Bid Form'' to ''Bid Submission'' and revise the definition to reflect that it would refer to a Bid submitted via the DMS rather than a Bid submitted on a form prescribed by ICE Clear Europe. Similarly, the proposed rule change would amend the definitions for Primary and Secondary CDS Auction Announcement to reflect that ICE Clear Europe would send the announcement via the DMS rather than a circular.

Similarly, the proposed rule change would amend other parts of the CDS Auction Terms to reflect ICE Clear Europe's use of the DMS. Specifically, the proposed rule change would require that Minimum Bid Requirements be communicated via the DMS (or via such other means and in such format as is specified by ICE Clear Europe), rather than by the template notification currently set out in Annex B. Accordingly, the proposed rule change would delete Annex B from the CDS Auction Terms. The proposed rule change would also require that ICE Clear Europe send the particular specifications for an Auction Lot, like its minimum reserve price (the lowest price ICE Clear Europe would accept), via the DMS rather than by the template notification currently set out in Annex A. Accordingly, the proposed rule change would delete Annex A from the CDS Auction Terms. Finally, the

proposed rule change would require that ICE Clear Europe notify the winning bidders for particular Auction Lots via the DMS.

In addition, the proposed rule change would amend the CDS Auction Terms to reflect Clearing Members' use of the DMS. The proposed rule change would require Clearing Members to submit bids via the DMS. The proposed rule change would also specify that a Clearing Member could amend its Bid by resubmitting the entire bid through DMS.

To reflect the particular operations of the DMS, the proposed rule change would delete a provision from the CDS Auction Terms that currently states that Clearing Members may make an unlimited number of separate Bids. Operationally, the DMS does not accept an unlimited number of separate Bids from Clearing Members. Rather, the DMS would allow a Clearing Member to make separate Bids in respect of either its Customers for whom it acts as Clearing Member or its Sponsored Principals for whom it acts as Sponsor (in addition to any Bids for its Proprietary Accounts), in the same way as it may make a Bid for one of its Proprietary Accounts and subject to the same provisions of the CDS Auction Terms. Similarly, the proposed rule change would delete a statement that a Clearing Member who has made a mistaken or erroneous bid may withdraw the Bid and correct the mistake. The DMS would not permit Clearing Members to withdraw Bids. Instead, the Clearing Member would need to request that ICE Clear Europe invalidate the Bid, which, as under the current CDS Auction Terms, ICE Clear Europe could do at its own discretion if the Clearing Member has made a genuine mistake in the submission of a Bid.

Finally, the CDS Auction Terms currently allow ICE Clear Europe to set a minimum bid size for an Auction and provide that any bid below the minimum bid size will be null and void. The proposed rule change would leverage the DMS to automate these existing requirements by specifying that the DMS would be designed to automatically prevent Clearing Members from submitting bids below the minimum bid size and to render null and void any bid below the minimum bid size that the DMS accepted in error.

vi. All or Nothing Bids

As mentioned above, the proposed rule change would add a new defined term, ''All or Nothing Bid.'' An All or Nothing Bid would be a Bid that stipulates that if the Bid is the winning Bid, the bidder would receive all of the contracts being auctioned in the lot, without any of the contracts being split among other Bids. To make an All or Nothing Bid, the bidder would need to mark the Bid as such in its submission. The proposed rule change would introduce a new defined term for Bids that are not All or Nothing Bids, calling them Standard Bids.

Clearing Members would not be required to make All or Nothing Bids pursuant to the proposed rule change. If a Clearing Member submits an All or Nothing Bid, however, then in the absence of other bids, the All or Nothing Bid would satisfy the Clearing Member's Minimum Bid Requirement (if any) at the same price but adjusted on a pro rata basis for the notional amount of contracts in the Auction Lot. If a Clearing Member makes an All or Nothing Bid, the Clearing Member still would be able to submit one or more Standard Bids for the same Auction Lot, whether for its account or the account of its customers, provided that all of the Bids are submitted in the same submission.

Under the CDS Auction Terms, ICE Clear Europe currently determines the price of an Auction by ordering Bids sequentially, starting with the highest price and ending with the lowest price. The price of the Bid at which, along with any equal or higher Bids, the sum of the notional amount of contracts being purchased equals or is greater than the notional amount of contracts that ICE Clear Europe is auctioning is the clearing price of the Auction (the ''CDS Auction Clearing Price''). In other words, ICE Clear Europe proceeds down the list of Bids by price, starting with the highest priced Bid, and sets the CDS Auction Clearing Price at the Bid that, along with the other higher priced Bids before it, allows ICE Clear Europe to allocate 100% of the open CDS contracts in the Auction Lot.

The CDS Auction Terms currently require that, in the event there are multiple Bids at the CDS Auction Clearing Price and there is a shortfall of open CDS contracts, ICE Clear Europe must allocate the contracts *pro rata* according to the notional amount of contracts that each winning bidder requested in its Bid. As revised under the proposed rule change, the CDS Auction Terms would require that, where there is an All or Nothing Bid in the sequence of Bids before the CDS Auction Clearing Price, the price of the All or Nothing Bid would set the CDS Auction Clearing Price (because that would be the highest priced bid that would allow ICE Clear Europe to allocate 100% of the open contracts). In that case, ICE Clear Europe would allocate to the bidder that submitted the All or Nothing Bid 100% of the contracts even if there are Standard Bids at a higher or equal price. If there were more than one All or Nothing Bid at the CDS Auction Clearing Price, then the CDS Auction Procedures, as revised under the proposed rule change, would require that ICE Clear Europe allocate the portfolio equally among the All or Nothing Bids.

The proposed rule change would update two other provisions of the CDS Auction Terms to clarify how those provisions would apply in light of the presence of All or Nothing Bids. First, the CDS Auction Terms currently provide that ICE Clear Europe may, after a Primary Auction, in its discretion and after consultation with the CDS Default Committee, determine the CDS Auction Clearing Price to be less than 100% of the notional amount of the contracts and declare a Repeat Auction to auction off the remaining contracts. ICE Clear Europe may do so if, in its reasonable determination, awarding 100% of the notional amount of the contracts would have a material impact on the amounts payable or receivable by ICE Clear Europe. The proposed rule change would not alter this provision but would specify that, in such a situation, ICE Europe could disregard any All or Nothing Bids.

Second, the proposed rule change would revise the CDS Auction Terms to clarify how an All or Nothing Bid affects the calculation of a Clearing Member's Bid price for purposes of determining the competitiveness of a Clearing Member's Bid and satisfaction of a Clearing Member's Minimum Bid Requirement. The competitiveness of a Clearing Member's Bid and satisfaction of a Clearing Member's Minimum Bid Requirement are important because under the CDS Auction Terms and ICE Clear Europe Rule 908(i), in the event that ICE Clear Europe needs to use non-defaulting Clearing Members' Guaranty Fund Contributions or Assessment Contributions to resolve the default of a Clearing Member, ICE Clear Europe uses first the contributions attributable to Clearing Members that did not satisfy their Minimum Bid Requirement (Non-Bidding CDS Clearing Members), followed by those that submitted less competitive Bids. Currently, ICE Clear Europe uses the weighted average price of all valid Standard Bids made by the Clearing Member in the Auction (weighted by the portfolio size of each such Bid, and converted into Euro, if applicable) to determine Bid price and thus to determine the competitiveness

of a Clearing Member's Bids in an Auction.

Under the CDS Auction Terms as revised by the proposed rule change, where a Clearing Member has submitted both an All or Nothing Bid and one or more Standard Bids, the Clearing Member's Bid price would be the (i) the weighted average price of all valid Standard Bids made by the Clearing Member in the Auction (weighted by the portfolio size of each such bid, and converted into Euro, if applicable) and (ii) the price of any valid All or Nothing Bid made by the Clearing Member in the Auction, in either case proportionately scaled to a portfolio size representing 100% of the relevant Auction Lot. Moreover, under the proposed rule change, if a Clearing Member's Standard Bids do not satisfy its Minimum Bid Requirement, the Clearing Member's Bid price would be the price of its All or Nothing Bid. Where a Clearing Member has submitted one or more Standard Bids (and has not submitted an All or Nothing Bid), and that Clearing Member's Standard Bids do not satisfy its Minimum Bid Requirement, the CDS Auction Terms would treat the Clearing Member as a Non-Bidding CDS Clearing Member, which, as noted above, has consequences under ICE Clear Europe Rule 908(i).

vii. Market Abuse Regulation

The proposed rule change would also amend the CDS Auction Terms to clarify and state explicitly certain obligations for auction participants in respect of information they may receive in connection with an Auction, including the contents of the portfolio and the outcome or timing of an Auction. Specifically, a participant in an Auction would be required to acknowledge that such information may constitute inside information for the purposes of the EU Market Abuse Regulation (Regulation (EU) No 596/2014) or any similar under applicable law in respect of any Contracts cleared by the ICE Clear Europe or in respect of securities of a defaulting Clearing Member. Under the proposed rule change, each participant in an Auction would be required to assess whether such information is inside information for purposes of the Market Abuse Regulation and, if so, to agree to: (i) Comply with applicable Market Abuse Laws; (ii) generally not disclose such information to persons outside of its organization; (iii) prevent persons engaged in client trading at such organization from possessing such information; (iv) prevent those in possession of such information from trading on such information until it ceases to be inside information; and (v) where such information constitutes inside information under Regulation (EU) No. 596/2014, maintain an insider list of persons with access to this information.

B. Amendments to the Policy

The proposed rule change would make a number of changes to the Policy in relation to the amendments to the CDS Auction Terms. First, as mentioned above, the proposed rule change would change the name from the CDS Default Management Framework to the CDS Default Management Policy. The proposed rule change would make amendments to that effect throughout the document.

Next, the proposed rule change would revise certain characterizations of the timeframe within which certain actions would occur under the Policy. The Policy currently provides that after the approval for the declaration of a default, ICE Clear Europe will immediately institute its default management process as outlined in the Policy. The proposed rule change would remove ''immediately'' from this provision. In addition, the proposed rule change would remove ''immediately'' from the provision that ICE Clear Europe cease clearing trades for the defaulting Clearing Member when that Clearing Member is declared in default. Although ICE Clear Europe expects that it would implement such actions in a timely manner under the circumstances, ICE Clear Europe does not believe it is necessary or feasible to specify that it would do take such actions immediately.

Similarly, with respect to assembling the Clearing Risk Team after a default, the Policy currently requires that the Head of Clearing Risk assemble the Clearing Risk Team as soon as a Clearing Member is deemed to have defaulted. The proposed rule change would amend this to require assembly once a Clearing Member is deemed to have defaulted. Again, ICE Clear Europe does not believe it is necessary or feasible to specify that assembly occur as soon as a Clearing Member is deemed to have defaulted. Finally, the Policy currently provides that when liquidating collateral assets of a default Clearing Member, ICE Clear Europe ensures that it can sell the collateral, subject to settlements terms, within a single working day, but the Head of Clearing Risk has discretion to postpone the collateral sale. The proposed rule change would delete this statement. ICE Clear Europe believes the statement is not needed to ensure timely sale of collateral and that it is unnecessary given that ICE Clear Europe relies on its existing and detailed collateral and liquidity policies to ensure it has sufficient access to liquidity in case of default.

The proposed rule change would also make a change with respect to the personnel authorized to take action regarding default management. The proposed rule change would remove a statement that in the event that the President/Chief Operating Officer is absent, the Head of Clearing Risk has the ability to overrule any other head of department (including Head of Treasury and Head of Operations) where necessary, on matters relating to default management. Thus, if the President/Chief Operating Officer is absent, the Head of Clearing Risk no longer has the ability to overrule any head of department. ICE Clear Europe is making this amendment to reflect a change in the Board's delegation of authority. Under the current delegation of authority, where the President/Chief Operating Officer is absent, the Executive Risk Committee has authority to make decisions, and thus override any head of department.

The proposed rule change would also amend the Policy regarding ICE Clear Europe's authority to convert a default Clearing Member's non-cash margin to cash. The Policy currently provides that to manage the risks related to a Clearing Member's default, ICE Clear Europe will internally isolate the Defaulting Clearing Member's positions and, if deemed appropriate, convert any non-cash portion of the Defaulting Member's margin and collateral securing their portion of the Guaranty Fund into cash. The proposed rule change would alter this slightly to provide that ICE Clear Europe ''may'' convert any non-cash portion of the Defaulting Member's margin and collateral securing their portion of the Guaranty Fund into cash. ICE Clear Europe is making this change to clarify the drafting of this provision, but it does not believe this change would substantively alter ICE Clear Europe's authority under this provision.

The proposed rule change would also amend the portion of the Policy related to the mechanics of bidding in an Auction to address the introduction of All or Nothing Bids, as discussed above. The proposed amendments would provide explanation regarding the meaning of an All or Nothing Bid and an example of how an All or Nothing Bid would work. The proposed amendments would also provide that ICE Clear Europe would publish further information on the bidding types utilized in any given Auction as part of the specifications for that Auction.

Finally, the proposed rule change would amend the Policy's provisions regarding review, breach management, and exception handling. With respect to reviewing and revising the Policy, the Policy currently provides that ICE Clear Europe will conduct a quarterly review of the Policy, to include an assessment of responsibilities, trading facilities, and equipment. The proposed rule change would delete this provision because ICE Clear Europe would review and revise the Policy as part of ICE Clear Europe's separate annual documentation review process rather than on a quarterly basis and, as discussed below, the document owner would be responsible for ensuring the Policy remains up-to-date. In its place, the proposed rule change would add a provision explaining that ICE Clear Europe, in coordination with its Clearing Members, would conduct an annual mock Clearing Member default test with the Clearing Risk Department, appropriate Clearing House management, and CDS Default Committee Members for each Clearing Member. The proposed rule change would also make the Policy's provisions for breach management and exception handling consistent with other ICE Clear Europe policies and governance processes.[7] Pursuant to the amendments, the document owner, as specified in ICE Clear Europe policies, would be responsible for making sure the Policy is up-to-date and for reporting report material breaches or unapproved deviations from the Policy to the Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together would determine if further escalation should be made to relevant senior executives, the Board and/or competent authorities. Exceptions to the Policy would be approved in accordance with ICE Clear Europe's governance process for the approval of changes to the Policy.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[8] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[9] and Rules 17Ad–22(e)(2)(v) and (e)(13).[10]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.[11] As discussed in more detail below, the Commission generally believes that the proposed rule change should improve the CDS Auction Terms and the Policy and, therefore, ICE Clear Europe's conduct of an Auction in response to a Clearing Member's default, and, as a result, believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[12]

Specifically, the Commission believes that the proposed rule change, in amending certain defined terms and adding defined terms needed for the other changes as discussed in Part II,A,i above, should reduce the possibility for confusion in the application of the CDS Auction Terms by clarifying the terminology in the CDS Auction Terms and by identifying and defining the terms needed to enact the other changes discussed above. In addition, amending the defined terms with respect to certain operations of an auction, including changing the term Closing Time to Bidding Close Time and revising the definitions of Primary and Secondary CDS Auction Priority AC Sequence and Primary and Secondary CDS Auction Priority GF Sequence, should help to clarify these operational aspects of Auctions and thereby improve the efficiency of Auctions.

Moreover, adding provisions to explain how ICE Clear Europe would interpret and apply the CDS Auction Terms, as discussed in Part II.A.ii above, including how the CDS Auctions Terms would relate to the ICE Clear Europe Rulebook, should help to reduce the possibility for confusion when interpreting and applying the CDS Auction Terms alongside the ICE Clear Europe Rulebook. Similarly, the additional provisions to explain that the CDS Contracts part of an Auction would include certain terminated CDS Contracts and hedging CDS Contracts should allow ICE Clear Europe to replace such contracts and establish a price to calculate its loss with respect to such contracts, thereby further improving the efficacy of Auctions.

Further, giving ICE Clear Europe the ability to postpone the Bidding Close Time and withdraw a lot after the Bidding Close Time, as discussed in Part II.A.iii above, should afford ICE Clear Europe flexibility to respond to changing conditions as Auctions are being conducted and therefore to respond as needed to conduct a successful Auction. Clearing Members should also benefit from additional clarity with respect to the consequences of making Bids in an Auction as a result of the proposed rule change specifying the circumstances in which a Clearing Member is treated as having not made a Bid, in which ICE Clear Europe could exclude certain bids for purposes of calculating the CDS Auction Clearing Price, and in which a Bid would constitute an offer governed by ICE Clear Europe Rule 904(b) and Part 4 of the ICE Clear Europe Rulebook. Finally, the additional requirement that each Direct Participating Customer enter into a CDS Auction Participation Agreement with its CDS Clearing Member should provide an additional assurance that Customers participating in an Auction would comply with the requirements of the CDS Auction Terms.

As it relates to Minimum Bid Requirements discussed in Part II.A.iv above, the Commission believes that the proposed rule change could increase participation in Auctions by reducing the potential for avoidance of Minimum Bid Requirements, thereby leading to more successful Auctions. Three particular aspects of the proposed rule change should help to reduce the possibility that a Clearing Member elects not to participate in an Auction or avoids the Minimum Bid Requirement: (i) Removal of the possibility that a Clearing Member could elect not to participate in an Auction; (ii) shortening the time by which a Clearing Member must provide notice to ICE Clear Europe that a Minimum Bid Requirement should not apply; and (iii) requiring ICE Clear Europe to confirm that it agrees to the Clearing Member's assessment

[7] *See* Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, To Revise the ICE Clear Europe Treasury and Banking Services Policy, Liquidity Management Procedures, Investment Management Procedures and Unsecured Credit Limits Procedures, Exchange Act Release No. 86891 (Sept. 6, 2019); 84 FR 48191 (Sep. 12, 2019) (SR–ICEEU–2019–012) (approving similar provisions in the ICE Clear Europe Treasury and Banking Services Policy, Liquidity Management Procedures, Investment Management Procedures and Unsecured Credit Limits Procedures).

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(2)(v), (e)(13).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1(b)(3)(F).

At the same time, the proposed rule change should increase the flexibility with which Clearing Members may address Minimum Bid Requirements by allowing Clearing Members to outsource the operational processing of their obligations under the CDS Auction Terms; continuing to allow Clearing Members to transfer their Minimum Bid Requirements to Affiliates (subject to both being Clearing Members and entering into an agreement); making explicit that a Clearing Member can satisfy its Minimum Bid Requirement with multiple Bids provided that any individual Bid is equal to or larger than the applicable minimum Bid size; and adding a provision to state that only those Bids that count toward the Minimum Bid Requirement would be taken into account under the Primary and Secondary CDS Auction Priority AC Sequence, Primary and Secondary CDS Auction Priority GF Sequence, and ICE Clear Europe Rule 908(i). Similarly, the additional clarity provided regarding the continued liability of a Clearing Member that transfers its Minimum Bid Requirement or outsources other operational obligations would allow Clearing Members to better understand the consequences of transferring or outsourcing a Minimum Bid Requirement. The Commission believes that this additional flexibility and information should generally help to ensure Clearing Members comply with Minimum Bid Requirements, which, in turn, should help to increase the likelihood of a successful Auction.

As discussed in part II.A.v above, the proposed rule change would make a number of changes reflecting the role and operations of the DMS in the context of an Auction. These changes would replace manual communications with electronic ones and therefore should improve the efficiency and accuracy of communications regarding Auctions, which may help to avoid delays or miscommunications that could delay the successful completion of an Auction. Thus, requiring use of the DMS and amending the CDS Auction Terms to reflect the operation of the DMS should help to promote the smooth conduct and successful completion of Auctions.

The proposed rule change would also add All or Nothing Bids, and make related changes, to the CDS Auction Terms, as discussed in Part II.A.vi above. Because an All or Nothing Bid provides a means for a single bidder to take all of the contracts in an Auction and requires that ICE Clear Europe allocate such contracts to that bidder if the All or Nothing Bid meets the Auction Clearing Price, All or Nothing Bidding should increase the likelihood that ICE Clear Europe successfully sells all of a defaulting Clearing Member's contracts by an Auction. Thus, the Commission believes that the changes discussed regarding All or Nothing Bids, including how an All or Nothing Bid would affect Minimum Bid Requirements and the calculation of bid price, should help to increase the likelihood of a successful Auction.

Moreover, adding provisions for the EU Market Abuse Regulations as discussed in Part II.A.vii above should ensure compliance with applicable EU law in the conduct of Auctions and should protect sensitive information shared as part of an Auction. The Commission believes this should, in turn, increase participants' confidence in the security of information shared as part of an Auction and therefore increase participation in an Auction.

Finally, the Commission believes that the changes to the Policy discussed in Part II.B above should improve ICE Clear Europe's ability to use the processes outlined in the Policy to respond to a Clearing Member's default and increase the clarity regarding the operation of the Policy, including when ICE Clear Europe may take certain actions and its authority for doing so. These changes include: (i) Renaming the Policy; (ii) revising the timing requirements for certain actions; and (iii) specifying that ICE Clear Europe may convert the defaulting Clearing Member's non-cash Margin and Guaranty Fund Contributions into cash. Similarly, removing a statement that in the event that the President/Chief Operating Officer being absent, the Head of Clearing Risk has the ability to overrule any other head of department (including Head of Treasury and Head of Operations) to reflect a change in the Board's delegation of authority, should reduce the possibility for confusion or mistakes in taking action under the Policy. Amending the mechanics of bidding in an Auction to address the introduction of All or Nothing Bids should further help to implement All or Nothing Bidding, which, as discussed above, should increase the likelihood for a successful Auction. Deleting the requirement that ICE Clear Europe conduct a quarterly review and instead making the document owner responsible for ensuring that the Policy is up-to-date and for reporting breaches, consistent with other ICE Clear Europe policies and governance processes, should establish a means for ensuring that ICE Clear Europe maintains and adheres to the Policy. For these reasons, the Commission believes the changes to the Policy should generally improve ICE Clear Europe's conduct of Auctions.

Through Auctions, ICE Clear Europe sells the open CDS contracts of a defaulting Clearing Member. Thus, in improving the efficiency of such Auctions, the Commission believes the proposed rule change should promote the prompt and accurate clearance and settlement of the CDS transactions resulting from such Auctions. Moreover, the Commission believes that the default of a Clearing Member, if not promptly resolved, could cause losses for ICE Clear Europe. The Commission believes the proposed rule change should help to avoid these losses by promoting the prompt resolution of Auctions, and therefore the prompt resolution of a Clearing Member's default. Because losses resulting from the default of a Clearing Member could disrupt ICE Clear Europe's ability to operate and therefore threaten ICE Clear Europe's ability to clear and settle transactions and access securities and funds, the Commission believes the proposed rule change also should help to promote the prompt and accurate clearance and settlement of transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control.

Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[13]

B. Consistency with Rule 17Ad–22(e)(2)(v)

Rule 17Ad–22(e)(2)(v) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, specify clear and direct lines of responsibility.[14] As discussed in Part II.B above, the proposed rule change would amend the Policy to make the document owner responsible for ensuring that the Policy is up-to-date and for reporting breaches. The Commission believes that this aspect of the proposed rule change would place on the document owner a clear and direct responsibility for ensuring that ICE Clear Europe maintains the Policy and complies with it. For this reason, the Commission finds

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 17Ad–22(e)(2)(v).

that the proposed rule change is consistent with Rule 17Ad–22(e)(2)(v).[15]

C. Consistency with Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires that ICE Clear Europe establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure ICE Clear Europe has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring its Clearing Members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.[16]

As discussed above, the Commission believes the proposed rule change should generally improve the clarity and operation of the CDS Auction Terms and, therefore, ICE Clear Europe's ability to conduct a successful Auction via the CDS Auction Terms. Because ICE Clear Europe uses Auctions to close out a defaulting Clearing Member's contracts and contain the losses and liquidity demands stemming from a Clearing Member's default, the Commission believes the proposed rule change, in improving ICE Clear Europe's ability to conduct a successful Auction via the CDS Auction Terms, should help to ensure ICE Clear Europe has the authority and operational capacity to take timely action to contain losses and liquidity demands. Moreover, as discussed in Part II.B above, the proposed rule change would amend the Policy to add a provision explaining that ICE Clear Europe, in coordination with its Clearing Members, would conduct an annual mock Clearing Member default test with the Clearing Risk Department, appropriate ICE Clear Europe management, and CDS Default Committee Members for each Clearing Member. The Commission believes this particular change should help to ensure that ICE Clear Europe requires its Clearing Members to participate in the testing and review of its default procedures.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(13).[17]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[18] and Rules 17Ad–22(e)(2)(v) and (e)(13).[19]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[20] that the proposed rule change, as modified by Partial Amendment No. 1 (SR–ICEEU–2020–007), be, and hereby is, approved.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14389 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 17Ad–22(e)(2)(v).

[16] 15 U.S.C. 17Ad–22(e)(13).

[17] 15 U.S.C. 17Ad–22(e)(13).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(2)(v) and (e)(13).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89176; File No. SR–NYSECHX–2020–19]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Waiver of the Co-location Hot Hands Fee

June 29, 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 17, 2020 the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary waiver of the co-location ''Hot Hands'' fee. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend of the temporary waiver of the co-location[4] ''Hot Hands'' fee through the earlier of August 31, 2020 and the reopening of the Mahwah, New Jersey data center (''Data Center''). The waiver of the Hot Hands fee is scheduled to expire on June 30, 2020.[5]

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.[6] Among those services is a ''Hot Hands'' service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet;

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in October 2019. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–27).

[5] *See* Securities Exchange Act Release No. 88957 (May 27, 2020), 85 FR 33766 (June 2, 2020) (SR–NYSECHX–2020–15).

[6] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* 84 FR 58778, *supra* note 4, at note 6. As specified in the Fee Schedule of NYSE Chicago, Inc. (''Fee Schedule''), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See id.* at 58779. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–53, SR–NYSEAmer-2020- 46, SR–NYSEArca-2020–58, and SR–NYSENAT–2020–20.

power recycling; and install and document the fitting of cable in a User's cabinet(s).[7] The Hot Hands fee is $100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID–19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE Chicago Rule 7.1 to close the co-location facility of the Exchange to third parties. The closure period was extended twice, through June 30, 2020 (the ''Initial Closure'').[8]

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rule 7.1 closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.[9] Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Fee Schedule as follows (deletions bracketed, additions italicized):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the earlier of [June 30]*August 31,* 2020 and the reopening of the Mahwah, New Jersey data center.

The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rule 7.1 closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

The Proposed Rule Change is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.

The Proposed Change is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rule 7.1 closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment

[7] *See* 84 FR 58778, *supra* note 4.

[8] *See* Securities Exchange Act Release Nos. 88400 (March 17, 2020), 85 FR 16434 (March 23, 2020) (SR–NYSECHX–2020–07), and 88522 (March 31, 2020), 85 FR 19191 (April 6, 2020) (SR–NYSECHX–2020–10).

[9] *See* 85 FR 33766, *supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78f(b)(8).

requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–19 and should be submitted on or before July 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14387 Filed 7–2–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 39035, June 29, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, July 1, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, July 1, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 30, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–14498 Filed 7–1–20; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11151]

Determination Pursuant to The Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated from the Under Secretary for Management pursuant to the Delegation of Authority No. 484, dated May 26, 2020, I hereby determine that the representative offices and operations in the United States of the following entities:

1. China Central Television (CCTV)
2. The People's Daily
3. Global Times
4. China News Service

including their real property and personnel, are foreign missions within the meaning of 22 U.S.C. 302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of the above noted entities, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above noted entities' activities in the United States.

Finally, I determine that the requirements established by Designation 2020–2, dated June 5, 2020, will not be

applied to the above-named entities unless and until further notice.

Clifton C. Seagroves,

Principal Deputy Director, Office of Foreign Missions, Department of State.

[FR Doc. 2020–14440 Filed 7–2–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 11152]

Designation and Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (''the Act''), and delegated from the Under Secretary for Management pursuant to the Delegation of Authority No. 484, dated May 26, 2020, I hereby designate engagements between Chinese members of the People's Republic of China's foreign missions and any personnel, including but not limited to elected and appointed officials, representatives, and employees, of:

1. Any state, local, or municipal government;

2. any educational institution (public or private); and

3. any research institution (public or private), including national laboratories;

located in the United States and its territories, as well as any visit by Chinese members of the People's Republic of China's foreign missions to any such sub-national governmental facilities, educational institutions, or research institutions, as a benefit under the Act. I hereby determine it is reasonably necessary to achieve one or more of the purposes set forth in section 204(b) of the Act (22 U.S.C. 4304(b)) to require all Chinese members of the People's Republic of China's foreign missions in the United States, including all personnel of the Government of the People's Republic of China temporarily visiting the United States or its territories traveling on A–1, A–2, G–1, G–2 or G–3 visas, as well as any member of their household accompanying any such individual, to submit advance notification to the Office of Foreign Missions of such engagements or visits and to comply with any other requirements as may be established by the Director or Deputy Director of the Office of Foreign Missions with respect to this Designation and Determination, as well as to authorize the Deputy Director of the Office of Foreign Missions to modify application of these requirements as circumstances warrant. This Designation and Determination replaces Designation and Determination No. 2019–5 of October 15, 2019.

Clifton C. Seagroves,

Principal Deputy Director, Office of Foreign Missions, Department of State.

[FR Doc. 2020–14443 Filed 7–2–20; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0370]

Hours of Service (HOS) of Drivers; U.S. Department of Energy (DOE); Application for Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the application of the U.S. Department of Energy (DOE) for a renewal of its exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. DOE currently holds an exemption for the period through June 29, 2020, which enables DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exempted drivers will be allowed to use 30 minutes or more of on-duty ''attendance time'' to meet the HOS rest break requirements providing they do not perform any other work during the break.

DATES: The requested exemption renewal is effective from June 30, 2020, through September 29, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2012–0370 in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal. FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time ''attending'' their CMVs toward the required 30-minute break, would likely provide a level of

safety equivalent to what would be achieved by the break. The notice renewing the DOE exemption was published on June 22, 2015 (80 FR 35703).

On July 25, 2016 (81 FR 48495), FMCSA announced the extension of the 2015 DOE exemption notice to June 29, 2020 in response to section 5206(b)(2)(A) of the ''Fixing America's Surface Transportation Act'' (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment (Dec. 4, 2015) to five years from the date of issuance of the exemptions. DOE has now requested a renewal of the exemption. A copy of DOE's request is in the docket referenced at the beginning of this notice.

IV. Method To Ensure an Equivalent or Greater Level of Safety

DOE has implemented several technical and administrative controls to ensure the continued effective use of driver on-duty and rest-break time, which would remain in effect under the requested exemption renewal. They include the following:

- Real-time tracking and monitoring of transuranic waste and security-sensitive shipments using DOE's satellite-based systems;
- Use of electronic on-board recorders on trucks, which are contractually required for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules; and
- Continuous monitoring of the performance of DOE-qualified motor carriers using the FMCSA Compliance Safety Accountability Program's Safety Measurement System, and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's safety controls can be found in its application for a renewal of the exemption. The application can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable them to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

V. Public Comments

On April 23, 2020, FMCSA published notice of this application, and requested public comment (85 FR 22785). Two comments were submitted, one by an individual, Garrett Chaffey, and the other by the Commercial Vehicle Safety Alliance (CVSA). Both supported the exemption.

Garrett Chaffey wrote:

> In conclusion, the DOE should be granted the continued exemption as requested because the DOE is best situated to evaluate its needs, there is a lack of evidence of negative consequences to the exemption, the transport of radioactive materials provides similar risks that explosives drivers also are granted exemption for, and after five years of this exemption the exemption appears to be having the desired impact without creating additional risks.

CVSA wrote the following:

> CVSA believes that DOE drivers have demonstrated an ability to maintain an equivalent level of safety under this exemption and does not oppose the renewal. However, FMCSA recently released a final rule that makes changes to the hours-of-service requirements that addresses DOE's scenario, by allowing all drivers to satisfy the 30-minute rest break requirement with any non-driving time. As a result, the Alliance supports extending DOE's exemption through the implementation date of the new hours-of-service regulations, at which time the exemption will no longer be necessary.

VI. FMCSA Decision

In reviewing the DOE request, FMCSA considered a wide range of studies, including the 2011 Blanco study,[1] coupled with the analysis of the safety performance data and information for the motor carriers that have been granted exemptions similar to DOE's. The Agency continues to believe that on-duty breaks from the driving task provide safety benefits essentially equivalent to those produced by an off-duty break (as well as productivity benefits). The Blanco study demonstrates that breaks of at least 30 minutes—whether on or off-duty—reduce safety critical events in the hour after driving resumes. This conclusion is consistent with the safety rationale presented in the preamble to the June 1, 2020 in the recent HOS final rule (85 FR 33396, 33452) which revised 49 CFR 395.3(a)(3)(ii).

The Agency has analyzed DOE's application for renewal and comments filed to the docket and believe the application for exemption renewal is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

VII. Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., June 30, 2020, through 11:59 p.m. on September 29, 2020. Thereafter, revised § 395.3(a)(3)(ii) will make this exemption unnecessary.

Extent of the Exemption

The exemption is restricted to DOE's contract driver-employees transporting security-sensitive radioactive materials. This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii) to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

The DOE must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

a. Exemption Identity: ''DOE'';

b. Name of operating motor carrier and USDOT number;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or closest to the accident scene;

e. Driver's name and driver's license number and State of issuance;

f. Vehicle number and State license plate number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations; and

k. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the

[1] Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., & Guo, F. (2011) ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations.'' Available in this rulemaking docket.

exemption for failure to comply with its terms and conditions.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–14497 Filed 7–2–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Written comments should be received on or before September 4, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1530–0023.

Abstract: The Bureau of the Fiscal Service conducts various surveys, focus groups, and interviews to assess the effectiveness and efficiency of existing products and services; to obtain knowledge about the potential public audiences attracted to new products being introduced; and to measure awareness and appeal of efforts to reach audiences and customers.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 75,000.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 10,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Comments are invited on: 1. 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; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. 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 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 29, 2020.

Bruce A. Sharp,

Bureau PRA Clearance Officer.

[FR Doc. 2020–14342 Filed 7–2–20; 8:45 am]

BILLING CODE 4810–AS–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; Assistant Director for Licensing, tel.: 202–622–2480; 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 (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 5, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. BLANCO HURTADO, Nestor Neptali, Miranda, Venezuela; DOB 26 Sep 1982; nationality Venezuela; Gender Male; Cedula No. 15222057 (Venezuela) (individual) [VENEZUELA–EO13884].

Identified as meeting the definition of the term, ''Government of Venezuela,'' pursuant to section 6(d) of Executive Order 13884, ''Blocking Property of the Government of Venezuela,'' 84 FR 38843 (''E.O. 13884'' or the ''Order''), for acting of purported to act for or on behalf of, directly or indirectly, the Government of Venezuela.

2. CEBALLOS ICHASO, Remigio, Caracas, Capital District, Venezuela; DOB 01 May 1963; Gender Male; Cedula No. 6557495 (Venezuela) (individual) [VENEZUELA–EO13884].

Identified as meeting the definition of the term, ''Government of Venezuela,'' pursuant to section 6(d) of the Order, for acting of purported to act for or on behalf of, directly or indirectly, the Government of Venezuela.

3. CARRENO ESCOBAR, Pedro Miguel, Delta Amacuro, Venezuela; DOB 24 Apr 1961; Gender Male; Cedula No. 8142392 (Venezuela) (individual) [VENEZUELA–EO13884].

Identified as meeting the definition of the term, ''Government of Venezuela,'' pursuant to section 6(d) of the Order, for acting of purported to act for or on behalf of, directly or indirectly, the Government of Venezuela.

4. ORNELAS FERREIRA, Jose Adelino (a.k.a. ORNELLA FERREIRA, Jose Adelino; a.k.a. ORNELLAS FERREIRA, Jose Adelino), Caracas, Capital Disrict, Venezuela; DOB 14 Dec 1964; Gender Male; Cedula No. 7087964 (Venezuela) (individual) [VENEZUELA–EO13884].

Identified as meeting the definition of the term, ''Government of Venezuela,'' pursuant to section 6(d) of the Order, for acting of purported to act for or on behalf of, directly or indirectly, the Government of Venezuela.

5. CALDERON CHIRINOS, Carlos Alberto, Maracaibo, Zulia, Venezuela; DOB 03 Jul 1970; Gender Male; Cedula No. 10352300 (Venezuela) (individual) [VENEZUELA–EO13884].

Identified as meeting the definition of the term, ''Government of Venezuela,'' pursuant to section 6(d) of the Order, for acting of purported to act for or on behalf of, directly or indirectly, the Government of Venezuela.

Dated: November 5, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

Editorial Note: This document was received for publication by the Office of the Federal Register on June 30, 2020.

[FR Doc. 2020–14464 Filed 7–2–20; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 85 Monday,
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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0357; FRL–10006–87–OAR]

RIN 2060–AT02

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Ethylene Production source category regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, the U.S. Environmental Protection Agency (EPA) is taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding work practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses. The EPA is also taking final action to revise requirements for heat exchange systems; add monitoring and operational requirements for flares; add provisions for electronic reporting of performance test results and other reports; and include other technical corrections to improve consistency and clarity. We estimate that these final amendments will reduce hazardous air pollutants (HAP) emissions from this source category by 29 tons per year (tpy) and reduce excess emissions of HAP from flares by an additional 1,430 tpy.

DATES: This final rule is effective on July 6, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 6, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0357. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (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 either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Andrew Bouchard, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4036; and email address: *bouchard.andrew@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Mark Morris, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5416; and email address: *morris.mark@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Ms. Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7042; and email address: *mia.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACC American Chemistry Council
APCD air pollution control device
ASME American Society of Mechanical Engineers
BAAQMD Bay Area Air Quality Management District
BTF beyond-the-floor
Btu/scf British thermal units per standard cubic foot
CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CO_2 carbon dioxide
CRA Congressional Review Act
EFR external floating roof
EMACT Ethylene Production MACT
EPA Environmental Protection Agency
FTIR Fourier transform infrared spectrometry
gpm gallons per minute
GMACT Generic Maximum Achievable Control Technology
HAP hazardous air pollutant(s)
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICR Information Collection Request
IFR internal floating roof
km kilometer
kPa kilopascals
LDAR leak detection and repair
LEL lower explosive limit
MACT maximum achievable control technology
m^3 cubic meter
Mg/yr megagrams per year
MIR maximum individual risk
MTVP maximum true vapor pressure
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value in the combustion zone gas
NHVvgnet heating value in the vent gas
NOCS Notification of Compliance Status
NPDES National Pollutant Discharge Elimination System
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
POM polycyclic organic matter
ppm parts per million
ppmv parts per million by volume
PRA Paperwork Reduction Act
PRD pressure relief device(s)
psig pounds per square inch gauge
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SCAQMD South Coast Air Quality Management District
SSM startup, shutdown, and malfunction
TAC Texas Administrative Code
TCEQ Texas Commission on Environmental Quality
The Court United States Court of Appeals for the District of Columbia Circuit
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standards
VOC volatile organic compound(s)

Background information. On October 9, 2019, the EPA proposed revisions to the Generic Maximum Achievable Control Technology (GMACT) Standards NESHAP based on our RTR for the Ethylene Production source category. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the

Summary of Public Comments and Responses for Risk and Technology Review for Ethylene Production, in Docket ID No. EPA–HQ–OAR–2017–0357. A ''tracked changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS [1] code
Ethylene Production	GMACT Standards	325110

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/acetal-resins-acrylic-modacrylic-fibers-carbon-black-hydrogen.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under the Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by September 4, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building,

1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tpy or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 84 FR 54278, October 9, 2019.

B. What is the Ethylene Production source category and how does the NESHAP regulate HAP emissions from the source category?

The Ethylene Production MACT standards (herein called the EMACT standards) for the Ethylene Production source category are contained in the GMACT NESHAP which also includes MACT standards for several other source categories. The EMACT standards were promulgated on July 12, 2002 (67 FR 46258), and codified at 40 CFR part 63, subparts XX and YY. The EMACT standards regulate HAP emissions from ethylene production units located at major sources. An ethylene production unit is a chemical manufacturing process unit in which ethylene and/or propylene are produced by separation from petroleum refining process streams or by subjecting hydrocarbons to high temperatures in the presence of steam. The EMACT defines the affected source as all storage vessels, ethylene process vents, transfer racks, equipment, waste streams, heat exchange systems, and ethylene cracking furnaces and associated decoking operations that are associated with each ethylene production unit located at a major source as defined in CAA section 112(a).

As of January 1, 2017, there were 26 facilities in operation and subject to the EMACT standards. We are also aware of the expansion and construction of several facilities. Based upon this anticipated growth for the Ethylene Production source category, we estimate that a total of 31 facilities will ultimately be subject to the EMACT standards and complying with this final rule over the course of the next 3 years. The source category and the EMACT standards are further described in the October 9, 2019, RTR proposal. See 84 FR 54278.

C. What changes did we propose for the Ethylene Production source category in our October 9, 2019, RTR proposal?

On October 9, 2019, the EPA published a proposed rule in the **Federal Register** for the EMACT standards of the GMACT NESHAP, 40 CFR part 63, subparts XX and YY, that took into consideration the RTR analyses. We proposed to find that the risks from the source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. In addition, pursuant to the technology review for the Ethylene Production source category, we proposed that no revisions to the current standards are necessary for ethylene process vents, transfer racks, equipment leaks, and waste streams; however, we did propose changes for storage vessels and heat exchanger systems. We proposed revisions to the storage vessels control applicability requirements, pursuant to CAA section 112(d)(6), to tighten both the threshold for maximum true vapor pressure (MTVP) of total organic HAP (*i.e.,* decreasing it from 3.4 kilopascals (kPa) or greater to 0.69 kPa or greater) and the threshold for storage vessel capacity (*i.e.,* decreasing it from 95 cubic meter

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (DC Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

(m^3) to 59 m^3) and to require storage vessels meeting these criteria to reduce emissions of total organic HAP by 98 weight-percent or use a floating roof storage vessel subject to the requirements of 40 CFR part 63, subpart WW. In addition, we proposed revisions to the heat exchange system requirements, pursuant to CAA section 112(d)(6), to require owners or operators to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 parts per million by volume (ppmv) or greater.

We also proposed the following amendments:

- Revisions to the operating and monitoring requirements for flares used as air pollution control devices (APCDs), pursuant to CAA section 112(d)(2) and (3);
- requirements and clarifications for periods of SSM and bypasses, including for pressure relief device(s) (PRD) releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, and certain gaseous streams routed to a fuel gas system, pursuant to CAA section 112(d)(2) and (3);
- work practice standards for decoking ethylene cracking furnaces (*i.e.,* minimizing emissions from the coke combustion activities in an ethylene cracking furnace), pursuant to CAA section 112(d)(2) and (3);
- revisions to the SSM provisions of the NESHAP (in addition to those related to flares, vent control bypasses, or ethylene cracking furnace decoking operations) in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (DC Cir. 2008), which vacated two provisions that exempted source owners and operators from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM;
- a requirement for electronic submittal of performance test results and reports, and Notification of Compliance Status (NOCS) reports;
- removal of certain exemptions for once-through heat exchange systems;
- overlap provisions for equipment at ethylene production facilities subject to both the EMACT standards and synthetic organic chemicals manufacturing equipment leak standards at 40 CFR part 60, subpart VVa;
- IBR of an alternative test method for EPA Methods 3A and 3B (for the manual procedures only and not the instrumental procedures);
- IBR of an alternative test method for EPA Method 18 (with caveats);
- IBR of an alternative test method for EPA Method 320 (with caveats); and
- several minor editorial and technical changes in the subpart.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Ethylene Production source category and amends the EMACT standards based on those determinations. This action also finalizes other changes to the NESHAP, including adding requirements and clarifications for periods of SSM and bypasses; revisions to the operating and monitoring requirements for flares used as APCDs; adding provisions for electronic reporting of performance test results and reports, NOCS reports, and Periodic Reports; and other minor editorial and technical changes. This action also reflects several changes to the October 9, 2019 RTR proposal in consideration of comments received during the public comment period as described in section IV of this preamble.

A. What are the final rule amendments based on the risk review for the Ethylene Production source category?

This section describes the final amendments to the EMACT standards being promulgated pursuant to CAA section 112(f). The EPA proposed no changes to the EMACT standards based on the risk reviews conducted pursuant to CAA section 112(f). In this action, we are finalizing our proposed determination that risks from this source category are acceptable, and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Section IV.A.3 of this preamble provides a summary of key comments we received regarding risk review and our responses.

B. What are the final rule amendments based on the technology review for the Ethylene Production source category?

The EPA is finalizing its proposed determination in the technology review that there are no developments in practices, processes, and control technologies that warrant revisions to the EMACT standards for process vents, transfer racks, equipment leaks, and waste streams in this source category. Therefore, we are not finalizing revisions to the EMACT standards for these emission sources under CAA section 112(d)(6). Also, based on comments received on the proposed rulemaking, we are not finalizing the proposed revisions to the EMACT standards for storage vessels under CAA section 112(d)(6) to tighten the control applicability thresholds for MTVP of total organic HAP (*i.e.,* decreasing it from 3.4 kPa or greater to 0.69 kPa or greater) and storage vessel capacity (*i.e.,* decreasing it from 95 m^3 to 59 m^3).

For heat exchange systems, we determined that there are developments in practices, processes, and control technologies that warrant revisions to the EMACT standards for this source category. Therefore, to satisfy the requirements of CAA section 112(d)(6), we are revising the EMACT standards, consistent with the October 9, 2019, RTR proposal, to include revisions to the heat exchange system requirements to require owners or operators to use the Modified El Paso Method and repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or greater. In addition, based on comments received on the proposed rulemaking, we are also including an alternative mass-based leak action level of total strippable hydrocarbon equal to or greater than 0.18 kilograms per hour for heat exchange systems with a recirculation rate of 10,000 gallons per minute (gpm) or less.

Section IV.B.3 of this preamble provides a summary of key comments we received on the technology review and our responses.

C. What are the final rule amendments pursuant to CAA section 112(d)(2) and (3) for the Ethylene Production source category?

Consistent with *Sierra Club* v. *EPA* 551 F. 3d 1019 (D.C. Cir. 2008) and the October 9, 2019, RTR proposal, we are revising monitoring and operational requirements for flares to ensure that ethylene production facilities that use flares as APCDs meet the EMACT standards at all times when controlling HAP emissions. In addition, we are adding provisions and clarifications for periods of SSM and bypasses, including PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, and certain gaseous streams routed to a fuel gas system to ensure that CAA section 112 standards apply continuously. Also, for the same reason, we are adopting the proposed decoking operations work practice standards into the final rule with only minor changes, such as adding delay of repair provisions to the flame impingement inspection requirements, adding clarifying text to the carbon dioxide (CO_2) monitoring, coil outlet temperature monitoring, air removal, and radiant tube(s) treatment requirements, and removing unnecessary recordkeeping associated

with the time each isolation valve inspection is performed and the results of that inspection even if no problem was found. For details about these minor changes, refer to Section 6.7 of the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

Lastly, based on comments received on the proposed rulemaking, we are adding a separate standard for storage vessel degassing for storage vessels subject to the control requirements in Table 7 to 40 CFR 63.1103(e)(3)(b) and (e)(3)(c).

Section IV.C.3 of this preamble provides a summary of key comments we received on the CAA section 112(d)(2) and (3) provisions and our responses.

D. What are the final rule amendments addressing emissions during periods of SSM?

We are finalizing the proposed amendments to the EMACT standards to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. As detailed in section IV.E.1 of the proposal preamble, the Ethylene Production NESHAP requires that standards apply at all times (see 40 CFR 63.1108(a)(4)(i)), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008). We determined that facilities in this source category can generally meet the applicable EMACT standards at all times, including periods of startup and shutdown. As discussed in the proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. Where appropriate, and as discussed in section III.C of this preamble, we are also finalizing alternative standards for certain emission points during periods of SSM to ensure a continuous CAA section 112 standard applies ''at all times.'' Other than for those specific emission points discussed in section III.C of this preamble, the EPA determined that no additional standards are needed to address emissions during periods of SSM.

We are also finalizing, as proposed, eliminating SSM exemptions for waste streams at facilities with a total annual benzene less than 10 megagrams per year (Mg/yr) and amending language in the definitions of ''dilution steam blowdown waste stream'' and ''spent caustic waste stream'' at 40 CFR 63.1082(b) to remove the exclusion for streams generated from sampling, maintenance activities, or shutdown purges. In addition, we are finalizing a revision to the performance testing requirements at 40 CFR 63.1108(b)(4)(ii)(B). The final performance testing provisions do not include the language that precludes startup and shutdown periods from being considered ''representative'' for purposes of performance testing, and instead allows performance testing during periods of startup or shutdown if specified by the Administrator. However, the final performance testing provisions prohibit performance testing during malfunctions because these conditions are not representative of normal operating conditions. The final rule also requires that operators maintain records to document that operating conditions during the test represent normal operations.

The legal rationale and detailed changes for SSM periods that we are finalizing here are set forth in the proposed rule. See 84 FR 54278, October 9, 2019. Also, based on comments received during the public comment period, we are revising 40 CFR 63.1103(e)(9) to sufficiently address the SSM exemption provisions from subparts referenced by the EMACT standards. For example, in addition to what we proposed, we are also clarifying that the certain referenced provisions do not apply when demonstrating compliance with the EMACT standards, such as phrases like ''other than a start-up, shutdown, or malfunction'' in the recordkeeping and reporting requirements of 40 CFR 63, subparts SS and UU. We are also not removing as proposed the term ''breakdowns'' in 40 CFR 63.998(b)(2)(i) as well as 40 CFR 63.998(d)(1)(ii) in its entirety.

Section IV.D.3 of this preamble provides a summary of key comments we received on the SSM provisions and our responses.

E. What other changes have been made to the NESHAP?

This rule also finalizes, as proposed, revisions to several other NESHAP requirements. We describe these revisions in this section as well as other revisions that have changed since proposal. To increase the ease and efficiency of data submittal and data accessibility, we are finalizing, as proposed, a requirement that owners and operators of facilities in the Ethylene Production source category submit electronic copies of certain required performance test results and reports and NOCS reports through the EPA's Central Data Exchange (CDX) website using an electronic performance test report tool called the Electronic Reporting Tool. In addition, in the final rule, we are correcting an error to clarify that Periodic Reports must also be submitted electronically (*i.e.,* through the EPA's CDX using the appropriate electronic report template for this subpart) beginning no later than the compliance dates specified in 40 CFR 63.1102(c) or once the report template has been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website for at least 1 year, whichever date is later. Furthermore, we are finalizing, as proposed, provisions that allow facility operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or CEDRI or for a *force majeure* event in the time just prior to a report's due date, as well as the process to assert such a claim.

To correct a disconnect between having a National Pollutant Discharge Elimination System (NPDES) permit that meets certain allowable discharge limits at the discharge point of a facility (*e.g.,* outfall) and being able to adequately identify a leak, we are finalizing, as proposed, the removal of certain exemptions for once-through heat exchange systems to comply with cooling water monitoring requirements.[2] Further, based on comments received on the proposed rulemaking, we are clarifying that the calibration drift assessment provisions at 40 CFR 60.485a(b)(2) apply only if the owner or

[2] Cooling water from a once-through heat exchange system at a petrochemical plant can be mixed with other sources of water (*e.g.,* cooling water used in once-through heat exchange systems in non-ethylene source categories, stormwater, treated wastewater, etc.) in sewers, trenches, and ponds prior to discharge from the plant. If this point of discharge from the plant is into a ''water of the United States,'' then the facility is required to have a NPDES permit and to meet certain pollutant discharge limits.

operator is subject to those requirements in 40 CFR part 60, subpart VVa [see the 40 CFR part 60, subpart VVa overlap provisions in the final rule at 40 CFR 63.1100(g)(4)(iii)].

We are finalizing all of the revisions that we proposed for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 9 of the proposal. See 84 FR 54278, October 9, 2019. We are also including several additional minor clarifying edits in the final rule based on comments received during the public comment period. We did not receive many substantive comments on these other amendments in the Ethylene Production RTR proposal. The comments and our specific responses to these items can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

F. What are the effective and compliance dates of the standards?

The revisions to the EMACT standards being promulgated in this action are effective on July 6, 2020. From our assessment of the timeframe needed for implementing the entirety of the revised requirements (see 84 FR 54278, October 9, 2019), the EPA proposed a period of 3 years to be the most expeditious compliance period practicable. Although opposing comments regarding the proposed compliance dates were received during the public comment period, we are finalizing the 3-year compliance period as proposed. Amendments to EMACT standards for adoption under CAA sections 112(d)(2) and (3) and 112(d)(6) are subject to the compliance deadlines outlined in the CAA under section 112(i). For existing sources, CAA section 112(i) provides that the compliance date shall be as expeditiously as practicable, but no later than 3 years after the effective date of the standard. For new sources, compliance is required by the effective date of the final amendments or upon startup, whichever is later. As explained in the preamble to the proposed rule (84 FR 54278, October 9, 2019), the EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose; and from our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 3 years after the effective date of the final rule to be the most expeditious compliance period practicable. Furthermore, as discussed in sections III and IV of this preamble, we are adding separate work practice standards to the final rule for the following SSM activities/events: (1) Periods of SSM for when flares are used as an APCD, (2) periods of SSM for certain vent streams (*i.e.* PRD releases and maintenance vents), (3) vent control bypasses for certain vent streams (*i.e.,* closed vent systems containing bypass lines, in situ sampling systems, and flares connected to fuel gas systems), and (4) decoking operations for ethylene cracking furnaces. The provisions being finalized are similar to the requirements promulgated in the Petroleum Refinery NESHAP. As we discovered during the Petroleum Refinery NESHAP rulemaking, the challenges faced by affected sources in complying with these requirements necessitated additional compliance time from what was promulgated, eventually having to move the original compliance date of these provisions from February 1, 2016, to August 1, 2018, an additional 2 and a half years.[3] Therefore the 3 year compliance date that was proposed for the EMACT standards provides a consistent time allowance to affected sources as was needed for Petroleum Refineries to fully implement the work practice standards. Thus, the compliance date of the final amendments for all existing affected sources, and all new affected sources that commence construction or reconstruction after December 6, 2000, and on or before October 9, 2019, is no later than July 6, 2023, or upon startup, whichever is later. The compliance date of the final amendments for all ethylene production new affected sources that commenced construction or reconstruction after October 9, 2019, is the effective date of these final rule amendments to the EMACT standards of July 6, 2020, or upon startup, whichever is later.

[3] *https://www.epa.gov/sites/production/files/2018-07/documents/petrefinery_compliance_ext_factsheet.pdf.*

IV. What is the rationale for our final decisions and amendments for the Ethylene Production source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket.

A. Residual Risk Review for the Ethylene Production Source Category

1. What did we propose pursuant to CAA section 112(f) for the Ethylene Production source category?

Pursuant to CAA section 112(f), the EPA conducted a residual risk review and presented the results of this review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the October 9, 2019, proposed rule for 40 CFR part 63, subparts XX and YY (84 FR 54278). The results of the risk assessment for the proposal are presented briefly in Table 2 of this preamble. More detail is in the residual risk technical support document, *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this rulemaking.

TABLE 2—ETHYLENE PRODUCTION INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [3]		Maximum screening acute noncancer HQ [4]
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Based on actual emissions level
31	100	100	2.8 million ...	4.6 million ...	0.1	0.2	1	1	HQ_{REL} = <1

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category. There is only one census block, and one person, at this risk level.
[3] Maximum target organ-specific hazard index (TOSHI). The target organ systems with the highest TOSHI for the source category are neurological and reproductive. The respiratory TOSHI was calculated using the California EPA chronic reference exposure level (REL) for acrolein.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

Using actual emissions data, the results of the proposed inhalation risk assessment, as shown in Table 2 of this preamble, indicate the estimated cancer maximum individual risk (MIR) is 100-in-1 million, with naphthalene and benzene as the major contributors to the risk. There is only one census block, and one person, at this risk level. The second-highest facility cancer risk is 30-in-1 million. At proposal, the total estimated cancer incidence from this source category was estimated to be 0.1 excess cancer cases per year, or one excess case in every 10 years. Approximately 2.8 million people were estimated to have cancer risks above 1-in-1 million from HAP emitted from the facilities in this source category. At proposal, the estimated maximum chronic noncancer TOSHI for the source category was 1 (neurological and respiratory) driven by emissions of manganese and epichlorohydrin.

Using the MACT-allowable emissions, the risk results at proposal for the inhalation risk assessment indicated that the estimated cancer MIR was 100-in-1 million with naphthalene and benzene emissions driving the risks, and that the estimated maximum chronic noncancer TOSHI was 1 with manganese and epichlorohydrin as the major contributors to the TOSHI. At proposal, the total estimated cancer incidence from this source category considering allowable emissions was 0.2 excess cancer cases per year or 1 excess case in every 5 years. Based on allowable emission rates, 4.6 million people were estimated to have cancer risks above 1-in-1 million.

As shown in Table 2 of this preamble, the reasonable worst-case acute HQ (based on the REL) at proposal was less than 1. This value is the highest HQ that is outside facility boundaries. No facilities were estimated to have an HQ greater than or equal to 1 based on any benchmark (REL, acute exposure guideline level, or emergency response planning guidelines). In addition, at proposal, we identified emissions of arsenic compounds, cadmium compounds, mercury compounds, and polycyclic organic matter (POM), all HAP known to be persistent and bio-accumulative in the environment. The multipathway risk screening assessment resulted in a maximum Tier 2 cancer screening value of 30 for arsenic and a maximum Tier 3 noncancer screening value of 2 for mercury compounds. Based on facility-specific analyses performed for mercury for other source categories, we concluded that such analyses would reduce the mercury screening value to 1 or lower. In addition, a screening-level evaluation of the potential adverse environmental risk associated with emissions of arsenic, cadmium, hydrochloric acid, hydrofluoric acid, lead, mercury, and POMs indicated that no ecological benchmarks were exceeded.

We weighed all health risk factors, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the risks posed by the Ethylene Production source category are acceptable (section IV.C.1 of proposal preamble, 84 FR 54311, October 9, 2019).

We then considered whether the existing EMACT standards provide an ample margin of safety to protect public health and whether, taking into consideration costs, energy, safety, and other relevant factors, more stringent standards are required to prevent an adverse environmental effect. In considering whether the standards are required to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. We proposed that additional emissions controls for the Ethylene Production source category are not necessary to provide an ample margin of safety to protect public health and that more stringent standards are not necessary to prevent an adverse environmental effect (section IV.C.2 of proposal preamble, 84 FR 54312, October 9, 2019).

We also evaluate risk from whole facility emissions in order to help put the risks in context. Whole facility (or ''facility-wide'') emissions include those regulated under this source category plus all other emissions generated at each facility. The results of the chronic inhalation cancer risk assessment based on facility-wide emissions are more uncertain and rely on the quality of the emissions data collected for source categories outside this regulatory review. These emissions sources may not undergo the same level of data quality review as those being assessed in this regulatory assessment. The estimated maximum lifetime individual cancer risk based on facility-wide emissions is 2,000-in-1 million, with ethylene oxide from non-category (non-ethylene production process) emissions driving the risk. The total estimated cancer incidence based on facility-wide emissions is 1 excess cancer case per year. Approximately 6,500,000 people are estimated to have cancer risks above 1-in-1 million from HAP emitted from all sources at the facilities in this source category. The estimated maximum chronic noncancer hazard index (HI) based on facility-wide emissions is 4 (for the respiratory HI), driven by emissions of chlorine from non-category (non-ethylene production process) emissions. Approximately 200 people are estimated to be exposed to noncancer HI levels above 1.

2. How did the risk review change for the Ethylene Production source category?

We have not changed any aspect of the risk assessment since the October 9, 2019, RTR proposal for the Ethylene Production source category.

3. What key comments did we receive on the risk review, and what are our responses?

We received comments in support of and against the proposed residual risk review and our determination that no revisions were warranted under CAA section 112(f)(2) for the Ethylene Production source category. Generally, the comments that were not supportive of the determination from the risk reviews suggested changes to the underlying risk assessment methodology. For example, some commenters stated that the 100-in-1 million lifetime cancer risk cannot be considered safe or ''acceptable,'' and the EPA should include emissions outside of the source categories in question in the risk assessment and assume that pollutants with noncancer health risks have no safe level of exposure. After review of all the comments received, we determined that no changes were necessary. The comments and our specific responses can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the risk review?

As noted in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (84 FR 54278, October 9, 2019; see also 54 FR 38045, September 9, 1989). We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum cancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, multipathway risks, and the risk estimation uncertainties.

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the Ethylene Production source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, we are not revising the EMACT standards to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the Ethylene Production Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Ethylene Production source category?

Pursuant to CAA section 112(d)(6), the EPA proposed to conclude that no revisions to the current EMACT standards are necessary for ethylene process vents, transfer racks, equipment leaks, and waste streams (sections IV.D.2 through IV.D.5 of proposal preamble, 84 FR 54314, October 9, 2019). We did not find any developments (since promulgation of the original NESHAP) in practices, processes, and control technologies that could be applied to ethylene process vents and that could be used to reduce emissions from ethylene production facilities. We also did not identify any developments in work practices, pollution prevention techniques, or process changes that could achieve emission reductions from ethylene process vents. For transfer racks, we identified one emission reduction option, at proposal, to revise the transfer rack applicability threshold (for volumetric throughput of liquid loaded) from 76 m^3 per day to 1.8 m^3 per day to reflect the more stringent applicability threshold of other chemical sector standards that regulate emissions from transfer rack operations (*i.e.,* 40 CFR part 63, subparts F and G and 40 CFR part 63, subpart FFFF). At proposal, we also identified two developments in leak detection and repair (LDAR) practices and processes for equipment leaks: (1) Lowering the leak definition for valves in gas and vapor service or in light liquid service from 500 parts per million (ppm) to 100 ppm and (2) lowering the leak definition for pumps in light liquid service from 1,000 ppm to 500 ppm. In addition, we identified two emission reduction options, at proposal, for waste streams: (1) specific performance parameters for an enhanced biological unit beyond those required in the Benzene Waste Operations NESHAP and (2) treatment of wastewater streams with a volatile organic compounds (VOC) content of 750 ppmv or higher by steam stripping prior to any other treatment process for facilities with high organic loading rates (*i.e.,* facilities with total annualized benzene quantity of 10 Mg/yr or more). However, based on the costs and emission reductions for each of the proposed options (for transfer racks, equipment leaks, and waste streams), we considered none of these options to be cost effective for reducing emissions from these emission sources at ethylene production units, and we proposed that it is not necessary to revise the EMACT standards for these emission sources pursuant to CAA section 112(d)(6).

Also, pursuant to CAA section 112(d)(6), we proposed revisions to the current EMACT standards for storage vessels and heat exchange systems (sections IV.D.1 and IV.D.6 of proposal preamble, 84 FR 54314, October 9, 2019). For storage vessels, we proposed tightening both the applicability threshold for MTVP of total organic HAP (*i.e.,* decreasing it from 3.4 kPa or greater to 0.69 kPa or greater) and the applicability threshold for storage vessel capacity (*i.e.,* decreasing it from 95 m^3 to 59 m^3) in Table 7 at 40 CFR 63.1103(e)(3)(a)(1) and 40 CFR 63.1103(e)(3)(b)(1), respectively. For heat exchange systems, we proposed to add a new provision, 40 CFR 63.1086(e), that would require owners or operators to use the Modified El Paso Method to monitor for leaks and to repair leaks of total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or greater. We also proposed to add a new provision, 40 CFR 63.1088(d), establishing a delay of repair action level of total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv, that if exceeded during leak monitoring, would require immediate repair (*i.e.,* the leak found cannot be put on delay of repair and would be required to be repaired within 30 days of the monitoring event). This would apply to both monitoring heat exchange systems and individual heat exchangers by replacing the use of any 40 CFR part 136 water sampling method with the Modified El Paso Method and removing the option that allows for use of a surrogate indicator of leaks. Finally, we proposed to add a new provision, 40 CFR 63.1087(c), requiring re-monitoring at the monitoring location where a leak is identified to ensure that any leaks found are fixed.

2. How did the technology review change for the Ethylene Production source category?

The EPA has not changed any aspect of the technology review for process vents, transfer racks, equipment leaks, and waste streams since the October 9, 2019, RTR proposal for the Ethylene Production source category. However, based on comments received on the proposed rulemaking, we are not finalizing the proposed revisions to the EMACT standards for storage vessels under CAA section 112(d)(6) to tighten the applicability threshold for MTVP of total organic HAP (*i.e.,* decreasing it from 3.4 kPa or greater to 0.69 kPa or greater) and the applicability threshold for storage vessel capacity (*i.e.,* decreasing it from 95 m^3 to 59 m^3). Moreover, although we are revising the EMACT standards for heat exchange systems consistent with the October 9, 2019, RTR proposal, we are also including, based on comments received on the proposed rulemaking, an alternative mass-based leak action level of total strippable hydrocarbon equal to or greater than 0.18 kilograms per hour for heat exchange systems with a recirculation rate of 10,000 gpm or less.

3. What key comments did we receive on the technology review, and what are our responses?

The EPA received comments in support of and against the proposed technology review amendments and our determination that no revisions were warranted under CAA section 112(d)(6) for process vents, transfer racks, equipment leaks, and waste streams in the Ethylene Production source category and that revisions were warranted for storage vessels and heat exchange systems in the Ethylene Production source category. Generally, for process vents, transfer racks, equipment leaks, and waste streams, the comments were either supportive of the determination that no cost-effective developments from the technology review were found, or that the Agency should re-open and re-evaluate the MACT standards for these emission sources and not consider cost in the technology review for the emissions sources. Based on our review of the comments received for process vents, transfer racks, equipment leaks, and waste streams, we are finalizing our determination that no cost-effective developments exist and that it is not necessary to revise these emission standards under CAA section 112(d)(6).

For storage vessels, the EPA received additional information from commenters on material composition, storage vessels that would be affected by the proposed option, and costs necessary for control of the storage vessels that would be affected by the proposed control option. After review of all the comments received, we determined that it is not cost effective to revise the storage vessel control requirements and are not finalizing revisions for this emissions source under CAA section 112(d)(6).

For heat exchange systems, the EPA received additional information from commenters on costs necessary for control of these sources as well as comments on a number of technical clarifications and allowance of compliance with an alternative mass-based leak action level should the EPA finalize the requirements for heat exchange systems. After review of all the comments received, we determined that it is cost effective to revise the heat exchange system requirements, and we are finalizing revisions for this emissions source under CAA section 112(d)(6) however, we are also including, based on comments received on the proposed rulemaking, an alternative mass-based leak action level of total strippable hydrocarbon equal to or greater than 0.18 kilograms per hour for heat exchange systems with a recirculation rate of 10,000 gpm or less.

This section provides comment and responses for the key comments received regarding the technology review amendments we proposed for storage vessels and heat exchange systems. Comment summaries and the EPA's responses for additional issues raised regarding the proposed requirements resulting from our technology review are in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

Comment: We received comments in support of and against the proposed changes to the storage vessel capacity and vapor pressure thresholds and corresponding control requirements. Most of the commenters opposed to the proposed requirements said the EPA's proposed changes to the capacity and vapor pressure thresholds for control of storage vessel emissions are not cost-effective. The commenters said that based on their analysis and using the EPA percentages of annual cost components (9.47-percent capital recovery, 5-percent maintenance, 4 percent for taxes, insurance, and administration, $380 per ton of VOC recovered), the average capital cost for control is approximately $1.2 million per tank, the average annual cost is $216,000 per tank, and the cost effectiveness of the control option is $108,000 per ton of VOC. The commenters said that their estimates account for materials and installation, in addition to the necessary cleaning and preparation required to install the floating roof or make the necessary connections to the closed vent system. The commenters asserted that degassing and cleaning do not appear to be included in the EPA's cost calculation and should be added as these are necessary steps to prepare the tanks for modification and ensure worker safety. The commenter said that their cost estimate is much higher than the EPA's estimate; and the commenters contended the EPA's estimated capital investment for the installation of an internal floating roof (IFR) on an existing fixed roof tank is unrealistic and should be revised. The commenters stated that at least one facility would install a new closed vent system to an existing control device, instead of an IFR, due to more favorable economics or site-specific constraints. The commenters said that the cost of this closed vent system is approximately $825,000 per tank (materials and installation). The commenters also provided certain technical details and cost information that they claimed as CBI.

Response: We are not finalizing the proposed requirements to tighten the storage vessel capacity and MTVP thresholds in response to comments and additional costs information that the EPA received on the proposal. Specifically, we reviewed and agree with the additional information submitted by commenters on the specific storage vessels that would be affected (*e.g.,* material composition and vapor pressure data, costs to control those storage vessels, and estimated emissions reductions). Importantly, the CBI submitted by one commenter provided details showing that installation of an IFR was not an option for their specific facility due to technical constraints. In addition, given that the proposed option would result in 10 tpy of VOC reductions nationwide (and lower emissions reductions for HAP) and cost over $1 million annually, we find the control of storage vessels at $108,000 per ton for VOC (and higher cost effectiveness for HAP) is not cost effective. Further, the proposed option would only affect six of the approximately 248 storage vessels in the source category [assuming an average of eight storage vessels per facility from the CAA section 114 Information Collection Request (ICR) data] and would not meaningfully reduce overall

emissions from the source category. Given all of this information, we are not finalizing the proposed requirements to tighten the storage vessel capacity and MTVP thresholds and are keeping the current MACT level of control for storage vessels in place.

Comment: A commenter stated that the proposed technology review amendments do not represent MACT and noted three control options were identified for storage vessels, but only one was adopted into the proposed rule. The commenter emphasized that many new ethylene production facilities are planned to be constructed or are under construction and the EPA must address their HAP emissions by applying the most stringent control technologies.

Similarly, another commenter stated that it would be unlawful, arbitrary, and capricious for the EPA not to set stronger standards for emissions from storage vessels. The commenter stated that although the EPA identified two other developments in technology for storage vessels: (1) Requiring LDAR for fittings on fixed roof storage vessels (*e.g.,* access hatches) using EPA Method 21, and the use of liquid level overfill warning monitors and roof landing warning monitors on storage vessels with an IFR or external floating roof (EFR); and (2) the conversion of EFRs to IFRs through use of geodesic domes, the EPA declined to require these controls simply because the control options were not cost effective. The commenter insisted that the EPA failed to show why the cost-per-ton it found for storage vessel developments are inappropriate and failed to show why further reductions are not required to satisfy CAA sections 112(d)(6) and (f)(2). The commenter noted the costs the EPA found ($6,120 per ton HAP to $44,100 per ton HAP) are lower than other rules where the EPA determined the cost-per-ton to be appropriate. As an example, the commenter cited the cost-per-ton from secondary lead smelting that were considered reasonable, ranging from $330,000 per ton to $1,500,000 per ton (77 FR 576, January 5, 2012). The commenter stated that because the EPA found higher cost-reduction ratios appropriate, it is arbitrary and capricious for the EPA not to require greater reductions for storage vessels, when they are achievable and would provide more protection for public health, as statutorily provided. The commenter asserted that several of these developments are already widely in use or required by other regulatory agencies. The commenter further argued that the EPA gives no explanation for why the Agency considers ''incremental cost effectiveness'' to be determinative rather than evaluating costs based on ''HAP cost effectiveness'' as it does for other source types, such as equipment leaks and waste streams.

The commenter argued that the EPA's decision to make cost-per-ton the standard-setting criterion and to choose a number it deems unreasonable, without a rational explanation, is arbitrary and capricious. The commenter stated the cost-per-ton of HAP reduction does not indicate whether a stronger standard is feasible and does not consider whether the industry could bear the costs of additional controls. The commenter stated that the ethylene production industry generated $50.8 billion in revenue in 2016 and the EPA cannot plausibly claim that this industry cannot afford to implement the identified storage vessel developments. The commenter noted that cost-per-ton says nothing about health risk, and that a ton of HAP is a very large amount. The commenter stated that the risk assessment for this source category shows the pollutants emitted in ethylene production are known to be hazardous at an exposure level of micrograms or less, and the carcinogens emitted (*e.g.,* benzene, formaldehyde, naphthalene) have no safe level of exposure. In addition, the commenter asserted that no two HAP create the same health risks and that reducing tons of one pollutant does not produce the same benefit as reducing tons of another. The commenter added that the EPA should not base its final standards on cost effectiveness at all; the Agency's job is simply to determine the ''maximum'' degree of reduction that can be achieved considering cost, under CAA section 112(d)(2), and to assure an ''ample margin of safety to protect public health'' under CAA section 112(f)(2). The commenter stressed that if the EPA wishes to consider cost effectiveness in any meaningful sense, it cannot rely on the cost-per-ton, which says nothing about the true effectiveness of reducing emissions of highly toxic pollutants, in terms of public health—which is a key factor missing from the EPA's analysis. Thus, the commenter concluded it was arbitrary and capricious for the EPA to decide that it was not necessary to update the standards to account for storage vessel developments based on cost.

The commenter also contended the EPA may consider cost but CAA section 112(d)(6) does not authorize the EPA to refuse to update standards based on cost. The commenter stated the Court has recognized that developments are the core requirement, and if developments have occurred, the EPA must account for those. The commenter further claimed that the EPA should follow the plain text of CAA section 112(d)(2)–(3) and applicable precedent requiring explicit authorization to consider cost. The commenter stated the EPA's cost-focused analysis ignores the statutory objective of assuring the ''maximum'' achievable degree of emission reduction provided in CAA section 112(d)(2), as implemented through the technology review. The commenter stated that this analysis also ignores the statutory goal of protecting public health, per CAA section 112 (f)(2).

The commenter also stated that although the EPA initially considered tightening the threshold for storage vessel capacity from 95 m^3 to 38 m^3, the EPA proposed a threshold of 59 m^3 because it found that ''it would not be cost-effective for this particular storage vessel to add additional controls due to its infrequent use.'' The commenter contended that the EPA cannot set a higher capacity threshold simply based on the cost of installing a control on one affected vessel, especially without information or analysis.

Response: We disagree with the comment that the EPA has an obligation to review prior MACT determinations and recalculate MACT floors as part of each CAA section 112(d)(6) review given that this argument has been repeatedly rejected by the Court. See, *e.g., Nat'l Ass'n of Surface Finishing* v. *EPA,* 795 F.3d 1 (DC Cir. 2015); *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 673 (DC Cir. 2013); *Natural Resources Defense Council* (*NRDC*) v. *EPA,* 529 F.3d 1077 (DC Cir. 2008). In the proposal we neither re-evaluated nor re-opened the MACT standard for storage vessels under CAA sections 112(d)(2) and (3) in this action. For storage vessels, the revisions we proposed were as a result of the RTR under CAA sections 112(d)(6) and (f)(2). As also explained at proposal, under section 112(d)(6), the EPA is to review the ''emission standards promulgated under'' CAA section 112(d)(2) and (3). The EPA has consistently posited that CAA section 112(d)(6) focuses on the review of developments that have occurred in a source category since the original promulgation of a MACT standard. Similarly, the EPA is to conduct a risk review that evaluates whether the emission limits—the ''standards promulgated pursuant to subsection (d),'' [CAA section 112(f)(2)(A)]—should be made more stringent to reduce the risk posed after compliance with the underlying MACT standard. Therefore, the EPA does not have an obligation in its technology and

residual risk review to consider ''hypothetical'' facilities that is, facilities that have yet to begin construction (or may never even be constructed or operate) and where air emissions from ethylene production operations are merely anticipated because said operations do not yet exist and facilities have yet to start up. As also previously discussed we are not finalizing these proposed revisions under CAA section 112(d)(6) because they are not cost effective. In addition, the proposed revisions have little to no impact on HAP emissions for the source category. With respect to the role of cost in our decisions under the technology review, we note that the Court has not required the EPA to demonstrate that a technology is ''cost-prohibitive'' in order not to require adopting a new technology under CAA section 112(d)(6); a simple finding that a control is not cost effective is enough. See *Association of Battery Recyclers, et al.* v. *EPA, et al.,* 716 F.3d 667, 673–74 (D.C. Cir. 2015) (approving the EPA's consideration of cost as a factor in its CAA section 112(d)(6) decision-making and the EPA's reliance on cost effectiveness as a factor in its standard-setting).

The commenter's comparison of cost-per-ton estimates against other rules and other requirements within this final rule is also misplaced. The commenter draws a comparison to an analysis for metal HAP in the Secondary Lead NESHAP RTR, where those costs per ton were determined to be within the range of metal HAP values for other CAA section 112 rules (see 77 FR 576, January 5, 2012). However, organic HAP are the issue of concern for storage vessels, and the EPA has historically used a different and significantly lower cost-effectiveness scale for organic HAP versus metal HAP due to their relative toxicity. Generally, for organic HAP, we consider a cost effectiveness of $10,000/ton or more to be near the upper end of what the EPA has traditionally considered to be cost effective for control for these particular type of HAP.

In addition, we disagree with the commenter that consideration of incremental cost effectiveness was an unreasonable approach for comparing differing strategies that build upon one another. We note that CAA section 112(d)(6) does not prescribe a methodology for the agency's costs analysis, and the EPA has sometimes presented cost/ton-reduced numbers in the supporting analyses for regulations that we issue. See for example, *Husqvarna AB* v. *EPA,* 254 F. 3d 195 at 200 (D.C. Cir. 2001) (''Because section 213 does not mandate a specific method of cost analysis, we find reasonable the EPA's choice to consider costs on the per ton of emissions removed basis.''). For storage vessels, we proposed to tighten the capacity and MTVP thresholds for control (known as option SV1 in our technology review memorandum) and also evaluated two other control options that built upon option SV1. Option SV1 was evaluated in concert with the two other options, including adding enhanced monitoring requirements (option SV2) and requiring EFR storage vessels to convert to IFR storage vessels via use of geodesic domes (option SV3). The costs are presented such that the overall HAP cost effectiveness for options SV2 and SV3 also include option SV1, while the incremental cost-effectiveness values for options SV2 and SV3 are the cost-effectiveness values only for requiring enhanced monitoring and only for requiring EFR storage vessels to convert to IFR storage vessels via use of geodesic domes, respectively. Simply put, the incremental cost-effectiveness values for options SV2 and SV3 do not include costs and emissions reductions for option SV1. The commenter did not provide additional details on costs or emissions reductions on these options; thus, we continue to believe these options are not cost-effective and are not finalizing them. An incremental cost-effectiveness analysis was not needed for equipment leaks or waste operations because we did not propose any revisions under our CAA section 112(d)(6) technology review for these emission sources. We also did not consider control options for these emission sources that would build upon each other and necessitate an evaluation of incremental costs and, thus, the HAP cost effectiveness for the options presented in those analyses are equivalent to the incremental cost-effectiveness values presented for options SV2 and SV3 for storage vessels. For further information on our technology review for storage vessels, see the technical memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Storage Vessels Located in the Ethylene Production Source Category,* which is available in Docket ID Item No. EPA–HQ–OAR–2017–0357–0014.

Lastly, we disagree with the commenter that it was unreasonable to consider an infrequently used storage vessel with a capacity of 58 m^3 (*i.e.,* a storage vessel with a capacity within the threshold of 38 m^3 and 59 m^3, which we evaluated, but did not propose) with little emissions and an extremely high cost-effectiveness value for control in setting the size threshold for control in our SV1 option evaluated under our CAA section 112(d)(6) review. As explained in the technology review memorandum, we first looked at other chemical sector and refinery NESHAP for storage vessel control thresholds for capacity and MTVP as a starting point and then we used our CAA section 114 ICR data to further refine option SV1. Based on our CAA section 114 data, only one storage vessel (with a capacity of 58 m^3) met the most stringent requirements for control from other NESHAP compared to the option we evaluated and would be impacted were we to evaluate this storage vessel in option SV1 (along with the other 12 storage vessels we anticipated would also be affected at proposal). Using the information from our CAA section 114 request that was submitted for this storage vessel (*e.g.,* size, number of tank turnovers, stored material composition), we conservatively estimated that this 58 m^3 storage vessel would only have annual emissions of 0.005 tpy of HAP if it had one full turnover (even though it reported having none in 2013). Considering the extreme case that all these emissions would be reduced from this storage vessel if it were required to be controlled, and if we made several other assumptions (*e.g.,* retrofit with an IFR, 12-foot diameter tank, one of each of the various upgraded deck fittings), we determined that controlling this one storage vessel would have an annualized cost of approximately $5,550 per year and not be cost effective (*i.e.,* over $1,000,000 per ton of HAP). We note that this information was available in the docket for commenters to use and provide their own estimates of HAP emissions and costs for control for this storage vessel. When considering this information, we find the option to tighten the capacity and MTVP thresholds to be even less cost effective if you consider impacts requiring control from the 58 m^3 storage vessel. Thus, as previously discussed, we are not finalizing the proposed capacity and MTVP thresholds we proposed for storage vessels and are keeping the current MACT level of control for storage vessels in place.

Comment: We received comments in support of and against the proposal to require use of the Modified El Paso Method for repairing leaks in heat exchange systems. A commenter that supported the proposal noted that at least eight facilities in the source category were already using the Modified El Paso Method. On the other hand, some commenters said the EPA's proposed control requirements for heat

exchange systems were not cost effective when considering the actual costs to repair leaks. A commenter said that the costs provided in Table 7 of the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems Located in the Ethylene Production Source Category,* significantly underestimates the true cost associated with leak repair at ethylene production facilities. The commenter contended that for purposes of leak repair, after identifying a leak, maintenance and operations personnel must develop a strategy and schedule to remove the leaking exchanger from service, which involves identifying and selecting options for: Bypassing the process stream from the leaking system, the amount of production turndown necessary while the exchanger is out of service, identifying and selecting the appropriate contract personnel, and scheduling the work so that it does not conflict with any other planned maintenance. According to the commenter, several different personnel would be involved in these planning tasks including management, maintenance, production, and engineering staff (128 hour estimate is based on 32 hours × 4 persons). In addition to these planning costs, the commenter said that the EPA did not include costs for bypassing the leaking system to avoid a total shutdown which may include renting and plumbing temporary heat exchangers. The commenter also said that the EPA did not include costs for the rental and installation of cranes and scaffolding for accessing the heat exchanger for repairs, and costs for specialized contracted maintenance support to de-head the exchanger and perform the repair. Based on maintenance records, the commenter contended that repair costs range from $200,000 to $400,000 per event, not considering lost profit due to turndown or shutdown of the production unit. Factoring in these additional costs and using the EPA's estimated HAP emissions reductions of 25 tpy, the commenter said the revised cost effectiveness becomes $16,200 per ton of HAP. The commenter cited the RTR for Friction Materials Manufacturing Facilities (83 FR 19511, May 3, 2018) where the EPA found that $3,700 per ton for a permanent total enclosure was not cost effective, and the RTR for the Petroleum Refinery Sector (79 FR 36916, June 30, 2014) where the EPA found that $14,100 per ton for lowering leak definitions was not cost effective. The commenter also said that in cases where the leaking heat exchanger must be completely replaced to fix the leak, the costs exceed $1 million. The commenter stated that the EPA acknowledged in the preamble that emissions from heat exchange systems have an overall small contribution to cancer risk to the individual most exposed and that additional controls for heat exchange systems are not necessary to provide an ample margin of safety.

Response: We disagree with commenters that said the proposed requirements for heat exchange systems to use the Modified El Paso Method and a leak definition of 6.2 ppmv of total strippable hydrocarbon concentration (as methane) in the stripping gas are not cost-effective. We are finalizing this proposed development under CAA section 112(d)(6) with some minor technical clarifications that are discussed elsewhere in the rulemaking record (see our response in this preamble to commenters' requests to include an alternative mass-based leak definition; also see the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Ethylene Production,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357). We note that the existing MACT standards that were finalized in 2002 (67 FR 46258, July 12, 2002) contained LDAR provisions and many of the items commenters include in their cost estimates are associated with repair costs that would have already been incurred under the existing MACT standards. These repair costs include, but are not limited to, planning, bypassing, various equipment rental costs, costs for scaffolding, and deheading. We also disagree with commenter's cost estimates because most of the items that they claim are associated with the proposed revision will not be required by this final rule requirement (*i.e.,* we determined that the costs associated with the difference between conducting leak sampling using water sampling methods and leak sampling using the Modified El Paso Method as well as costs associated with combined operator and maintenance labor to find and repair a leak by plugging are the only costs that would be additionally incurred by the technology review standards). Further, commenters failed to provide enough information demonstrating why their costs information represents leak repair costs for an average heat exchange system at an ethylene production facility. For example, facilities may have additional heat exchange system capacity available at their facility and may opt to use this capacity to repair the leak, at no additional expense, yet this was not considered by commenters. Also, commenters did not provide additional information for us to evaluate the percentage of time additional leaks would have to be fixed under the revised heat exchange system standards proposed under technology review compared to the original MACT standards. Thus, we continue to believe that the majority, if not all of the repair costs cited by commenters would have been accounted for and incurred as a result of the existing MACT standards and that simply plugging a leaking heat exchanger would more likely represent the average cost additionally incurred by ethylene production sources as a result of this technology review development. In addition, in the proposed rule we explained that we considered a heat exchanger to effectively be at the end of its useful life if it was leaking to such an extent that it would need to be replaced in order to comply with the requirement; so the cost of replacing the heat exchanger would be an operational cost that would be incurred by the facility as a result of routine maintenance and equipment replacement and not attributable to the proposed work practice standard that is being finalized in this action (see the technical memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357). Thus, given all of this information, we continue to believe that those costs associated with the difference between conducting leak sampling using water sampling methods and leak sampling using the Modified El Paso Method as well as costs associated with combined operator and maintenance labor to find and repair a leak by plugging are the only costs that would be additionally incurred by the technology review standards. Based on our analysis, we find that the revised standards we proposed for heat exchange systems are cost effective at $1,060 per ton of HAP without consideration of product recovery and result in a cost savings when you consider product recovery. Therefore, we are finalizing the revisions for heat exchange systems that we proposed under CAA section 112(d)(6) with some minor technical clarifications that are discussed elsewhere in this preamble and in the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Ethylene Production,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357.

Additionally, with respect to rules where we have determined that

requirements are not cost effective at varying levels of cost effectiveness, we note that there can be other compelling factors beyond cost effectiveness that play a role in the EPA's determinations and that each rulemaking is unique and should be judged on its own merits. With respect to the two proposed rules commenters cited, we note that different determinations likely would have resulted if some of the other variables in those rulemaking records were not considered, such as for the Friction Materials RTR (83 FR 19511, May 3, 2018) where no facilities in the source category would have been impacted by rule revisions under the technology review due to process changes and use of non-HAP solvents. Similarly, for the Petroleum Refinery RTR (79 FR 36916, June 30, 2014), consideration of other fugitive emissions management techniques that were finalized (*e.g.,* fenceline monitoring) also had the potential to help control equipment leaks in the Petroleum Refinery source category. Regardless, and as stated above, we believe that the developments we identified for heat exchange systems used in the Ethylene Production source category are cost effective and are finalizing these revisions under CAA section 112(d)(6).

Comment: Some commenters recommended the EPA revise 40 CFR 63.1086(e)(i) through (iii) to include an alternative mass-based leak definition. Commenters argued that by only defining a leak on a concentration basis, smaller facilities with lower heat exchange system recirculation rates would be forced to identify and fix leaks with a much lower potential HAP emissions rate than facilities with larger recirculation systems.

A commenter said the EPA should calculate the equivalent mass-based emission rate using the 90th percentile heat exchange system recirculation rates (165,000 gpm) and the leak definition of 6.2 ppmv as methane in the stripping gas, assuming 100 percent of the hydrocarbon is hexane, for an equivalent mass leak-based leak definition of 6.1 pounds per hour (2.8 kilograms per hour) of Table 1 to 40 CFR part 63, subpart XX HAP.

Another commenter said the EPA should modify the leak action level to be defined as potential strippable hydrocarbon emissions greater than 4.0 pounds per hour for heat exchange systems with a recirculation flowrate less than or equal to 100,000 gpm. The commenter asserted that the memorandum, *CAA Section 112(d)(6) Technology Review for Heat Exchangers Located in the Ethylene Production Source Category,* mentions one case where the concentration of methane was 6.1 ppmv in the gas phase and just less than 80 parts per billion by weight (ppbw) in the water phase, thus, resulting in emissions of 0.64 pounds per hour based on a recirculation rate of 17,000 gpm. Using this information, the commenter determined that an average cooling water system with a recirculation rate of 100,000 gpm (the average cooling water recirculation rate of the ethylene production industry based on the responses the EPA received to the CAA section 114 ICR) and a concentration of strippable hydrocarbons in the water of 80 ppbw, will have potential strippable hydrocarbon emissions of 4 pounds per hour.

A commenter also recommended the EPA adjust the ''delay of repair'' leak action level in 40 CFR 63.1088(d)(3) to 40 pounds per hour of potential strippable hydrocarbon emissions for heat exchange systems with a recirculation rate of 100,000 gpm or less, and maintain the ''delay of repair'' action level at a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv (approximately 800 ppbw in the cooling water) for heat exchange systems with a recirculation rate greater than 100,000 gpm.

Response: We agree with commenters that an alternative mass-based leak action level is warranted, and that by not finalizing such an alternative, smaller heat exchange systems with low recirculation rates would be disproportionally affected and forced to repair leaks with a much lower potential HAP emissions rate than facilities with larger recirculation rate systems. We disagree with commenters, however, that the foundation of the alternative mass-based leak action level should be based on the average recirculation rate in the source category of 100,000 gpm or the 90th percentile heat exchange system recirculation rate of 165,000 gpm. As commenters allude to, the goal of this alternative is to not disproportionally impact small heat exchange systems with low emissions potential. To that end and given that this is a technology review under CAA section 112(d)(6), consideration of where it is cost-effective to repair a leaking heat exchange system should be a primary consideration for this alternative. In our technology review memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems Located in the Ethylene Production Source Category,* at Docket ID Item No. EPA–HQ–OAR–2017–0357–0011, the nationwide impacts and emissions reductions presented in Tables 15 and 16 are used to determine the HAP cost effectiveness for the source category on average. In other words, the nationwide impacts for HAP cost effectiveness (without consideration of product recovery) at $1,060/ton of HAP would be the HAP cost effectiveness for an average heat exchange system in the source category that has a recirculation rate of approximately 100,000 gpm. We also generally consider that technology review developments are not cost effective for organic HAP if the cost effectiveness is more than $10,000/ton (or approximately 10 times higher than the cost effectiveness estimated for the average heat exchange system at ethylene production sources). Since the recirculation rate directly correlates to mass emissions potential at the same leak concentration, the mass emissions for a heat exchange system with recirculation rate of 10,000 gpm or less would be at least 10 times smaller compared to a 100,000 gpm recirculation rate system and the annual costs to find and repair leaks would not change. As such, we determined that it is not cost effective to control leaks at the leak action level of total strippable hydrocarbon of 6.2 ppmv (as methane) for heat exchange systems with a recirculation rate of 10,000 gpm or less, because the HAP cost effectiveness would be approximately $10,000/ton of HAP or more. Therefore, to alleviate the concern about disproportionally impacting small heat exchange systems with low HAP emissions potential, and to ensure our technology review developments are cost effective for all heat exchange systems in the source category, we are finalizing an alternative total hydrocarbon mass-based emissions rate leak action level (as methane) of 0.18 kilograms per hour (0.4 pounds per hour) for heat exchange systems in the Ethylene Production source category that have a recirculation rate of 10,000 gpm or less. We also agree that for consistency, and to not disproportionately impact small heat exchange systems, that an alternative mass-based leak action level of 1.8 kilograms per hour (4.0 pounds per hour) for delay of repair for heat exchange systems with a recirculation rate of 10,000 gpm or less is warranted.

4. What is the rationale for our final approach for the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the EMACT standards were originally promulgated on July 12, 2002 (67 FR 46258). Specifically, we

focused our technology review on all existing MACT standards for the various emission sources in the Ethylene Production source category, including, storage vessels, ethylene process vents, transfer racks, equipment leaks, waste streams, and heat exchange systems. In the proposal, we only identified cost-effective developments for storage vessels and heat exchange systems and proposed to tighten the standards for these two emissions sources under technology review. We did not identify developments in practices, processes, or control technologies for ethylene process vents, transfer racks, equipment leaks, and waste streams. Further rationale about the technology review can be found in the proposed rule (84 FR 54278, October 9, 2019) and in the supporting materials in the rulemaking docket at Docket ID No. EPA–HQ–OAR–2017–0357.

During the public comment period, we received several comments on our proposed determinations for the technology review. The comments and our specific responses and rationale for our final decisions can be found in section IV.B.3 of this preamble and in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action. No information presented by commenters has led us to change our proposed determination, under CAA section 112(d)(6) for ethylene process vents, transfer racks, equipment leaks, and waste streams, and we are finalizing our determination that no changes to these standards are warranted. Substantive information was submitted by commenters on proposed revisions for heat exchange systems, and based on this information, we are finalizing revisions for heat exchange systems and making some technical clarifications to allow compliance with an alternative mass-based leak action level for small heat exchange systems with a recirculation rate of 10,000 gpm or less in lieu of the concentration-based leak action level that was proposed. Lastly, for storage vessels, substantive information was also submitted by commenters, and based on this additional information, we find that the developments we proposed are not cost effective for this emissions source. Thus, we are not finalizing any changes for storage vessels as a result of the technology review.

C. Amendments Pursuant to CAA Section 112(d)(2) and (d)(3) for the Ethylene Production Source Category

1. What did we propose pursuant to CAA section 112(d)(2) and (3) for the Ethylene Production source category?

Under CAA section 112(d)(2) and (3) we proposed to amend the operating and monitoring requirements for flares used as APCDs in the Ethylene Production source category to ensure that facilities that use flares as APCDs meet the EMACT standards at all times when controlling HAP emissions. We proposed to add a provision, 40 CFR 63.1103(e)(4), to extend the application of the Petroleum Refinery Flare Rule requirements in 40 CFR part 63, subpart CC to flares in the Ethylene Production source category with clarifications, including, but not limited to, specifying that several definitions in 40 CFR part 63, subpart CC, that apply to petroleum refinery flares also apply to flares in the Ethylene Production source category, adding a definition and requirements for pressure-assisted multi-point flares, and specifying additional requirements when a gas chromatograph or mass spectrometer is used for compositional analysis. Specifically, we proposed to retain the General Provisions requirements of 40 CFR 63.11(b) and 40 CFR 60.18(b) that flares used as APCDs in the Ethylene Production source category operate pilot flame systems continuously and that flares operate with no visible emissions (except for periods not to exceed a total of 5 minutes during any 2 consecutive hours) when the flare vent gas flow rate is below the smokeless capacity of the flare. We also proposed to consolidate measures related to flare tip velocity and new operational and monitoring requirements related to the combustion zone gas. Further, in keeping with the elimination of the SSM exemption, we proposed a work practice standard related to the visible emissions and velocity limits during periods when the flare is operated above its smokeless capacity (*e.g.,* periods of emergency flaring). We proposed eliminating the cross-references to the General Provisions and instead to specify all operational and monitoring requirements that are intended to apply to flares used as APCDs in the Ethylene Production source category.

In addition, we proposed provisions and clarifications for periods of SSM and bypasses, including PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, and certain gaseous streams routed to a fuel gas system to ensure that CAA section 112 standards apply continuously, consistent with *Sierra Club* v. *EPA* 551 F. 3d 1019 (D.C. Cir. 2008). For PRD releases, we proposed at 40 CFR 63.1103(e)(2) definitions of ''pressure relief device'' and ''relief valve'' and proposed to add a work practice standard at 40 CFR 63.1107(h)(3), (6), and (7) for PRDs that vent to atmosphere that requires three prevention measures and root cause analysis and corrective action when a release occurs.[4] We proposed to require that sources monitor PRDs that vent to the atmosphere using a system that is capable of identifying and recording the time and duration of each pressure release and of notifying operators that a pressure release has occurred. We also proposed to add a provision, 40 CFR 63.1107(h)(4), to require PRDs that vent through a closed vent system to a control device or to a process, fuel gas system, or drain system meet minimum requirements for the applicable control system. In addition, we proposed to add a provision, 40 CFR 63.1107(h)(5), to exclude the following types of PRDs from the work practice standard for PRDs that vent to the atmosphere: (1) PRDs with a design release pressure of less than 2.5 pounds per square inch gauge (psig); (2) PRDs in heavy liquid service; (3) PRDs that are designed solely to release due to liquid thermal expansion; and (4) pilot-operated and balanced bellows PRDs if the primary release valve associated with the PRD is vented through a control system. Finally, we proposed to add a provision, 40 CFR 63.1107(h)(8), to require future installation and operation of non-flowing pilot-operated PRDs at all affected sources.

For bypass lines on closed vent systems, we proposed to add a provision, 40 CFR 63.1103(e)(6), to not allow an owner or operator to bypass the APCD at any time, and if a bypass is used, then the owner or operator is to estimate and report the quantity of organic HAP released. We proposed this revision to be consistent with *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), where the Court determined that standards under CAA section 112(d) must provide for compliance at all times, because bypassing an APCD could result in a release of regulated organic HAP to the atmosphere. We also proposed that the use of a cap, blind flange, plug, or second valve on an

[4] Examples of prevention measures include flow indicators, level indicators, temperature indicators, pressure indicators, routine inspection and maintenance programs or operator training, inherently safer designs or safety instrumentation systems, deluge systems, and staged relief systems where the initial PRD discharges to a control system.

open-ended valve or line is sufficient to prevent a bypass. For in situ sampling systems, we proposed to delete the exclusion of ''in situ sampling systems (online analyzers)'' from the definition of ''ethylene process vent'' and require that these kinds of vents meet the standards applicable to ethylene process vents at all times.

For maintenance activities, we proposed a definition for ''periodically discharged'' and removed ''episodic or nonroutine releases'' from the list of vents not considered ethylene process vents. We proposed to add a work practice standard at 40 CFR 63.1103(e)(5) requiring that, prior to opening process equipment to the atmosphere, the equipment either: (1) Be drained and purged to a closed system so that the hydrocarbon content is less than or equal to 10 percent of the lower explosive limit (LEL); (2) be opened and vented to the atmosphere only if the 10-percent LEL cannot be demonstrated and the pressure is less than or equal to 5 psig, provided there is no active purging of the equipment to the atmosphere until the LEL criterion is met; (3) be opened when there is less than 50 pounds of VOC that may be emitted to the atmosphere; or (4) for installing or removing an equipment blind, depressurize the equipment to 2 psig or less and maintain pressure of the equipment where purge gas enters the equipment at or below 2 psig during the blind flange installation, provided none of the other proposed work practice standards can be met. For cases where an emission source is required to be controlled in the EMACT standards but is routed to a fuel gas system, we proposed to add footnote b to Table 7 of 40 CFR 63.1103(e) to require that any flare, utilizing fuel gas whereby the majority (*i.e.,* 50 percent or more) of the fuel gas in the fuel gas system is derived from an ethylene production unit, comply with the proposed flare operating and monitoring requirements.

We proposed to add work practice standards at 40 CFR 63.1103(e)(7) and (8) to address the decoking of ethylene cracking furnaces (*i.e.,* the coke combustion activities in an ethylene cracking furnace), which is defined as a shutdown activity and was previously only required to minimize emissions by following a startup, shutdown, malfunction plan. This ensures that CAA section 112 standards apply continuously. To minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace, we proposed that an owner or operator must conduct daily inspections of the firebox burners and repair all burners that are impinging on the radiant tube(s) as soon as practical, but not later than 1 calendar day after the flame impingement is found. We also proposed that an owner or operator conduct two of the following activities: (1) Continuously monitor (or use a gas detection tube every hour to monitor) the CO_2 concentration at the radiant tube(s) outlet for indication that the coke combustion in the ethylene cracking furnace radiant tube(s) is complete; (2) continuously monitor the temperature at the radiant tube(s) outlet to ensure the coke combustion occurring inside the radiant tube(s) is not so aggressive (*i.e.,* too hot) that it damages either the radiant tube(s) or ethylene cracking furnace isolation valve(s); (3) after decoking, but before returning the ethylene cracking furnace back to normal operations, purge the radiant tube(s) with steam and verify that all air is removed; or (4) after decoking, but before returning the ethylene cracking furnace back to normal operations, apply a coating material to the interior of the radiant tube(s) to protect against coke formation inside the radiant tube during normal operation. In addition, we proposed that the owner or operator must conduct the following inspections for ethylene cracking furnace isolation valve(s): (1) Prior to decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) being decoked is completely isolated from the ethylene production process so that no emissions generated from decoking operations are sent to the ethylene production process; and (2) prior to returning the ethylene cracking furnace to normal operations after a decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) that was decoked is completely isolated from the decoking pot or furnace firebox such that no emissions are sent from the radiant tube(s) to the decoking pot or furnace firebox once the ethylene cracking furnace returns to normal operation.

More information concerning our proposal to address CAA section 112(d)(2) and (3) can be found in the proposed rule (84 FR 54278, October 9, 2019).

2. How did the revisions pursuant to CAA section 112(d)(2) and (3) change since proposal?

The EPA is finalizing the revisions to the monitoring and operational requirements for flares, as proposed, except that we are not finalizing the work practice standard for velocity exceedances for flares operating above their smokeless capacity. In response to comments that owners or operators have historically considered degassing emissions from shutdown of storage vessels to be covered by their SSM plans per 40 CFR 63.1108(a)(5) and relied on the language in 40 CFR 63.1108(a)(5) that back-up control devices are not required, we are adding a separate standard for storage vessel degassing for storage vessels subject to the control requirements in Table 7 to 40 CFR 63.1103(e)(3)(b) and (c). The standard requires owners or operators to control degassing emissions for floating roof and fixed roof storage vessels until the vapor space concentration is less than 10 percent of the LEL. Storage vessels may be vented to the atmosphere once the storage vessel degassing concentration threshold is met (*i.e.,* 10 percent LEL) and all standing liquid has been removed from the vessel to the extent practical.

Lastly, based on comments received on the proposal, we are making some minor editorial corrections and technical clarifications to the work practice standards for the decoking of ethylene cracking furnaces. Specifically, we are adding delay of repair provisions to the flame impingement inspection requirements, adding clarifying text to the CO_2 monitoring, coil outlet temperature monitoring, air removal, and radiant tube(s) treatment requirements, and removing unnecessary recordkeeping associated with the time each isolation valve inspection is performed and the results of that inspection even if poor isolation was not found. For details about these minor changes, refer to Section 6.7 of the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

3. What key comments did we receive on the proposal revisions pursuant to CAA section 112(d)(2) and (3), and what are our responses?

This section provides comment and responses for the key comments received regarding our proposed revisions for flares and clarifications for periods of SSM, including PRD releases, decoking operations for ethylene cracking furnaces (*i.e.,* the decoking of ethylene cracking furnace radiant tubes), and storage vessel emptying and degassing. Other comment summaries and the EPA's responses for additional issues raised regarding these activities as well as issues raised regarding our proposed revisions for bypass lines on closed vent systems, in situ sampling systems, maintenance activities, and certain gaseous streams routed to a fuel gas system, can be found in the

document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

Comment: We received comments in support of and against our proposal to establish similar requirements for flares used in the Ethylene Production source category as the flare requirements established in the 2015 Petroleum Refinery NESHAP, including the incorporation of the net heating value of the combustion zone (NHVcz) calculation and limits. One commenter supported the proposed strengthened operational and monitoring requirements, which the commenter stated reflect best practices already in place at many facilities and must be required pursuant to CAA sections 112(d)(2), (3), and (6). The commenter reiterated the EPA's determination that measuring the net heating value of the flare gas, as it enters the flares, is insufficient to determine combustibility because facilities add steam and other gases not accounted for and that flare performance data shows that the net heating value of vent gas in the combustion zone must reach at least 270 British thermal units per standard cubic foot (Btu/scf). Some commenters also supported the EPA's proposal ''that owners or operators may use a corrected heat content of 1,212 Btu/scf for hydrogen, instead of 274 Btu/scf, to demonstrate compliance with the NHVcz operating limit,'' because the data show that the control efficiency of a flare drops off significantly below this level.

Another commenter also suggested other improvements to the proposed flared revisions. According to this commenter, data shows the proposed rule does not assure heating values in the combustion zone that are high enough to achieve the EMACT standards. The commenter said that the EPA has an extensive record to support its conclusion that some ethylene production facility flares do not destroy at least 98 percent of HAP, and urged the EPA to mandate additional measures to ensure 98-percent flare destruction efficiency. The commenter noted that at least one operator, Formosa, recognizes that flares can achieve 99-percent reduction in HAP emissions for small molecules.[5] The commenter stated that continuous monitoring of either the net heating value or composition of flare gas must be required pursuant to CAA sections 112(d)(2), (3), and (6). The commenter recommended that the EPA also consider the following measures to help assure compliance with 98-percent destruction efficiency:

- Prohibit wake dominated flow flaring conditions. The commenter noted that studies have shown that high winds can decrease flare destruction efficiency.[6]
- Require continuous video monitoring and recording for flares equipped with video monitoring and flares that vent more than 1 million standard cubic feet scf per day (MMscf/day).[7]
- Require monitoring of pilot gas, which is already required by the South Coast Air Quality Management District (SCAQMD) and Bay Area Air Quality Management District (BAAQMD).

The commenter also stated that the EPA should require that facilities conduct necessary flare maintenance and upgrades and have additional flare capacity on standby. The commenter stated that if a flare is smoking, that may mean it simply needs to be either maintained or updated to address the problem. The commenter recommended add-on equipment to augment the smokeless capacity of a flare.[8] The commenter also said that the EPA neither explained why other types of conveyances are not possible, nor can the EPA justify a standard that exempts equipment routed to a flare from the standards that generally apply to such equipment.

Response: We appreciate the support from several commenters for the flare operational and monitoring requirements being finalized at 40 CFR 63.1103(e)(4). However, we disagree with one commenter's request to mandate additional measures to ensure 98-percent flare combustion efficiency. The flare requirements we are finalizing are already designed to ensure flares meet a minimum destruction efficiency of 98 percent, consistent with the MACT control requirements.

We disagree with the commenter's specific request to prohibit wake dominated flow flaring conditions as we have extremely limited data to suggest that wind adversely impacts the combustion efficiency of flares, let alone the combustion efficiency of industrial-sized flares used at ethylene production units. Commenters submitted no new data to otherwise support the assertion that wind does indeed affect flare performance, and, as such, we are not persuaded into changing our position at proposal that no flare operating parameter(s) are needed to minimize wind effects on flare performance.

We disagree with the commenter's specific request to require continuous video monitoring and recording for flares equipped with video monitoring and flares that vent more than 1 MMscf/day. We note that in the final rule we have provided for the use of video camera surveillance monitoring as an alternative to EPA Method 22 monitoring. Observation via the video camera feed can be conducted readily throughout the day and will allow the operators of the flare to watch for visible emissions at the same time they are adjusting the flare operations.

We also disagree with the commenter's specific request to require monitoring of pilot gas. The data available to us suggests that heat release from the flare pilots are generally negligible when regulated materials are sent to the flare and exclusion of the flare pilot gas simplifies the NHVcz calculation. Even when only purge gas is used, the flare pilots typically only provided about 10 percent of the total heat input to the flare and typically well less than 1 percent in the recent passive fourier transform infrared spectrometry flare tests when potential regulated material is routed to the flare (this is dependent on the size of the flare, number of pilots, and flare tip design, which impacts minimum purge flows). We are finalizing the definition of flare vent gas as proposed, which excludes pilot gas.

Also, we disagree with the commenter's specific request to require additional flare capacity on standby to avoid a smoking flare because it would require new additional flares to operate at idle conditions for the vast majority

[5] The commenter provided the following reference: RISE St. James et al. Comments on 14 Proposed Initial Title V/Part 70 Air Permits, Proposed Initial Prevention of Significant Deterioration Permit, and the Associated Environmental Assessment Statement for FG LA, LLC (Formosa) Chemical Complex, Attachment E at 18 (August 12, 2019).

[6] The commenter provided the following reference: Robert E. Levy et al., Indus. Prof. for Clean Air, Reducing Emissions from Plant Flares (No. 61) at 1 (April 24, 2006).

[7] The commenter provided the following reference: See 84 FR 54296; BAAQMD § 12–11–507: requiring continuous video monitoring and recording for flares equipped with video monitoring and flares with vent gas more than 1 MMscf/day); SCAQMD Rule 1118(g)(7): requiring continuous video monitoring and recording; Consent Decree, *United States of America* v. *Marathon Petroleum Company LP et al.,* No. 12–cv–11544 (E.D. Mich.) (April 5, 2012); Consent Decree, *United States of America et al.* v. *BP Products North America Inc.,* No. 12–cv–0207 (N.D. Ind.) (May 23, 2012); Consent Decree, *United States of America* v. *Shell Oil Company et al.,* No. 13–cv–2009 (S.D. Tex.) (July 10, 2013); Consent Decree, *United States of America* v. *Flint Hills Resources Port Arthur, LLC,* No. 14–cv–0169, at 12 (E.D. Tex.) (March 20, 2014).

[8] The commenter provided the following reference: John Zink Hamworthy, Smokeless, Safe, Economical Solutions: Refining & Petrochemical Flares. Pg. 4 (this technology can increase the smokeless capacity of a flare by nearly 38 percent), available at *http://www.johnzink.com/wp-content/uploads/Flares-Refining-Petrochemical.pdf.*

of time, contributing to additional criteria pollutant emissions on a continuous basis, while having only a small impact on HAP emissions. For example, an existing flare burns approximately 25,000 to 100,000 standard cubic feet per day of natural gas (or fuel gas). If three new flares are added for each existing flare to ensure flares do not smoke during emergency shutdowns or other similar major events, then the additional emissions per existing flare would be 1,000 to 4,100 megagrams per year of CO_2 equivalence and 0.9 to 3.6 tpy of nitrogen oxides. This estimate does not include emissions from the generation of the extra steam needed for these flares to operate in a smokeless manner during the emission events. Therefore, the secondary impacts associated with having greater smokeless flare capacity would be significant. In addition, it is not clear whether the specific technology that the commenter cited to augment the smokeless capacity of a flare (*i.e.,* a specific steam-assisted flare system that uses multiple-port supersonic nozzle technology) is an ''add-on'' technology, nor did the commenter provide any data to quantify or substantiate the claims, or any other additional details on costs or emissions reductions for it.

Finally, the commenter did not provide any context regarding their comment about other types of conveyances and justifying standards; therefore, we are unable to respond to this portion of the comment.

Comment: A commenter stated that the EPA improperly based the proposed flare revisions on CAA sections 112(d)(2) and (3) and should have evaluated them under CAA section 112(d)(6). The commenter stated that in setting the original MACT, the EPA did not have actual data demonstrating that the best performers were achieving 98-percent HAP reduction with flares (and other combustion devices), but rather based its conclusions on what it presumed sources would achieve if a combustion device were operated consistent with the requirements in the rule. The commenter further stated that the EPA is now claiming that 98-percent HAP reduction was not achieved in practice by the best performers, and instead can only be achieved by the best performers if they take additional steps to reduce emissions (*e.g.,* meet NHVcz requirements and implement additional monitoring). The commenter contended the proposed flare revisions can only be either a BTF standard or a revision as a result of the technology review, and the EPA cannot make the standard more stringent simply by claiming it is ensuring compliance with the current standard.

The commenter argued the EPA should have evaluated the flare revisions under CAA section 112 (d)(6), found the revisions were not cost effective, and not proposed the flare revisions. To support the commenter's contention that the proposed flare requirements would not be cost effective, the commenter provided updated estimates for the costs presented in Tables 3, 6, and 7 of the EPA memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category.* The commenter made the following statements regarding costs:

- The EPA did not consider the cost of constructing new flares at existing facilities to meet the proposed requirements. The commenter stated that they know that at least one company would be required under the proposed rule to install at least two new flares, due to the high potential for existing flares to exceed the number of visible emissions events allowed, with a capital cost of $20 million and annualized costs of $3.1 million.
- Gas chromatographs would need to be installed in certain instances to comply with the proposed monitoring requirements, which the commenter suggests would have an estimated nationwide capital investment of $964,000 and annualized costs of $140,000 for installation and operation.
- The EPA did not account for the costs associated with upgrading natural gas controls and flow monitoring; the commenter estimated approximately 47 flares will require upgraded supplemental fuel controls and monitoring equating to a nationwide capital investment of $5.3 million and an annualized cost of approximately $1 million.
- The EPA did not account for supplemental natural gas firing to meet the revised NHVcz operating parameter, which the commenter estimates would cost approximately $66.8 million per year in additional operating costs.
- The EPA underestimated the costs to develop the flare management plan by inappropriately relying on the cost estimated for refineries. However, most refineries were subject to similar flare management plan requirements under 40 CFR part 60, subpart Ja, and, therefore, were only required to update existing plans, whereas the commenter said ethylene producers will generally be required to develop new flare management plans. The commenter estimated the cost to develop a new flare management plan is $23,300 per flare.
- The EPA did not include the cost to develop the continuous parametric monitoring system monitoring plan required by 40 CFR 63.671(b), which they estimate is an additional $7,400 per flare to develop.

Using their updated costs and the EPA's estimated 1,430 tpy of HAP reductions, the commenter stated that the cost effectiveness of the proposed flare requirements would be $55,874 per ton of HAP reduced. The commenter argued that the EPA would have found the proposed flare revisions not cost effective under CAA section 112(d)(6) and, therefore, would not have included the changes in the proposed rule.

Another commenter stated there would be complications complying with the proposed flare revisions, which would further increase the cost of the proposal, including: (1) When gas chromatographs are currently in use, some flares will need to add calorimeters to directly measure the net heating value on a minute-by-minute basis to help with process control and meet the requirements on a 15-minute basis; (2) some flares have multiple vent gas lines entering the flare system (*e.g.,* a line to the base of the flare and a line entering the side of the flare stack) and additional vent gas monitors will be needed; (3) some flares have two or more steam lines to the flare tip and additional steam flow monitors will be needed; and (4) some flares will need to install larger volume supplemental fuel lines, triggering the need for permitting and construction of these systems.

Response: We disagree with the commenter that the flare revisions should have been evaluated and proposed under CAA section 112(d)(6). As explained at proposal, we are not revising the MACT standards, which generally require 98-percent control efficiency and allow an owner or operator to choose the control device to meet the standard. Rather, we determined the flare operating and monitoring requirements were not adequate to ensure that 98-percent control efficiency can be met for a flare at all times. (84 FR 54294). As a general matter, available flare test data indicates that flares can achieve 99.9-percent control at certain times, and we believe that the long term nationwide average control efficiency achieved by flares meeting the final rule requirements could be over 98-percent control efficiency. In fact, in the development of the EMACT standards, the EPA stated that ''It is generally accepted that combustion devices achieve a 98 weight-percent reduction in HAP emissions . . .'' (65 FR 76428, December 6, 2000). However, in this

rulemaking, we are acknowledging that there are instances, particularly when either assist steam or assist air is used, where flare performance is degraded, and this level of control is not achieved at all times. Since the revisions ensure continuous compliance with the MACT standards, under CAA sections 112(d)(2) and (3), costs are not a factor considered for these revisions. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008) (''EPA may not consider costs in setting the maximum achievable control technology 'floors,' but only in determining whether to require 'beyond the floor' reductions in emissions.''); *NRDC* v. *EPA,* 489 F.3d 1364, 1376 (D.C. Cir. 2007 (''[C]ost is not a factor that EPA may permissibly consider in setting a MACT floor.''); see also, *Nat'l Lime Ass'n* v. *EPA,* 233 F.3d 625, 640 (D.C. Cir.2000)). At proposal, we acknowledged that some additional instrumentation and supplemental fuel may be needed for some flares and included cost estimates for these items. In addition, as previously explained, the EPA has no obligation to review prior MACT determinations and recalculate MACT floors as part of each CAA section112(d)(6) review. See, *e.g., Nat'l Ass'n of Surface Finishing* v. *EPA,* 795 F.3d 1 (D.C. Cir. 2015); *Association of Battery Recyclers* v. *EPA,* 716 F.3d 667, 673 (D.C. Cir. 2013), *NRDC* v. *EPA,* 529 F.3d 1077(D.C. Cir. 2008).

Contrary to the commenter's assertions, we did estimate costs in order to provide the resulting impacts of the proposed flare requirements, and we are not revising these costs as a result of this comment. The largest impact on annual costs is associated with supplemental natural gas to meet the NHVcz limit, which the commenter estimated is approximately 18 times higher than our estimate ($66.8 million from the commenter versus $3.7 million for the EPA). We find the commenter's cost estimate unreasonable, and that commenters notably did not account for adjusting other flare parameters instead of using such a large amount of natural gas. We are also unable to re-create and establish how the estimated costs were developed by commenters due to a lack of information pertaining to baseline flare flows, waste gas compositions, current supplemental natural gas flows and steam flows. The commenter also stated that we did not include costs for flow monitors and controls, but these were specific items we included at proposal (see Table 3 in the memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category*), and the EPA's cost estimate for these items is higher than the commenter's cost estimate.

Comment: We received comments in support of and against the proposed work practice requirements for visible emissions and flare tip velocity. A commenter contended that the inherent nature of the ethylene production process (*i.e.,* ethylene production requires a significant amount of compression and refrigeration) necessitates the proposed flare work practice requirements to an even greater extent than the refinery sector. According to the commenter, in an upset situation such as a power outage or equipment malfunction, the compression and refrigeration systems can be lost resulting in a rapidly expanding volume of gas that must be removed from the process equipment to prevent potential damage and minimize safety risks.

Several commenters objected to the EPA's proposed emergency flaring provisions for smoking flares. Some commenters stated that the proposed number of visible emissions exceedance events allowed is not supported by data the EPA received in response to the CAA section 114 ICR. A commenter said that the information the EPA used indicates that there were zero velocity exceedances during any smoking; however, 40 CFR 63.670(o) implies that the flare must be operating above its smokeless capacity in order to smoke. The commenter said that unless the EPA has data indicating that these flares were exceeding their smokeless capacity (*i.e.,* there was a tip velocity exceedance) at the time of the smoking event, the database that the EPA used does not support its claims on the frequency of these events at the best performing flares and the proposed deviation definitions at 40 CFR 63.670(o)(7)(ii) and (iv) are arbitrary and capricious. Similarly, a commenter noted that the EPA ''assumed . . . that the best performers would have no more than one [visible emissions] event every 7 years'' based on industry survey data provided by the American Chemistry Council (ACC), which the commenter noted fails to provide date ranges for the data presented, or to identify the location of the facilities. The commenter also noted that the survey identifies zero exceedances of the flare tip velocity from any facility, and the average presented by industry is provided without any context. The commenter warned that without access to more detailed underlying data it is impossible to determine if the ACC data includes smoking events that occurred at flares when the flow rate to the flare was also below the smokeless capacity of the flare. The commenter urged that smoking events that occur when the smokeless capacity of a flare is not exceeded should not be included in determining the average frequency of hydraulic load smoking events at flares.

A commenter also stated that the information the ACC provided to the EPA showing visible emissions events and velocity exceedances (see Appendix B of Docket ID Item No. EPA–HQ–OAR–2017–0357–0017) identifies two flares as material handling flares and one flare as a process wastewater flare while all other flares are not characterized in any way. The commenter said that the inconsistent characterization of the flares raises questions about the nature of the flares used to support the EPA's claims on the frequency of these events at the best performing flares.

In addition, the commenter reiterated that the proposed revisions for releases from smoking flares do not satisfy CAA section 112(d)(2) or (3). The commenter said the EPA did not provide rationale, and did not meet, the statutory test for smoking flares. The commenter also said the EPA did not provide a reasonable analysis or determination showing that allowing one to two uncontrolled such events every 3 calendar years (plus *force majeure* event releases) reflects the average of the best performers' reductions and is the ''maximum achievable degree of emission reduction.'' The commenter urged that what is ''achievable for the average'' is not the statutory test. The commenter expressed the view that it is unclear how a smoking flare could ever meet CAA sections 112(d)(2) and (3).

The commenter recommended the EPA consider the data it collected on flares to determine the amount of HAP emitted. The commenter stated that the EPA has not explained why its own data on emission exceedances from equipment connected to flares would not allow it to set limits on smoking flares, and that the EPA has not and could not show, based on the record that the complete exemption for one to two smoking flare incidents at each flare, every 3 years, in any way satisfies CAA section 112(d)(3). The commenter stated that the EPA's failure to review actual data is especially egregious given the fact that the Texas Commission on Environmental Quality (TCEQ), the BAAQMD, and the SCAQMD have extensive data on the frequency that operators report smoking emissions from flares,[9] and given that the

[9] The commenter provided the following reference: This data is available on TCEQ Emission Event Reporting website (*http://*

Continued

smokeless capacity of the flare is an easily ascertainable characteristic. The commenter argued that using this data, the EPA could have potentially determined a MACT floor that complies with the requirements of the CAA.

The commenter also warned that the EPA does not meet the BTF requirements in CAA section 112(d)(2). The commenter stressed that the EPA has not demonstrated that allowing multiple smoking flare exemptions from the standards is the ''maximum achievable degree of emission reduction'' from those flares. The commenter argued that, at the very least, the EPA must set standards on the duration and amount of gas that is routed to a flare during a malfunction event that causes the flare to operate above its smokeless capacity, in addition to the cap on the number of exemptions included in the proposed rule. The commenter stated that the HAP emission limits for flares during malfunctions cannot be less stringent than the emission limits that apply during normal operations.

The commenter stated that, based on data from TCEQ, smoking flare events can last several minutes or multiple days, and the EPA's proposed regulations do not make clear whether this should be considered a single event or multiple smoking events. The commenter additionally noted that the EPA's proposed regulation does not make clear whether visible smoke emissions that are caused by multiple root causes occurring at the same time should count as one visible emission event or two.

Response: First, as explained at proposal flares are used as APCDs to control HAP emissions in both the Petroleum Refinery and Ethylene Production source categories. It is therefore not a specific emission source within the EMACT standards and, thus, we did not seek to establish a MACT floor for flares at the time that we promulgated the EMACT standards in the GMACT NESHAP. Rather, we identified flares as an acceptable means for meeting otherwise applicable requirements and we established flare operational standards that we believed would achieve a 98-percent destruction efficiency on a continual basis. As previously explained, recognizing that flares were not achieving the 98-percent reduction efficiency in practice at all times, we proposed additional requirements in the October 9, 2019, proposed rule (84 FR 54294) to ensure that flares operate as intended at the time we promulgated the EMACT standards. This is entirely consistent with agency practice of fixing underlying defects in existing MACT standards under CAA sections 112(d)(2) and (3), provisions that directly govern the initial promulgation of MACT standards. (See, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, October 28, 2009, 74 FR 55670; and National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and the Printing and Publishing Industry, April 21, 2011, 76 FR 22566)).

Regarding the operational standards for flares operating above the smokeless capacity, we note that these flare emissions are due to a sudden increase in waste gas entering the flare, typically resulting from a malfunction or an emergency shutdown at one or more pieces of equipment that vents emissions to the flare. The EPA disagrees with commenter's suggestion that standards are warranted for the duration and amount of gas discharged to a flare during malfunction events, which are infrequent, unpredictable and not under the control of an operator. Flares are associated with a wide variety of process equipment and the emissions routed to a flare during a malfunction can vary widely based on the cause of the malfunction and the type of associated equipment. Thus, it is not feasible to establish a one-size-fits-all standard on the amount of gas allowed to be routed to flares during a malfunction. Moreover, we note that routing emissions to the flare will result in less pollution than the alternative, which would be to emit directly to the atmosphere. We note that we do not set similar limits for thermal oxidizers, baghouses, or other control devices that we desire to remain operational during malfunction events to limit pollutant emissions to the extent practicable. However, we did propose work practice standards that we believed would be effective in reducing the size and duration of flaring events that exceed the smokeless capacity of the flare to improve overall flare performance. On that premise, we acknowledge that the data we received from ACC's survey identifies zero exceedances of the flare tip velocity during a smoking event; and we agree with the commenter that our proposed determination of the frequency of these events at the best performing sources is not supported. Therefore, in response to comments on our proposal, we are not finalizing the proposed work practice standard for when the flare vent gas flow rate exceeds the smokeless capacity of the flare and the tip velocity exceeds the maximum flare tip velocity operating limit. Instead, we are finalizing provisions that require compliance with the maximum flare tip velocity operating limit at all times, regardless of whether you are operating above the smokeless capacity of the flare.

In order to ensure 98-percent destruction of HAP discharged to the flare (as contemplated at the time the EMACT standards were promulgated) during both normal operating conditions when the flare is used solely as a control device and malfunction releases where the flare acts both as a safety device and a control device, we are finalizing, as proposed, the work practice standard for when the flare vent gas flow rate exceeds the smokeless capacity of the flare and visible emissions are present from the flare for more than 5 minutes during any 2 consecutive hours during the release event. As described in more detail in our technical memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category,* located at Docket ID Item No. EPA–HQ–OAR–2017–0357–0017, the best performing flare in the Ethylene Production source category for which we have information on visible emissions has a visible emissions event once every 7 years. Even if the best-performing flare ''typically'' only has one event every 7 years, the fact that visible emissions events are random by nature (unpredictable, not under the direct control of the owner or operator) makes it difficult to use a short term time span to evaluate a backstop to ensure an effective work practice standard. Thus, when one considers a longer term time span of 20 years, our analysis shows that three events in 3 years would appear to be ''achievable'' for the average of the best performing flares. We disagree with commenters that we should allow more or fewer visible emissions events above the smokeless capacity of a flare. We also disagree with commenters that the regulatory text we are cross-referencing at 40 CFR 63.670(o) is unclear about what constitutes an event or how to handle multiple root causes, especially since there is generally only a singular root cause at the heart of a visible emissions event.

With respect to the comment about conducting a BTF analysis under CAA section 112(d)(2), we note the work practice combustion efficiency standards (specifically limits on the net heating value in combustion zone)

www.tceq.texas.gov/field/eventreporting) and is also available in Excel format from the state agency.

apply at all times, including during periods of emergency flaring. Because flares are not an affected emissions source, but rather an APCD, no BTF analysis is needed. While requiring the use of systems such as back-up power or adding additional flares for additional flare capacity might alleviate additional visible emission events, we note that facilities would have to invest significant capital to build a back-up cogeneration power plant or add additional flare capacity for flares to operate on standby to handle very infrequent events we are limiting in this final rule. Combined with the costs, significant additional emissions would also be generated from a cogeneration power plant or from a flare operating in standby to handle infrequent smoking events and this would lead to a net environmental disbenefit and is contradictory to the commenter's own concerns about limiting emissions from flares since owners or operators of ethylene production facilities would have to construct more of them.

Comment: A commenter noted that CAA section 112(h) allows the EPA to set a ''work practice standard'' in lieu of a numerical emission standard only if it is ''not feasible to prescribe or enforce an emission standard.'' Further, the commenter noted, even when the EPA sets a work practice standard, such a standard must still be consistent with CAA sections 112(d)(2) and (3). The commenter rejected the EPA's rationale for the CAA section 112(h) determination in the proposal that ''application of a measurement methodology for PRDs that vent to atmosphere is not practicable due to technological and economic limitations.'' The commenter stated that the EPA's statement is false, and that the EPA's proposed reporting and recordkeeping requirements would mandate facilities ''calculate the quantity of organic HAP released during each pressure release event.'' According to the commenter, a 2007 SCAQMD report found that ''new (wireless) technology allows for continuous monitoring of PRDs without significant capital expense and makes it easy for operators to identify valve leaks . . . VOCs that are emitted from PRDs may be accurately identified, estimated, remedied, and reported immediately.'' [10] The commenter stated this monitoring technology is already in use at refineries in the United States,[11] and noted that SCAQMD required refineries to install wireless monitoring on 20 percent of the PRDs at their facilities since 2003 and on all PRDs since 2009.[12] The commenter noted that the EPA also relied on TCEQ data from seven ethylene production facilities that reported the quantity of HAP emissions released during specific PRD release events. For these reasons, the commenter argued that it is possible to measure PRD emissions, and they actually have been measured. The commenter stated that the EPA has not shown and cannot show why, in view of existing data on the amount, duration, and types of PRD releases, it cannot set a limit on these releases. The commenter further asserted that PRD releases may be captured and controlled; therefore, the EPA cannot use a work practice standard under CAA sections 112(h)(1) and (2)(A) to justify failing to set an appropriate numerical emission standard for them.

A commenter further objected to the proposed work practice standards because, they asserted, the EPA proposed the standards in part on the basis that the cost of measuring emissions is too high. The commenter stated that the EPA must set a MACT floor without consideration of cost, and that the cost is reasonable if 12 percent of existing sources met the limitation. The commenter argued that although the EPA stated that it would be economically prohibitive to construct an appropriate conveyance and install and operate continuous monitoring systems for each individual PRD that vents to atmosphere, the EPA fails to provide the estimated cost for construction and installation of such monitoring systems. The commenter argued that any such calculation would need to consider the impact of the EPA and state imposed flaring reduction programs, and the social and economic cost of the excess emissions from PRD emissions, including costs associated with the disruption in communities that are subject to ''shelter in place'' programs because of episodic releases from facilities.

Response: We disagree with the commenter's assessment and maintain the rationale provided in the proposal preamble (84 FR 54302, October 9, 2019), where we specifically discussed the issue related to constructing a conveyance and quantitatively measuring PRD releases and concluded that these measures were not practicable and that a work practice standard was appropriate. Owners or operators can estimate the quantity of HAP emissions released during a PRD release event based on vessel operating conditions (temperature and pressure) and vessel contents when a release occurs, but these estimates do not constitute a measurement of emissions or emission rate within the meaning of CAA section 112(h). The monitoring technology suggested by the commenter is adequate for identifying PRD releases and is one of the acceptable methods that facility owners or operators may use to comply with the continuous monitoring requirement. However, we disagree that it is adequate for accurately measuring emissions for purposes of determining compliance with a numeric emission standard. The technology cited by the commenter is a wireless monitor that provides an indication that a PRD release has occurred, but it does not provide information on either release quantity or composition. PRD release events are characterized by short, high pressure, non-steady state conditions that make such releases difficult to quantitatively measure. As such, we maintain our position that the application of a work practice standard is appropriate for PRDs.

Comment: We received comments in support of and against the proposed work practice standards for PRDs. Specific comments against the proposal related to whether they apply at all times.

A commenter stated that even assuming *arguendo* that the EPA could set a work practice standard for PRDs and that it otherwise had satisfied CAA sections 112(h) and (d), its action is unlawful because there would be no restriction that applies continuously as

[10] The commenter provided the following reference: SCAQMD, Rule 1173, *Control of Volatile Organic Compound Leaks and Releases from Components at Petroleum Facilities and Chemical Plants* (amended February 6 2009), *http://www.arb.ca.gov/DRDB/SC/CURHTML/R1173.PDF,* EPA–HQ–OAR–2010–0682–0761; SCAQMD, Final Staff Report for Proposed Amended Rule 1173—*Control of Volatile Organic Compound Leaks and Releases from Components at Petroleum Facilities and Chemical Plants* at 3–2 (May 15, 2007), Docket ID Item No. EPA–HQ–OAR–2010–0869–0024.

[11] The commenter provided the following reference: Rosemount Wireless Instrumentation, Refinery Improves Environmental Compliance and Reduces Costs with Wireless Instruments (2007) (''the result has been . . . true time and rate calculations for brief emissions''), *http://www2.emersonprocess.com/siteadmincenter/PM%20Rosemount%20Documents/00830-0100-4420.pdf;* see also *Adaptive Wireless Solutions, Continuous Valve Monitoring for Product Loss Prevention, Emission Reduction and ROI* at 2, *http://www.chemicalprocessing.com/assets/Media/MediaManager/Continuous_Monitoring_for_ROI.pdf;* Meeting Record for August 4, 2015, Representatives of Emerson Process Management and Representatives of Office of Air Quality Planning and Standards (U.S. EPA), Docket ID Item No. EPA–HQ–OAR–2010–0682–0743 (meeting regarding PRD monitoring tools and technologies).

[12] The commenter provided the following reference: SCAQMD, Staff Report at ES–2, 2–3 to 2–5, Docket ID Item No. EPA–HQ–OAR–2010–0869–0024.

the CAA directs.[13] The commenters stated that the proposed rule would permit an uncontrolled amount of HAP to be released by a PRD repeatedly, when it is opened at the facility's sole discretion. A commenter stated this means that once or twice every 3 years and whenever there is a *force majeure* event, any amount of HAP that may come from these devices could be released, and would not be a violation, no matter the original source of emissions.

A commenter argued that the fact that the EPA required three non-defined steps (including monitoring mechanisms, such as flow indicators, routine inspection and maintenance, and operator training) to be taken to try to prevent such releases does not mean that there is a continuous CAA section 112-compliant emission standard that applies. The commenter stated that none of these steps would restrict pollution released during PRD openings, would make the PRD malfunction exemptions lawful, or would turn them into a standard instead of an exemption. The commenter noted that although there are some potential controls listed as work practice requirements that a facility may choose to implement (*e.g.,* ''deluge systems'' and ''staged relief systems where the initial PRD discharges to a control system''), the proposed rule does not require any facility to either install them or any other controls or limits on PRDs. The commenter stated this should be required pursuant to the MACT floor, as the best performing PRDs are controlled, and the best performing process units are not equipped with any PRDs that are capable of venting emissions directly to the atmosphere.

The commenter stated that because analyses, reports, and potential corrective action steps would be required after such releases occur, that does not mean that the EPA has implemented a continuous emission standard. The commenter also stated that uncontrolled releases are not considered a violation, and there is no civil penalty for the HAP emitted during the allowable PRD releases. Under the proposed rule, the commenter argued, no matter how many corrective actions a facility may take afterward, the release would still be an authorized release, allowing an unlimited amount of toxic air pollution to be emitted into the air from facility equipment albeit through a PRD. The commenter said that post-hoc measures may help discover why a release happened, and might even help to prevent release, but these measures are not considered controls or limits on the pollution that was released. The commenter stated that the EPA additionally failed to propose any regulatory requirement to end PRD releases as soon as it is discovered.

Another commenter agreed that the EPA has the authority and obligation to adopt work practice standards under the *Sierra Club* SSM decision. The commenter reiterated the *Sierra Club* decision and said the EPA must ensure that some ''emission standard'' applies at all times—except that the standard that applies during normal operation need not be the same standard for SSM periods. The commenter said the requirement for ''continuous'' standards means only that a facility may not install control equipment and then turn it off when atmospheric conditions are good; and it does not mean that work practice standards must physically restrict emissions from all equipment at all times. The commenter said that the EPA has consistently imposed as ''MACT'' standards a variety of work practice obligations that do not prohibit or limit emissions to a specified level at all times, but rather are designed to limit overall emissions from various processes over the course of a year. The commenter said the EPA's own LDAR programs illustrate this distinction. The commenter contended that no court has suggested that periods of ''unlimited emissions'' [*e.g.,* 40 CFR 63.119(b)(1) (internal floating roof allowed not to contact with stored material during filling/emptying); 40 CFR 63.119(b)(6) (covers on tank openings may be opened when needed for access to contents); 40 CFR 63.135(c)(2) (allowing openings on containers as necessary to prevent physical damage)] render these requirements insufficient under CAA section 112. Rather, the work practice standards associated with these requirements—*e.g.,* maintaining openings in a closed position except as necessary for access; conducting filling/emptying as rapidly as possible—are considered to be acceptable mechanisms to minimize overall emissions from these types of equipment, even when they do not limit emissions at all during a few brief periods that are necessary for operational or safety reasons.

Response: We disagree with the underlying premise of the first commenter that any PRD release should be deemed a violation of section 112 and must be directly enforceable. As we have explained, we believe that a work practice standard, rather than a numerical limit applicable to each PRD release is appropriate. To the extent the commenter is claiming that a standard does not apply at all times, we also disagree. Although there is not a numerical limit that each PRD must meet at all times, we have established a work practice standard that does apply at all times. The work practice standard for PRDs requires operators to adopt prevention measures to minimize the likelihood of PRD release events, and the installation and operation of continuous monitoring device(s) to identify when a PRD release has occurred. These measures must be complied with at all times, and thus the work practice standard does apply at all times. (See for example, *Mexichem Specialty Resins, Inc.* v. *EPA,* 787 F.3d 544, 560 (D.C. Cir. 2015) (''The regulations anticipate that regulated entities will be allowed to open bypasses during maintenance as long as they comply with the opening provisions set forth therein.''). Additionally, having a backstop on the number of PRD releases allowed and requiring root cause analysis and corrective action analysis will ensure PRD releases are further minimized. We also note that we have always (since the rule was initially promulgated) had requirements in our equipment leaks regulations at 40 CFR 63.1030(c) for the Ethylene Source category that ensure a PRD has properly reseated after a release. We agree with the second commenter that there are a variety of work practice standards the EPA has adopted in its section 112 regulations that operate similar to the PRD requirements in that they do not prohibit emissions from equipment at all times or otherwise establish numeric limits for emissions from those pieces of equipment.

Comment: Commenters stated that the EPA cannot use CAA section 112(h) to allow unlimited HAP releases from PRDs because the authorizations for uncontrolled PRD releases are back-door exemptions from the other underlying standards regulating ethylene production facilities. For uncontrolled PRD releases, the commenter asserted that the EPA did not and could not reasonably explain how it is lawful to authorize completely uncontrolled emissions under CAA section 112(h). The commenter noted that the Court previously upheld a decision not to create a malfunction or ''excursion'' provision.[14]

The commenter argued that historically there has been no limit on

[13] The commenter provided the following reference: *Sierra Club,* 551 F.3d at 1028; CAA section 304(k).

[14] The commenter provided the following reference: *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057 (D.C. Cir. 1978) (citing *Am. Petrol. Inst.* v. *EPA,* 540 F.2d 1023, 1036 (10th Cir. 1976) (denying excursions)).

emissions when a PRD acts like a process vent, and that the EPA's purpose in conducting this rulemaking was, in part, to remove these unlawful exemptions as compelled by law. The commenter warns that the EPA's proposed rule reinstates new versions of precisely the same sort of exemptions, by allowing at least one, and in some instances two ''free passes'' to emit uncontrolled pollution every 3-year period for each PRD. The commenter further remarked that exempting such emissions from the definition of violation negates the meaning of ''emission standard,'' and shows that no standard applies to these releases.

The commenter stated that the EPA cannot create any exemption from or weakening of EMACT equipment standards simply because excess emissions from equipment are routed through a PRD. The commenter argued that doing so unlawfully weakens the original CAA section 112(d) standards for the linked equipment, without any reasoned explanation or support for doing so. Further, the commenter stated that because the EPA proposes that no emission standard applies during the uncontrolled releases, the exemptions violate CAA sections 112(d) and 302(k) and flout the Court's decisions in these cases, and also conflict with the EPA's decision not to create an unlawful exemption in the Boilers case.[15] The commenter stated that the EPA provided no statutory explanation or interpretation of how its action could comport with CAA sections 112 and 302(k), therefore, if the EPA were to finalize these exemptions, the EPA would open itself up to a violation of the CAA's core rulemaking requirements applicable to CAA sections 112(d) and (f) standards.

The commenter asserted that the proposed rule therefore seeks to establish major exemptions that allow uncontrolled releases due to predictable and often-repeated malfunctions. The commenter noted that the even though the standard explicitly defines a violation as the second or even the third such release from the same PRD during a 3-year period, whether the second uncontrolled release from the same PRD is a violation depends on if the release has the same root cause. The commenter stated that PRDs are not independent emission points, and that PRDs never release pollution into the air or smoke unless there is a malfunction. The commenter also asserted that the EPA's attempt to define a new way in which a facility can claim excess emissions are not a violation echoes the ''affirmative defense'' provision the Court held unlawful in *NRDC,* 749 F.3d 1055, 1064 (D.C. Cir. 2013). The commenter argued that the EPA may not flout statutory constraints Congress enacted in its discretion by trying to remove civil penalty liability for excess emissions that violate the CAA and increase human exposure to toxic air pollution directly, contrary to the CAA. The commenter pointed to the cement kilns case, in which they asserted the EPA tried to claim that the unlawful affirmative defense to civil penalties was ''part of the emission standard,'' noted that the Court rejected these arguments in *NRDC,* 749 F.3d 1055, 1064 (D.C. Cir. 2013), and argued that precedent would apply equally here.[16] The commenter further argued that the proposed rule, by allowing owners or operators to conduct root cause analyses for these events, essentially permits owners or operators—not the courts—to make the determination whether they should be subject to enforcement or penalties for certain PRD releases, which determines whether an event is either actionable (*i.e.,* the result of operator error or poor maintenance, or whether it was the result of the same root cause as a prior event). The commenter further stated that the proposed exemptions contravene the citizen suit and penalty provisions by creating a *de facto* complete defense (not just an affirmative defense) from civil penalties for certain uncontrolled emission releases that would otherwise constitute violations. The commenter pointed to a ruling by the Court that explained how creating such a multi-stage complicated assessment to determine if a violation has occurred undermines the purpose of the CAA and the ability to enforce it.[17]

According to the commenter, by granting this exemption, the EPA may incentivize facilities to release large amounts of HAP through PRDs rather than flares to avoid using one of their ''free passes'' for the prohibition on visible smoke emissions from flares. Instead of meeting the CAA section 112 standards that apply to other facility equipment routed to PRDs or flares, the commenter asserted that exemptions authorize a facility to violate those limits and have no liability if the excess emissions are emitted directly into the air. The commenter stated that this even creates a perverse incentive for operators to install redundant PRDs on process equipment. The commenter also stated that, at the very least, the EPA must include regulations prohibiting the installation of new redundant PRDs to circumvent the prohibition on atmospheric releases.

The commenter further stated that emissions from malfunctions at ethylene production facilities that are released through PRDs are a significant source of underestimated HAP emissions. The commenter suggested that the emissions from PRD releases are a substantial problem for the industry as a whole when viewed over time. Further, the commenter argued that there is no upper limit on the amount of pollution an individual PRD event can release to the atmosphere. The commenter asserted that the EPA's proposed exemptions would, therefore, bar enforcement action against the worst events.

A commenter observed that uncontrolled PRD releases are preventable and avoidable, and that they need not occur if a facility avoids over-pressure in the system. The commenter referred to the proposal preamble, noting that such ''pressure build-ups are typically a sign of a malfunction of the underlying equipment,'' and PRDs ''are equipment installed specifically to release during malfunctions.'' Therefore, the commenter argued that the EPA cannot rely on any argument that equipment can fail, and that PRDs are necessary to address over-pressure and avoid a larger safety incident, and that the EPA has not relied on or demonstrated with any evidence that it is a valid concern. The commenter stated that even if it may be considered by the EPA in an administrative enforcement context or by the courts in an enforcement case, the EPA cannot authorize, up front, a whole set of problematic releases.

The commenter stated that the proposed malfunction standards for PRDs also break with prior Agency policy regarding malfunctions and for the use of case-by-case enforcement discretion to address malfunctions. The commenter stated that the Agency has repeatedly explained why case-by-case

[15] The commenter provided the following reference: See *U.S. Sugar Co.,* 830 F.3d at 607–08.

[16] The commenter provided the following reference: EPA, NESHAP, Portland Cement Summary of Public Comments and Responses at 124–25 (December 20, 2012) (''EPA's view is that the affirmative defense is part of the emission standard and defines two categories of violation.'').

[17] The commenter provided the following reference: ''Once excursion provisions are promulgated, an enforcement case no longer turns on the sharply defined issue of whether the plant discharged more pollutant than it was allowed to, but instead depends on murky determinations concerning the sequence of events in the plant, whether those events would have been avoidable if other equipment had been installed, and whether the discharge was within the intent of the excursion provision. Consequently, what Congress planned as a simple proceeding suitable for summary judgments would become a form of inquest into the nature of system malfunction.'' Weyerhaeuser, 590 F.2d at 1058.

evaluation of such issues is the only workable approach, and has repeatedly finalized prohibitions on uncontrolled releases from PRDs that vent directly to the atmosphere, fully aware that allowing such releases without an emission limit is a malfunction exemption prohibited both by the CAA and the Court's decision in *Sierra Club.* The commenter objected to this change and indicated that the EPA has failed to clearly explain this break with prior precedent.[18] The commenter noted that the EPA finalized similar provisions prohibiting PRD releases in MACT standards for Group IV Polymers and Resins, Pesticide Active Ingredient Manufacturing, and Polyether Polyols Production. The commenter further stated that the Court recently upheld this type of prohibition in *Mexichem Specialty Resins, Inc. v EPA,* 787 F.3d 544, 560–61 (DC Cir. 2015) and urged the EPA to finalize the standards for PRD as proposed. The commenter noted that in light of the EPA's prior policy, there can be ''no doubt'' that prohibiting uncontrolled PRD releases is lawful and consistent with the CAA. The commenter stated that the EPA has neither provided a reasoned explanation for the exemptions, nor acknowledged or explained the break in its prior policy against malfunction exemptions.

Response: We disagree that PRDs are simply bypasses for emissions that are subject to emission limits and controls and that they, thus, allow for uncontrolled emissions without violation or penalty. PRDs are generally safety devices that are used to prevent equipment failures that could pose a danger to the facility and facility workers. PRD releases are triggered by equipment or process malfunction. As such, they do not occur frequently or routinely and do not have the same emissions or release characteristics that routine emission sources have, even if the PRD and the vent are on the same equipment. This is because conditions during a PRD release (temperature, pressure, and vessel contents) differ from the conditions that exist during routine emissions from equipment. For example, emissions from ethylene process vents are predictable and must be characterized for emission potential and applicable control requirements prior to operation in the facility's NOCS report. In addition, PRDs must operate in a closed position and must be continuously monitored to identify when releases have occurred.

Under the final rule, if an affected PRD releases to the atmosphere, the owner or operator is required to perform root cause analysis and corrective action analysis as well as implement corrective actions and comply with the specified reporting requirements. The work practice standard also includes criteria for releases from affected PRDs that would result in a violation at 40 CFR 63.1107(h)(3)(v). We also note that a facility cannot simply choose to release pollutants from a PRD; any release that is caused willfully or caused by negligence or operator error is considered a violation.

We also disagree that PRDs are not independent emission points and instead function in venting emissions from other emission points during a malfunction. The commenter incorrectly suggests that the PRD work practice standard replaces the existing emission standards for connected equipment. The amendments to the NESHAP addressing PRDs do not affect requirements in the NESHAP that apply to equipment associated with the PRD. For example, compliance with the PRD provisions are required in addition to requirements for ethylene process vents for the same equipment. We also disagree with the comment that the standards for PRDs also break with prior agency policy regarding malfunctions. As commenters correctly note, the EPA has indeed both set work practice standards for PRDs and prohibited PRD releases in other source categories. As explained at proposal, however, the basis of the work practice standards promulgated for PRD releases in the Petroleum Refinery Sector RTR (80 FR 75178, December 1, 2015) were our underlying basis for the proposed work practice standards for PRD releases for facilities in the Ethylene Production source category (84 FR 54303, October 9, 2019).

The EPA evaluated the best performing facilities in determining the appropriate work practice standard, and as a result considered requirements established in the SCAQMD and BAAQMD rules and the Chemical Accident Prevent Provisions rule (84 FR 54303, October 9, 2019). These rules are the only rules we are aware of that address the infrequent and unpredictable nature of PRD releases. The EPA established a MACT standard based on these rules, and as part of this, we determined that either two or three PRD releases (depending on the root cause) from a single PRD in a 3-year period is a violation of the work practice standard.

Regarding citizen suits, we note that the regulations do not specify that the EPA Administrator would make a binding determination regarding whether a PRD release is in compliance or a violation, and the issue could be argued and resolved by a court in the context of a citizen suit.

Comment: We received comments in support of and against the work practice standards calling for root cause analysis and certain corrective actions. Some commenters supported the EPA's assessment that even at the best performing sources, releases from PRDs are likely to occur and cannot be safely routed to a control device. A commenter said the EPA's conclusion is consistent with company's experiences that pressure release actuation events, while infrequent, will occur even at properly designed and operated sources, including the best performers. Another commenter said that although they agree with the EPA's conclusion that it is not cost effective to control all PRD releases to the atmosphere, they do not agree that a root cause analysis and corrective action is a warranted work practice in every situation where a PRD relieves to the atmosphere and should not be required as part of the work practice standard for every PRD release. The commenter stated that under the Chemical Accident Prevention Program at 40 CFR 68.81(a), an incident investigation with root cause analysis is required only when the release is a catastrophic release or ''could reasonably have resulted in a catastrophic release.'' The commenter said that a ''catastrophic release'' is defined as a ''major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.'' The commenter argued that the EPA has not established sufficient evidence in the background documents for this rulemaking to indicate that conducting a root cause analysis routinely for all PRD releases regardless of whether they meet the definition of ''catastrophic release'' is being performed by the best performing sources in the Ethylene Production source category.

Another commenter asserted that the EPA did not set a standard for PRDs that complies with the CAA requirements to assure both the ''average emission limitation achieved'' by the relevant best-performing sources and the

[18] The commenter provided the following references: See, *FCC* v. *Fox,* 556 U.S. 502, 516 (2009) (citing *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983)) (''the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, depart from a prior policy sub silentio or simply disregard rules that are still on the books.''); see also *Encino* v. *Navarro,* 136 S.Ct. 2117, 2125–26 (2016) (reaffirming *FCC* v. *Fox* and noting the need to explain changes in agency policy based on actual facts and circumstances).

''maximum degree of emission reduction'' that is ''achievable'' and, therefore, the EPA's proposed standards for PRDs do not meet the CAA sections 112(d)(2) and (3) test. The commenter states there is no discussion in the proposed rule of these factors for PRD releases, much less an analysis or determination that allowing one—two uncontrolled releases every 3 years (plus *force majeure* event releases) reflects, at minimum, the average of the best performers' reductions, and is the ''maximum achievable degree of emission reduction.''

The commenter stated that the TCEQ data that the EPA relies on clearly demonstrate that at least 23 percent (likely higher) of ethylene production facilities have zero atmospheric releases. The EPA reviewed roughly 30 percent of all operating ethylene production facilities (*i.e.,* seven of 26 ethylene production facilities) in the source category that were chosen at random. The commenter notes that only one of the events was actually an atmospheric PRD release on a properly operating PRD, which means that six facilities, or 23 percent of all operating ethylene production facilities, had no atmospheric releases on a properly operating PRD. The commenter noted that the number of ethylene production facilities with zero atmospheric releases is higher. The commenter also stated that the EPA has not explained why it relied on data from the petroleum refinery sector when data for ethylene production facilities is readily available and relied on elsewhere in the rulemaking. The commenter noted that compliance data for refineries from 2019 under the 2015 Petroleum Refineries NESHAP that is publicly available shows that the average uncontrolled PRD has far fewer releases to the atmosphere than the EPA claims that the best performers do, and that the best-performing uncontrolled PRDs are likely to have no atmospheric releases over a 3-year period. The commenter provided data from 40 CFR part 63, subpart CC compliance reports available on the websites of state environmental agencies in Louisiana, Texas, and Indiana for 10 refineries that collectively represented approximately 1,030 uncontrolled PRDs. The commenter noted that these data suggest that the EPA is proposing a number of releases that is exponentially higher than what has been demonstrated by real-world results from refineries thus far, and that the average uncontrolled PRD from the average refinery has far fewer than the two or three releases to the atmosphere over 5 years that the EPA claims that the best performers do.

A commenter argued that the EPA should set a zero emission limit for all PRDs because the best-performing PRD has no emissions to the atmosphere and the average of the best-performing 12 percent emit nothing to the atmosphere. The commenter stated that since the emission limitation for new sources is to reflect the performance of best performing PRD, new PRDs would presumably be required to capture and return discharges to process units; existing PRDs would have to meet the average of the best performing PRD, which could not be less stringent than the emission rate of the best performing PRD controlled by flares.

A commenter recommended that the EPA require new and modified atmospheric PRDs or existing PRDs on modified process equipment to be routed to the fuel gas system, flare, or other control device that achieves 98-percent destruction efficiency, pursuant to the MACT floor, as the best performing PRDs are controlled and the best performing process units are not equipped with any PRDs that are capable of venting emissions directly to the atmosphere. The commenter requested that the EPA propose that uncontrolled HAP emissions no longer be allowed from a PRD, and any releases from such devices would have to be routed through a control device.

The commenter further stated that the EPA's determination on PRDs was based on review of SCAQMD and BAAQMD adopted programs that attempt to reduce uncontrolled releases from PRDs, with generally more stringent emission limitations and LDAR programs than federal programs. The commenter stated that the EPA should adopt the best features of those programs in strengthening the NESHAP, but that these efforts were not subject to or aiming to satisfy the MACT floor requirements of the CAA, nor are they determinative of the MACT floor for PRDs, which must be based on the level of control ''achieved in practice'' by the relevant best-performing 12 percent of emission sources (for existing sources), or the best single source (for new sources).

According to the commenter the SCAQMD data on PRD releases from refineries shows that five out of eight (more than 50 percent) of regulated facilities reported zero atmospheric PRDs releases between 2010 and 2015 (the total number of refineries in the SCAQMD data do not include those operated by Alon Refining, which were idled in 2012). Thus, the commenter stated that the SCAQMD data demonstrate that the best performing PRDs do not release emissions directly to the atmosphere.

The commenter further stated that the EPA has not actually implemented the requirements of the BAAQMD and SCAQMD programs, and that the BAAQMD and SCAQMD programs are far more protective than the proposed rule. First, the commenter noted the BAAQMD requires that the operator must control (via flare or routing to a process unit) all PRDs that discharge for a second time in a 5-year period, whereas the SCAQMD rules include a similar provision, but offer as an alternative payment of a fee of $350,000 for each PRD that is not controlled. The commenter added that SCAQMD rules also require control of any PRD that has a single large release of greater than 2,000 pounds per day (lbs/day). Second, the commenter noted the BAAQMD and SCAQMD rules require the use of three redundant systems, including worker training, inspection, and maintenance, and two redundant ''hardware'' oriented systems. The third significant difference noted by the commenter is the greater number of releases allowed by the option to parse releases by ''root cause.''

The commenter also stated that the EPA appears to have inappropriately categorized PRDs in its analysis. The commenter noted that the EPA stated it intended to regulate ''atmospheric'' PRD releases, *i.e.,* releases to the atmosphere, including those vented to a control device, however, in the proposed rule, the EPA appears to have effectively ignored the ''best controlled'' PRDs (those routed to processes with no discharge to the environment) and the ''well-controlled'' PRDs (those routed to high quality flares) and determined the MACT floor based on PRDs with some lesser level of regulation. The commenter stressed that the CAA does not allow the EPA to categorize in this manner (see CAA section 112(d)(1) (allowing the EPA only to ''distinguish among classes, types, and sizes of sources'')).

Response: At proposal, the EPA provided extensive discussions on why it was appropriate to establish a work practice standard for PRDs that vent to atmosphere, under CAA section 112(h). 84 FR 54302–304. We explained that no ethylene production facility is subject to numeric emission limits for PRDs that vent to the atmosphere. We posited that the EPA did not believe it was appropriate to subject PRDs that vent to the atmosphere to numeric emission limits due to technological and economical limitations that make it impracticable to measure emissions from such PRDs. We further explained

that CAA section 112(h)(1) allows the EPA to prescribe a work practice standard or other requirement, consistent with the provisions of CAA section 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. Additionally, we explained that CAA section 112(h)(2)(B) defines the term ''not feasible'' in this context as meaning that ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations.'' We also noted that the basis of the work practice standards promulgated for PRD releases in the Petroleum Refinery Sector RTR (80 FR 75178, December 1, 2015) were our underlying basis for the proposed work practice standards at ethylene production facilities. 84 FR 54303.

As a general matter, CAA section 112 requires MACT for existing sources to be no less stringent than ''the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information). . .'' [(CAA section 112(d)(3)(A)]. ''Emission limitation'' is defined in the CAA as ''. . .a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under this chapter'' [CAA section 302(k)]. The EPA specifically considers existing rules from state and local authorities in identifying the ''emission limitations'' for a given source. We then identify the best performers to identify the MACT floor (the no less stringent than level) for that source. The EPA identified the requirements established in the SCAQMD and BAAQMD rules, and the Chemical Accident Prevent Provisions rule (40 CFR part 68) as the basis of the MACT floor because they represented the requirements applicable to the best performing sources. 84 FR 54303. Work practice standards are established in place of a numeric limit where it is not feasible to establish such limits. Thus, in a case such as this, where the EPA has determined that it is appropriate to establish work practice standards, it was reasonable for the EPA to identify the rules that impose the most stringent requirements and, thus, represent what applies to the best performers, and then to apply the requirements from those rules as MACT.

We recognize that the proposed standard for PRDs did not exactly mirror the SCAQMD, BAAQMD, or Chemical Accident Prevent Provisions rules exactly, but consider the requirements to be comparable. For example, we did not include a provision similar to that in the SCAQMD rule that excludes releases less than 500 lbs/day from the requirement to perform a root cause analysis; that provision in the SCAQMD rule does not include any other obligation to reduce the number of these events. Similarly, we did not include a provision that only catastrophic PRD releases must be investigated, as the commenter noted. Rather than allowing unlimited releases less than 500 lbs/day or that are not considered catastrophic, we require a root cause analysis for releases of any size. Because we count small releases that the SCAQMD rule does not regulate at all, we considered it reasonable to provide a higher number of releases prior to considering the owner or operator to be in violation of the work practice standard. We also adopted the three prevention measures requirements in the BAAQMD rule with limited modifications. After considering the PRD release event limits in both the SCAQMD and BAAQMD rules, we determined it was reasonable and appropriate to establish PRD requirements consistent with the flare work practice standard provisions in the SCAQMD and BAAQMD rules. Therefore, the final requirements provide that two or three events (depending on the root cause) from the same PRD in a 3-calendar-year period is a violation of the work practice standard. We also note that a facility cannot simply choose to release pollutants from a PRD; any release that is caused willfully or caused by negligence or operator error is considered a violation.

With respect to subcategorizing PRDs into those that vent to the atmosphere versus those that vent to a control system, we note that the only information we have available about when PRD releases occur at ethylene production facilities are from those PRDs that release directly to atmosphere. Regardless of whether we subcategorize or not, the best performing PRD for which we have information had one release over a 7-year period, and the backstop for how many releases are allowed to occur is based on this information over a long-term period of time given the random nature of when a PRD release might occur.

In summary, the work practice standard we are finalizing provides a comprehensive program to manage entire populations of PRDs and includes prevention measures, continuous monitoring, root cause analysis, and corrective actions, and addresses the potential for violations for multiple releases over a 3-year period. We followed the requirements of section 112 of the CAA, including CAA section 112(h), in establishing what work practice constituted the MACT floor.

Comment: Commenters requested that the EPA add a standard for minimizing emissions arising from degassing storage vessels that are complying with the control requirements in Table 7 to 40 CFR 63.1103(e). A commenter explained this request is due to their current interpretation of the proposed rule, wherein 40 CFR 63.1108(a)(5) no longer applies, and, thus, facilities may be required to vent to control devices at all times, even during degassing events. A commenter stated that the current rule requires facilities to address minimization of emissions from shutdown, which includes degassing, in the SSM plan required by 40 CFR 63.1111; and facilities have historically considered degassing emissions from shutdown of storage vessels to be covered by their SSM plans per 40 CFR 63.1108(a)(5) and relied on the language in 40 CFR 63.1108(a)(5) that back-up control devices are not required. The commenter requested the EPA subcategorize storage vessel degassing emissions as maintenance vents based on class, just as the EPA proposed for process vents. The commenter remarked that the Texas permit conditions presented in the memorandum, *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* apply equally to both maintenance vents and degassing of storage vessels and stated these permit conditions reflect what the best performers have implemented for storage vessel degassing (for both fixed and floating roofs) for both new and existing sources. According to the commenter, it is not feasible to control all the emissions from the entire storage vessel emptying and degassing event and at some point, the storage vessel must be opened and any remaining vapors vented to the atmosphere. The commenter further stated that this venting of vapors to the atmosphere is similar to the EPA description for maintenance vents in the preamble to the proposed rule.

The commenter stated that the EPA referenced the memorandum, *Impacts for Control Options for Storage Vessels at Petroleum Refineries* (Docket Item ID

No. EPA–HQ–OAR–2010–0682–0199), as part of the EMACT storage vessel technology review, in which the EPA concluded that degassing controls for storage vessels were not cost effective. Additionally, the commenter said that in the EPA's summary of public comments and responses to the 2014 proposal for the Petroleum Refinery NESHAP RTR, the EPA stated: ''. . . if a control device is used to comply with this final rule during normal operations, then such a control device must be used at all times, including during degassing of the storage vessel. Any bypassing of emissions from being routed to a control device to being routed to the atmosphere would be considered a violation of the standard.''

Response: We agree with the commenters that complying with the storage vessel requirements in Table 7 at 40 CFR 63.1103(e)(3)(b) and (c) is not appropriate during storage vessel degassing events and a separate standard for storage vessel degassing is necessary, due to the nature of the activity. With the removal of SSM requirements, as proposed, a standard specific to storage vessel degassing does not exist when storage vessels are using control devices to comply with the requirements in Table 7 to 40 CFR 63.1103(e). We also agree with the commenters that storage vessel degassing is similar to maintenance vents (*e.g.,* equipment openings) and that there must be a point in time when the storage vessel can be opened and any emissions vented to the atmosphere. In response to this comment, therefore, we reviewed available data to determine how the best performers are controlling storage vessel degassing emissions.

We are aware of the following three regulations that address storage vessel degassing, two in the state of Texas and the third for the SCAQMD in California. Texas has degassing provisions in the Texas Administrative Code (TAC) (30 TAC Chapter 115, Subchapter F, Division 3. See *https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=30&pt=1&ch=115&sch=F&div=3&rl=Y*) and through permit conditions (as noted by the commenter, see *https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/mss/chem-mssdraftconditions.pdf*) while Rule 1149 contains the SCAMD degassing provisions (see *http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1149.pdf*). The TAC requirements are the least stringent and require control of degassing emissions until the vapor space concentration is less than 35,000 ppmv as methane or 50 percent of the LEL. The Texas permit conditions require control of degassing emissions until the vapor space concentration is less than 10 percent of the LEL or until the VOC concentration is less than 10,000 ppmv and SCAQMD Rule 1149 requires control of degassing emissions until the vapor space concentration is less than 5,000 ppmv as methane. The Texas permit conditions requiring compliance with 10 percent of the LEL and SCAQMD Rule 1149 control requirements are considered equivalent because 5,000 ppmv as methane equals 10 percent of the LEL for methane.

Ethylene production facilities located in Texas are subject to maintenance, startup, and shutdown (MSS) special permit conditions, but no ethylene production facilities are subject to the SCAQMD rule. Of the 26 currently operating ethylene production facilities, 17 are in Texas. Therefore, the Texas permit conditions relying on storage vessel degassing until 10 percent of LEL is achieved reflect what the best performers have implemented for storage vessel degassing and we considered this information as the MACT floor for both new and existing sources. Notably, this also aligns with the commenter's assessment.

We reviewed permit condition 6 (applicable to floating roof storage vessels) and permit condition 7 (applicable to fixed roof storage vessels) for key information that could be implemented to form the basis of a standard for storage vessel degassing that are required for facilities in Texas. The permit conditions require control of degassing emissions for floating roof and fixed roof storage vessels until the vapor space concentration is less than 10 percent of the LEL. The permit conditions also specify that facilities can also degas a storage vessel until they meet a VOC concentration of 10,000 ppmv, but we do not consider 10,000 ppmv to be equivalent to or as stringent as the compliance option to meet 10 percent of the LEL and are not including this as a compliance option. We also do not expect the best performers would be using this concentration for compliance, which is supported by the commenters recommending the requirements mimic the maintenance vent requirements and because the Texas permit conditions allow facilities to calibrate their LEL monitor using methane. Storage vessels may be vented to the atmosphere once the storage vessel degassing concentration threshold is met (*i.e.,* less than 10 percent of the LEL) and all standing liquid has been removed from the vessel to the extent practicable. These requirements are considered MACT for both new and existing sources and we are finalizing these requirements at 40 CFR 63.1103(e)(10).

We calculated the impacts due to controlling storage vessel degassing emissions by evaluating the population of storage vessels that are subject to control under Table 7 at 40 CFR 63.1103(e)(3)(b) and (c) and not located in Texas. Storage vessels in the Ethylene Production source category in Texas would already be subject to the degassing requirements, and there would not be additional costs or emissions reductions for these facilities. Our review of the CAA section 114 ICR survey responses, showed that most storage vessels are seldom degassed, with an average of 14 years between degassing events. Based on this average and the population of storage vessels that are not in Texas, we estimated two storage vessel degassing events would be newly subject to control each year. Controlling storage vessel degassing would reduce HAP emissions by 1.7 tpy, with a total annual cost of $9,400. See the technical memoranda, *Storage Vessel Degassing Model Development and Final Cost* and *Emissions Impacts for Ethylene Production NESHAP RTR,* which are available in Docket ID No. EPA–HQ–OAR–2017–0357 for details on the assumptions and methodologies used in this analysis.

We also considered options BTF, but we did not identify any and are not aware of storage vessel degassing control provisions more stringent than those discussed above and being finalized in this rule, therefore, no BTF option was evaluated.

Comment: We received comments in support of the proposed work practice standards for decoking operations. One commenter agreed with the EPA's conclusion to propose work practices for decoking operations pursuant to CAA section 112(h)(1) due to technological and economic limitations.

However, another commenter stated that the proposed requirements for new and existing decoking operations failed to meet the requirements of CAA sections 112(d)(2) and (3). The commenter stated that the EPA correctly proposes to remove the general SSM exemptions, but instead proposes to regulate HAP emissions from decoking operations through work practice standards rather than emission limits, and includes four alternate actions for decoking of radiant tubes. The commenter asserted that the EPA may not set work practice standards unless it is ''not feasible to prescribe or enforce an emission standard.'' The commenter noted that the EPA provides no explanation or justification for why it chose four alternate practices, rather

than identifying the combination of practices that would eliminate HAP emissions, or reduce them to the furthest extent possible, consistent with CAA sections 112(d)(2) and (3). Additionally, the commenter stated that the EPA admits that the test data it collected from industry is unreliable, and inappropriately relies on this claim to posit that the Agency is entitled to promulgate a work practice standard. The commenter argued that the EPA's proposed standard is, therefore, inconsistent with the CAA's MACT requirements.

Response: We agree with the commenters who state that work practice standards are appropriate for decoking operations due to technological and economic limitations. We are adopting these proposed work practice standards into the final rule with only minor changes, which are discussed elsewhere in rulemaking record (see the document, *Summary of Public Comments and Responses for the Risk and Technology Review for Ethylene Production,* which is available in Docket ID No. EPA–HQ–OAR–2017–0357).

We disagree that the work practice standards for decoking operations fail to meet the requirements of CAA sections 112(d)(2) and (3) and are inconsistent with the CAA's MACT requirements. As explained in the preamble to the proposed rule, we are adopting work practice standards instead of numeric emission limits as it is ''not feasible to prescribe or enforce an emission standard'' for these emissions because ''the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations'' (see CAA section 112(h)(2)(B)). 84 FR 54307–309. The emissions stream generated from decoking operations (*i.e.,* the combination of coke combustion constituents, air, and steam from the radiant tube(s)) is very dilute with a high moisture content (*e.g.,* generally >95 percent water); and as explained in the preamble to the proposed rule, based on CAA section 114 ICR data, the majority of emissions measurements from the stream are not ''technologically practicable'' within the meaning of CAA section 112(h) because they are below detection limits. We have also previously reasoned that ''application of measurement methodologies'' under CAA section 112(h) must also mean that a measurement has some reasonable relation to what the source is emitting (*i.e.,* that the measurement yields a meaningful value). We have further explained that unreliable measurements raise issues of practicability, feasibility, and enforceability. Additionally, we have posited that the application of measurement methodology would also not be ''practicable due to . . . economic limitation'' within the meaning of CAA section 112(h) because it would result in cost expended to produce analytically suspect measurements. Refer to the Area Source Boiler Rule (75 FR 31906, June 4, 2010) and the NESHAP for the Wool Fiberglass Manufacturing source category (80 FR 45280 and 45312, July 29, 2015).

Moreover, the final rule, at 40 CFR 63.1103(e)(7), requires owners or operators to conduct daily inspections for flame impingement and also implement at least two of four other work practices to minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace. Specifically, 40 CFR 63.1103(e)(7)(ii) through (v) requires owners or operators choose to conduct two of the following work practices: Monitor CO_2 concentration, monitor temperature, purge the radiant tube(s), and/or apply material to the interior of the radiant tube(s)). In addition, the final rule, at 40 CFR 63.1103(e)(8), requires owners or operators to conduct ethylene cracking furnace isolation valve inspections. With regard to the comment that the EPA provided no explanation or justification for why we chose the four other work practices, we believe each control measure is feasible and effective in reducing HAP emissions from decoking an ethylene cracking furnace. As explained in the preamble to the proposed rule (84 FR 54278, October 9, 2019), based on discussions with industry, as well as a review of facility-specific SSM plans that were submitted to the EPA in response to the CAA section 114 request, we determined that owners or operators already conduct work practices to minimize emissions due to coke combustion. We determined the measures to be consistent with CAA section 112(d) controls and reflect a level of performance analogous to a MACT floor; and we believe that it is most effective for sources to determine the best practices from the list of options. Regarding the comment as to unreliable data being used to support setting standards, as previously noted, the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem and courts generally defer to the agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.'' *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999)(If EPA were required to gather exhaustive data about a problem for which gathering such data is not yet feasible, the agency would be unable to act even if such inaction had potentially significant consequences . . . [A]n agency must make a judgment in the face of a known risk of unknown degree.'' *Mexichem Specialty Resins, Inc.,* 787 F.3d. 561.).

4. What is the rationale for our final approach and final decisions for the revisions pursuant to CAA sections 112(d)(2) and (3)?

We evaluated all of the comments on the EPA's proposed amendments to revisions for flares used as APCDs, clarifications for periods of SSM and bypasses, including PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, certain gaseous streams routed to a fuel gas system, and associated decoking operations for ethylene cracking furnaces (*i.e.,* the decoking of ethylene cracking furnace radiant tubes). For the reasons explained in the proposed rule (84 FR 54278, October 9, 2019), we determined that the flare amendments are needed to ensure that flares used as APCD achieve the required level of MACT control and meet 98 percent destruction efficiency at all times as well as to ensure that CAA section 112 standards apply at all times. Similarly, the clarifications for periods of SSM and bypasses, including PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, certain gaseous streams routed to a fuel gas system, and work practice standards associated decoking operations for ethylene cracking furnaces are needed to be consistent with *Sierra Club* v. *EPA, 551 F.3d* 1019 (D.C. Cir. 2008) to ensure that CAA section 112 standards apply at all times. More information and rationale concerning all the amendments we are finalizing pursuant to CAA sections 112(d)(2) and (3) is in the preamble to the proposed rule (84 FR 54278, October 9, 2019), section IV.B.3 of this preamble, and in the comments and our specific responses to the comments in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* which is available in the docket for this action. Therefore, we are finalizing the proposed provisions for flares (except that we are not finalizing the work practice standard for velocity exceedances for flares operating above their smokeless capacity), finalizing the proposed clarifications for periods of

SSM and bypasses, including PRD releases, bypass lines on closed vent systems, in situ sampling systems, maintenance activities, certain gaseous streams routed to a fuel gas system, and finalizing the proposed work practice standards for the decoking of ethylene cracking furnaces with only minor editorial corrections and technical clarifications.

D. Amendments Addressing Emissions During Periods of SSM

1. What amendments did we propose to address emissions during periods of SSM?

We proposed amendments to the EMACT standards to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. In a few instances, we are finalizing alternative standards for certain emission points during periods of SSM to ensure a continuous CAA section 112 standard applies ''at all times,'' (see section IV.C); however for the majority of emission points in the Ethylene Production source category, we proposed eliminating the SSM exemptions and to have the MACT standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (84 FR 54278, October 9, 2019).

2. How did the SSM provisions change since proposal?

We are finalizing the SSM provisions as proposed (84 FR 54278, October 9, 2019) with only minor changes to 40 CFR 63.1103(e)(9) to sufficiently address the SSM exemption provisions from subparts referenced by the EMACT standards.

3. What key comments did we receive on the SSM revisions and what are our responses?

While we are finalizing some alternative standards in this final rule for certain emission points during periods of SSM to ensure a continuous CAA section 112 standard applies ''at all times,'' (see section IV.C), we also proposed eliminating the SSM exemptions for the majority of emission points in the Ethylene Production source category. We did not receive many substantive comments on the removal of these exemptions; however, the comments and our specific responses to these items can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

4. What is the rationale for our final approach and final decisions to address emissions during periods of SSM?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule (84 FR 54278, October 9, 2019), we determined that these amendments, which remove and revise provisions related to SSM, are necessary to be consistent with the requirement that the standards apply at all times. More information concerning the amendments we are finalizing for SSM is in the preamble to the proposed rule (84 FR 54278, October 9, 2019) and in the comments and our specific responses to the comments in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action. Therefore, we are finalizing our approach for the SSM provisions as proposed.

E. Technical Amendments to the EMACT Standards

1. What other amendments did we propose for the Ethylene Production source category?

We proposed that owners or operators submit electronic copies of required performance test results and reports and NOCS reports through the EPA's CDX using the CEDRI; and we proposed two broad circumstances in which we may provide extension to these requirements. We proposed at 40 CFR 63.1110(a)(10)(iii) that an extension may be warranted due to outages of the EPA's CDX or CEDRI that precludes an owner or operator from accessing the system and submitting required reports. We also proposed at 40 CFR 63.1110(a)(10)(iv) that an extension may be warranted due to a *force majeure* event, such as an act of nature, act of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

To correct a disconnect between having a NPDES permit that meets certain allowable discharge limits at the discharge point of a facility *(e.g.,* outfall) and being able to adequately identify a leak, we proposed the removal of the exemption at 40 CFR 63.1084(c) for once-through heat exchange systems to comply with 40 CFR 63.1085 and 40 CFR 63.1086. We also proposed the removal of the exemption at 40 CFR 63.1084(d) because the provision lacks the specificity of where a sample must be taken to adequately find and quantify a leak from a once-through heat exchange system.

Further, to provide flexibility and reduce the burden on ethylene production facilities, we proposed overlap provisions at 40 CFR 63.1100(g) allowing an owner or operator subject to both the equipment leak EMACT standards and 40 CFR part 60, subpart VVa to comply with the EMACT standards only (instead of complying with both standards), provided the owner or operator also complies with the calibration drift assessment provisions at 40 CFR 60.485a(b)(2).

Finally, we proposed revisions for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. These editorial corrections and clarifications are summarized in Table 9 of the proposal. See 84 FR 54278, October 9, 2019.

2. How did the other amendments for the Ethylene Production source category change since proposal?

Since proposal, the electronic reporting requirements and the technical and editorial corrections in Table 9 of the proposal (see 84 FR 54278, October 9, 2019) have not changed and we are finalizing all the proposed requirements. Additionally, we are correcting an error in the final rule to clarify that Periodic Reports must also be submitted electronically (*i.e.,* through the EPA's CDX website using the appropriate electronic report template for this subpart) beginning no later than the compliance dates specified in 40 CFR 63.1102(c) or once the report template has been available on the CEDRI website for at least 1 year, whichever date is later. We are also including several additional minor clarifying edits in the final rule based on comments received during the public comment period.

3. What key comments did we receive on the other amendments for the Ethylene Production source category and what are our responses?

We did not receive many substantive comments on the other amendments in the Ethylene Production RTR proposal. These items generally include issues related to electronic reporting, removal of the allowance to use NPDES permits to identify leaks for heat exchange systems, overlap provisions for equipment leaks, and revisions that we proposed for clarifying text or correcting typographical errors, grammatical errors, and cross-reference errors. The comments and our specific responses to these items can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the*

Ethylene Production Source Category, available in the docket for this action.

4. What is the rationale for our final approach and final decisions for the other amendments for the Ethylene Production source category?

Based on the comments received for these other amendments, we are generally finalizing all proposed requirements. In a few instances (*e.g.,* overlap provisions for equipment leaks), we received comments such that minor editorial corrections and technical clarifications are being made, and our rationale for these corrections and technical clarifications can be found in the document, *Summary of Public Comments and Responses for the Risk and Technology Reviews for the Ethylene Production Source Category,* available in the docket for this action.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

As of January 1, 2017, there were 26 ethylene production facilities currently operating that are major sources of HAP, and the EPA is aware of five ethylene production facilities under construction. As such, we estimate that 31 ethylene production facilities will be subject to the final amendments within the next 3 years. A complete list of facilities that are currently subject, or will be subject, to the EMACT standards is available in Appendix A of the memorandum, *Review of the RACT/BACT/LAER Clearinghouse Database for the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357.

B. What are the air quality impacts?

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

As of January 1, 2017, there were 26 ethylene production facilities currently operating that are major sources of HAP, and the EPA is aware of five ethylene production facilities under construction. As such, we estimate that 31 ethylene production facilities will be subject to the final amendments within the next 3 years. A complete list of facilities that are currently subject, or will be subject, to the EMACT standards is available in Appendix A of the memorandum, *Review of the RACT/BACT/LAER Clearinghouse Database for the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357.

B. What are the air quality impacts?

We estimate HAP emissions reductions of 29 tpy and VOC emissions reductions of 232 tpy as a result of the final amendments for storage vessels, heat exchange systems, and decoking operations for ethylene cracking furnaces. These emissions reductions do not consider the potential excess emissions reductions from flares that could result from the final monitoring requirements; we estimate flare excess emissions reductions of 1,430 tpy HAP and 13,020 tpy VOC. When considering the flare excess emissions, the total emissions reductions as a result of the final amendments are estimated at 1,459 tpy HAP and 13,252 tpy VOC. These emissions reductions are documented in the following memoranda, which are available in Docket ID No. EPA–HQ–OAR–2017–0357: *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category; Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category; Control Option Impacts for Flares Located in the Ethylene Production Source Category;* and *Final Cost and Emissions Impacts for Ethylene Production NESHAP RTR.*

C. What are the cost impacts?

We estimate the total capital costs of the final amendments to be $47.2 million and the total annualized costs to be about $10.4 million in 2016 dollars (annualized costs include annual recovery credits of $180,000). The present value in 2020 of the costs is $87.5 million at a discount rate of 3 percent and $74.9 million at 7 percent. Calculated as an equivalent annualized value, which is consistent with the present value of costs, the costs are $9.4 million at a discount rate of 7 percent and $10.9 million at a discount rate of 3 percent. These cost estimates are included in the memorandum, *Economic Impact Analysis for Ethylene Production NESHAP RTR Final,* which is available in the docket for this action. The costs are associated with the final amendments for flares, PRDs, maintenance (equipment openings), storage vessels, heat exchange systems, and decoking operations for ethylene cracking furnaces. Costs for flares include purchasing analyzers, monitors, natural gas and steam, developing a flare management plan, and performing root cause analysis and corrective action (details are available in the memorandum, *Control Option Impacts for Flares Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Costs for PRDs were developed based on compliance with the final work practice standard and include implementation of three prevention measures, performing root cause analysis and corrective action, and purchasing PRD monitors (details are available in the memorandum, *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Maintenance costs were estimated to document equipment opening procedures and to document circumstances under which the alternative maintenance vent limit is used (details are available in the memorandum, *Review of Regulatory Alternatives for Certain Vent Streams in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Heat exchange systems costs include the use of the Modified El Paso Method to monitor for leaks (details are available in the memorandum, *Clean Air Act Section 112(d)(6) Technology Review for Heat Exchange Systems in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). The costs associated with decoking operations for ethylene cracking furnaces include conducting isolation valve inspections and conducting flame impingement firebox inspections (details are available in the memorandum, *Assessment of Work Practice Standards for Ethylene Cracking Furnace Decoking Operations Located in the Ethylene Production Source Category,* in Docket ID No. EPA–HQ–OAR–2017–0357). Costs for controlling storage vessel degassing emissions are discussed in the memorandum, *Final Cost and Emissions Impacts for Ethylene Production NESHAP RTR,* which is available in the docket for this action.

D. What are the economic impacts?

The EPA conducted economic impact analyses for the amendments to the final rule, as detailed in the memorandum, *Economic Impact Analysis for Ethylene Production NESHAP RTR Final,* which is available in the docket for this action. The economic impacts of the amendments to the final rule are calculated as the percentage of total annualized costs incurred by affected parent owners to their annual revenues. This ratio of total annualized costs to annual revenues provides a measure of the direct economic impact to parent owners of ethylene production facilities while presuming no passthrough of costs to ethylene consumers. We estimate that none of the 16 parent owners affected by the amendments to the final rule will incur total annualized costs of 0.02 percent or greater of their revenues. Of the 16 parent owners, none

of them is a small business according to the Small Business Administration's small business size standard (for NAICS 325110, 1,000 employees or less). Product recovery, which is estimated as an impact of the final amendments, is included in the estimate of total annualized costs that is an input to the economic impact analysis. Thus, these economic impacts are quite low for affected companies and the ethylene production industry, and consumers of ethylene should experience minimal price changes.

E. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Ethylene Production source category across different demographic groups within the populations living near facilities.

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Hispanic or Latino, Over 25 Without a High School Diploma, and Below the Poverty Level groups. In addition, the population living within 50 km of the ethylene production facilities has a higher percentage of minority, lower income, and lower education people when compared to the nationwide percentages of those groups. However, acknowledging these potential disparities, the risks for the source category were determined to be acceptable, and emissions reductions from the final amendments will benefit these groups the most.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Ethylene Production Source Category Operations,* available in the docket for this action.

F. What analysis of children's environmental health did we conduct?

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are summarized in section IV.A of this preamble and are further documented in the risk report, *Residual Risk Assessment for the Ethylene Production Source Category in Support of the 2020 Risk and Technology Review Final Rule,* available in the docket for this action.

VI. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, *Economic Impact Analysis for Ethylene Production NESHAP RTR Final,* is available in the docket for this rule.

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1983.10. The OMB Control Number is 2060–0489. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing amendments that change the reporting and recordkeeping requirements for several emission sources at ethylene production facilities (*e.g.,* flares, decoking operations for ethylene cracking furnaces, heat exchangers, PRDs, storage vessels). The final amendments also require electronic reporting, remove the malfunction exemption, and impose other revisions that affect reporting and recordkeeping. This information would be collected to assure compliance with 40 CFR part 63, subparts XX and YY.

Respondents/affected entities: Owners or operators of ethylene production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts XX and YY).

Estimated number of respondents: 31 (total).

Frequency of response: Semiannual and annual.

Total estimated burden: 8,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,410,000 (per year), which includes $3,660,000 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities affected in this regulated industry. See the document, *Economic Impact Analysis for Ethylene Production NESHAP RTR Final,* available in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the

relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. None of the ethylene production facilities that have been identified as being affected by this final action are owned or operated by tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections IV.A of this preamble.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. As discussed in the preamble of the proposal, the EPA conducted searches for the EMACT standards through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3B, 4, 5, 18, 21, 22, 25, 25A, 27, and 29 of 40 CFR part 60, appendix A, EPA Methods 301, 316, and 320 of 40 CFR part 63, appendix A, and EPA Methods 602 and 624 of 40 CFR part 136, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method.

The EPA incorporates by reference VCS ANSI/ASME PTC 19.10–1981 (Part 10), ''Flue and Exhaust Gas Analyses,'' as an acceptable alternative to EPA Methods 3A and 3B for the manual procedures only and not the instrumental procedures. This method is used to quantitatively determine the gaseous constituents of exhausts including oxygen, CO_2, carbon monoxide, nitrogen, sulfur dioxide, sulfur trioxide, nitric oxide, nitrogen dioxide, hydrogen sulfide, and hydrocarbons, and is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://wwww.ansi.org* and *https://www.asme.org.*

Also, the EPA incorporates by reference VCS ASTM D6420–18, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry,'' as an acceptable alternative to EPA Method 18 with the following caveats. This ASTM procedure uses a direct interface gas chromatograph/mass spectrometer to identify and quantify VOC and has been approved by the EPA as an alternative to EPA Method 18 only when the target compounds are all known and the target compounds are all listed in ASTM D6420–18 as measurable. ASTM D6420–18 should not be used for methane and ethane because the atomic mass is less than 35; and ASTM D6420–18 should never be specified as a total VOC method.

In addition, the EPA incorporates by reference VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' as an acceptable alternative to EPA Method 320 with caveats requiring inclusion of selected annexes to the standard as mandatory. This ASTM procedure uses an extractive sampling system that routes stationary source effluent to an FTIR spectrometer for the identification and quantification of gaseous compounds. The test plan preparation and implementation in the Annexes to ASTM D 6348–03, Sections A1 through A8 are mandatory; therefore, the EPA incorporates by reference, ''Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy.'' This ASTM procedure also uses an extractive sampling system and FTIR spectrometer for the identification and quantification of gaseous compounds. The percent (%) R must be determined for each target analyte (Equation A5.5) when using ASTM D6348–03, Annex A5 (Analyte Spiking Technique). In order for the test data to be acceptable for a compound, %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = (Measured Concentration in the Stack × 100)/ %R.

The three ASTM methods (ASTM D6420–18, ASTM D6348–12e1, and ASTM D 6348–03) newly incorporated by reference in this rule are available to the public for free viewing online in the Reading Room section on ASTM's website at *https://www.astm.org/READINGLIBRARY/.* In addition to this free online viewing availability on ASTM's website, hard copies and printable versions are available for purchase from ASTM at *http://www.astm.org/.*

Also, the EPA decided not to include 17 other VCS; these methods are impractical as alternatives because of the lack of equivalency, documentation, validation date, and other important technical and policy considerations. The search and review results have been documented and are in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Ethylene Production RTR,* which is available in the docket for this action.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) (in subpart A—General Provisions), a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

Finally, although not considered a VCS, the EPA incorporates by reference, ''Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)'' (SW–846–8260B) and ''Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)'' (SW–846–8270D) into 40 CFR 63.1107(a); and ''Air Stripping Method (Modified El Paso

Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' into 40 CFR 63.1086(e) and 40 CFR 63.1089(d). Each of these methods is used to identify organic HAP in water; however, SW–846–8260B and SW–846–8270D use water sampling techniques and the Modified El Paso Method uses an air stripping sampling technique. The SW–846 methods are available from the EPA at *https://www.epa.gov/hw-sw846* while the Modified El Paso Method is available from TCEQ at *https://www.tceq.texas.gov/assets/public/compliance/field_ops/guidance/samplingappp.pdf.*

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Ethylene Production Source Category Operations,* available in the docket for this action.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by:
■ a. Revising paragraphs (e)(1) and (h)(18), (83), and (85);
■ b. Redesignating paragraphs (h)(92) through (112) as paragraphs (h)(93) through (113);
■ c. Adding new paragraph (h)(92);
■ d. Revising paragraphs (n)(12) and (13); and
■ e. Revising paragraph (t)(1).

The revisions and addition read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(e) * * *

(1) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], issued August 31, 1981, IBR approved for §§ 63.309(k), 63.457(k), 63.772(e) and (h), 63.865(b), 63.997(e), 63.1282(d) and (g), 63.1625(b), 63.3166(a), 63.3360(e), 63.3545(a), 63.3555(a), 63.4166(a), 63.4362(a), 63.4766(a), 63.4965(a), 63.5160(d), table 4 to subpart UUUU, table 3 to subpart YYYY, 63.9307(c), 63.9323(a), 63.11148(e), 63.11155(e), 63.11162(f), 63.11163(g), 63.11410(j), 63.11551(a), 63.11646(a), and 63.11945, table 5 to subpart DDDDD, table 4 to subpart JJJJJ, table 4 to subpart KKKKK, tables 4 and 5 of subpart UUUUU, table 1 to subpart ZZZZZ, and table 4 to subpart JJJJJJ.

* * * * *

(h) * * *

(18) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, 1994, IBR approved for §§ 63.11(b), 63.987(b), and 63.1412.

* * * * *

(83) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, including Annexes A1 through A8, Approved October 1, 2003, IBR approved for §§ 63.457(b), 63.997(e), and 63.1349, table 4 to subpart DDDD, table 4 to subpart UUUU, table 4 subpart ZZZZ, and table 8 to subpart HHHHHHH.

* * * * *

(85) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, Approved February 1, 2012, IBR approved for §§ 63.997(e) and 63.1571(a) and Table 4 to subpart UUUU.

* * * * *

(92) ASTM D6420–18, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, Approved November 1, 2018, IBR approved for § 63.987(b) and § 63.997(e).

* * * * *

(n) * * *

(12) SW–846–8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.1107(a), 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

(13) SW–846–8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for §§ 63.1107(a), 63.11960, 63.11980, and table 10 to subpart HHHHHHH.

* * * * *

(t) * * *

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, January 31, 2003, IBR approved for §§ 63.654(c) and (g), 63.655(i), 63.1086(e), 63.1089(d), and 63.11920.

* * * * *

Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

■ 3. Section 63.987 is amended by revising parameter ''Dj'' of Equation 1 in paragraph (b)(3)(ii) to read as follows:

§ 63.987 Flare requirements.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

* * * * *

Dj = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of 40 CFR part 60, appendix A, or by ASTM D6420–18 (incorporated by reference, see § 63.14) under the conditions specified in § 63.997(e)(2)(iii)(D)(*1*) through (*3*). Hydrogen and carbon monoxide are measured by ASTM D1946–90

(Reapproved 1994) (incorporated by reference, see § 63.14); and

* * * * *

■ 4. Section 63.997 is amended by revising paragraphs (e)(2)(iii) introductory text, (e)(2)(iii)(C)(*1*), (e)(2)(iii)(D), (e)(2)(iv) introductory text, and (e)(2)(iv)(F) and (I) to read as follows:

§ 63.997 Performance test and compliance assessment requirements for control devices.

* * * * *

(e) * * *

(2) * * *

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC limit, the owner or operator shall use Method 18 or 25A of 40 CFR part 60, appendix A, as applicable. The ASTM D6420–18 (incorporated by reference, see § 63.14) may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iii)(A), (B), (D), and (E) of this section shall be used to calculate parts per million by volume concentration. The calculated concentration shall be corrected to 3 percent oxygen using the procedures specified in paragraph (e)(2)(iii)(C) of this section if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(C) * * *

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, or the manual method in ANSI/ASME PTC 19.10–1981—Part 10 (incorporated by reference, see § 63.14), shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic regulated material or organic compound samples, and the samples shall be taken during the same time that the organic regulated material or organic compound samples are taken.

* * * * *

(D) To measure the total organic regulated material concentration at the outlet of a control device, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–18 (incorporated by reference, see § 63.14). If you have a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream using process knowledge or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected at the outlet of the combustion control device as specified in Method 18 or ASTM D6420–18 for the regulated material compounds present at the inlet of the control device. The method ASTM D6420–18 may be used only under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section.

(*1*) If the target compounds are all known and are all listed in Section 1.1 of ASTM D6420–18 as measurable.

(*2*) ASTM D6420–18 may not be used for methane and ethane.

(*3*) ASTM D6420–18 may not be used as a total VOC method.

* * * * *

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18, 25, or 25A of 40 CFR part 60, appendix A, as applicable. The method ASTM D6420–18 (incorporated by reference, see § 63.14) may be used in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iv)(A) through (I) of this section shall be used to calculate percent reduction efficiency.

* * * * *

(F) To measure inlet and outlet concentrations of total organic regulated material, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–18 (incorporated by reference, see § 63.14), under the conditions specified in paragraphs (e)(2)(iii)(D)(*1*) through (*3*) of this section. In conducting the performance test, collect and analyze samples as specified in Method 18 or ASTM D6420–18. You must collect samples simultaneously at the inlet and outlet of the control device. If the performance test is for a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using process knowledge or the screening procedure described in Method 18. Quantify the emissions for the regulated material compounds present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

* * * * *

(I) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to paragraphs (e)(2)(iv)(I)(*1*) through (*3*) of this section.

(*1*) Except as specified in paragraph (e)(2)(iv)(I)(*3*) of this section, if you elect to comply with a percent reduction requirement and formaldehyde is the principal regulated material compound (*i.e.,* greater than 50 percent of the regulated material compounds in the stream by volume), you must use Method 316 or 320 of appendix A to this part, to measure formaldehyde at the inlet and outlet of the control device. Use the percent reduction in formaldehyde as a surrogate for the percent reduction in total regulated material emissions.

(*2*) Except as specified in paragraph (e)(2)(iv)(I)(*3*) of this section, if you elect to comply with an outlet total organic regulated material concentration or TOC concentration limit, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (by volume) formaldehyde, you must use Method 316 or 320 of appendix A to this part, to separately determine the formaldehyde concentration. Calculate the total organic regulated material concentration or TOC concentration by totaling the formaldehyde emissions measured using Method 316 or 320 and the other regulated material compound emissions measured using Method 18 or 25/25A of 40 CFR part 60, appendix A.

(*3*) You may elect to use ASTM D6348–12e1 (incorporated by reference, § 63.14) in lieu of Method 316 or 320 of appendix A to this part as specified in paragraph (e)(2)(iv)(I)(*1*) or (*2*) of this section. To comply with this paragraph, the test plan preparation and implementation in the Annexes to ASTM D6348–03 (incorporated by reference, see § 63.14) Sections Al through A8 are mandatory; the percent (%) R must be determined for each target analyte using Equation A5.5 of ASTM D6348–03 Annex A5 (Analyte Spiking Technique); and in order for the test data to be acceptable for a compound, the %R must be $70\% \geq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, then the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be

reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

Reported Results = (Measured Concentration in the Stack × 100)/ %R.

Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

■ 5. Section 63.1081 is revised to read as follows:

§ 63.1081 When must I comply with the requirements of this subpart?

You must comply with the requirements of this subpart according to the schedule specified in § 63.1102(a). Each heat exchange system which is part of an ethylene production affected source also must comply with paragraph (a) of this section. Each waste stream which is part of an ethylene production affected source also must comply with paragraph (b) of this section.

(a) Each heat exchange system that is part of an ethylene production affected source that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the heat exchange system requirements specified in §§ 63.1084(f), 63.1085(e) and (f), 63.1086(e), 63.1087(c) and (d), 63.1088(d), and 63.1089(d) and (e) upon initial startup or July 6, 2023, whichever is later. Each heat exchange system that is part of an ethylene production affected source that commences construction or reconstruction after October 9, 2019, must be in compliance with the heat exchange system requirements specified in §§ 63.1084(f), 63.1085(e) and (f), 63.1086(e), 63.1087(c) and (d), 63.1088(d), and 63.1089(d) and (e) upon initial startup, or July 6, 2020, whichever is later.

(b) Each waste stream that is part of an ethylene production affected source that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the flare requirements specified in § 63.1095(a)(1)(vi) and (b)(3) upon initial startup or July 6, 2023, whichever is later. Each waste stream that is part of an ethylene production affected source that commences construction or reconstruction after October 9, 2019, must be in compliance with the flare requirements specified in § 63.1095(a)(1)(vi) and (b)(3) upon initial startup, or July 6, 2020, whichever is later.

■ 6. Section 63.1082 is amended in paragraph (b) by revising definitions for ''Dilution steam blowdown waste stream,'' and ''Spent caustic waste stream'' to read as follows:

§ 63.1082 What definitions do I need to know?

* * * * *

(b) * * *

Dilution steam blowdown waste stream means any continuously flowing process wastewater stream resulting from the quench and compression of cracked gas (the cracking furnace effluent) at an ethylene production unit and is discharged from the unit. This stream typically includes the aqueous or oily-water stream that results from condensation of dilution steam (in the cracking furnace quench system), blowdown from dilution steam generation systems, and aqueous streams separated from the process between the cracking furnace and the cracked gas dehydrators. The dilution steam blowdown waste stream does not include blowdown that has not contacted HAP-containing process materials. Before July 6, 2023, the dilution steam blowdown waste stream does not include dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges. Beginning on July 6, 2023, the dilution steam blowdown streams generated from sampling, maintenance activities, or shutdown purges are included in the definition of dilution steam blowdown waste stream.

* * * * *

Spent caustic waste stream means the continuously flowing process wastewater stream that results from the use of a caustic wash system in an ethylene production unit. A caustic wash system is commonly used at ethylene production units to remove acid gases and sulfur compounds from process streams, typically cracked gas. Before July 6, 2023, the spent caustic waste stream does not include spent caustic streams generated from sampling, maintenance activities, or shutdown purges. Beginning on July 6, 2023, the spent caustic streams generated from sampling, maintenance activities, or shutdown purges are included in the definition of spent caustic waste stream.

■ 7. Section 63.1084 is amended by revising the introductory text and adding paragraph (f) to read as follows:

§ 63.1084 What heat exchange systems are exempt from the requirements of this subpart?

Except as specified in paragraph (f) of this section, your heat exchange system is exempt from the requirements in §§ 63.1085 and 63.1086 if it meets any one of the criteria in paragraphs (a) through (e) of this section.

* * * * *

(f) Beginning no later than the compliance dates specified in § 63.1081(a), your heat exchange system is no longer exempt from the requirements in §§ 63.1085 and 63.1086 if it meets the criteria in paragraph (c) or (d) of this section; instead, your heat exchange system is exempt from the requirements in §§ 63.1085 and 63.1086 if it meets any one of the criteria in paragraph (a), (b), or (e) of this section.

■ 8. Section 63.1085 is amended by revising the introductory text and paragraphs (a) and (b) and by adding paragraphs (e) and (f) to read as follows:

§ 63.1085 What are the general requirements for heat exchange systems?

Unless you meet one of the requirements for exemptions in § 63.1084, you must meet the requirements in paragraphs (a) through (f) of this section.

(a) Except as specified in paragraph (e) of this section, you must monitor the cooling water for the presence of substances that indicate a leak according to § 63.1086(a) through (d).

(b) Except as specified in paragraph (f) of this section, if you detect a leak, then you must repair it according to § 63.1087(a) and (b) unless repair is delayed according to § 63.1088(a) through (c).

* * * * *

(e) Beginning no later than the compliance dates specified in § 63.1081(a), the requirements specified in § 63.1086(a) through (d) no longer apply; instead, you must monitor the cooling water for the presence of total strippable hydrocarbons that indicate a leak according to § 63.1086(e). At any time before the compliance dates specified in § 63.1081(a), you may choose to comply with the requirements in this paragraph in lieu of the requirements in paragraph (a) of this section.

(f) Beginning no later than the compliance dates specified in § 63.1081(a), the requirements specified in §§ 63.1087(a) and (b) and 63.1088(a) through (c), no longer apply; instead, if you detect a leak, then you must repair it according to § 63.1087(c) and (d), unless repair is delayed according to § 63.1088(d). At any time before the compliance dates specified in § 63.1081(a), you may choose to comply with the requirements in this paragraph in lieu of the requirements in paragraph (b) of this section.

■ 9. Section 63.1086 is amended by revising the introductory text and by adding paragraph (e) to read as follows:

§ 63.1086 How must I monitor for leaks to cooling water?

Except as specified in § 63.1085(e) and paragraph (e) of this section, you must monitor for leaks to cooling water by monitoring each heat exchange system according to the requirements of paragraph (a) of this section, monitoring each heat exchanger according to the requirements of paragraph (b) of this section, or monitoring a surrogate parameter according to the requirements of paragraph (c) of this section. Except as specified in § 63.1085(e) and paragraph (e) of this section, if you elect to comply with the requirements of paragraph (a) or (b) of this section, you may use alternatives in paragraph (d)(1) or (2) of this section for determining the mean entrance concentration.

* * * * *

(e) Beginning no later than the compliance dates specified in § 63.1081(a), you must perform monitoring to identify leaks of total strippable hydrocarbons from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (e)(1) through (5) of this section.

(1) *Monitoring locations for closed-loop recirculation heat exchange systems.* For each closed loop recirculating heat exchange system, you must collect and analyze a sample from the location(s) described in either paragraph (e)(1)(i) or (ii) of this section.

(i) Each cooling tower return line or any representative riser within the cooling tower prior to exposure to air for each heat exchange system.

(ii) Selected heat exchanger exit line(s), so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s).

(2) *Monitoring locations for once-through heat exchange systems.* For each once-through heat exchange system, you must collect and analyze a sample from the location(s) described in paragraph (e)(2)(i) of this section. You may also elect to collect and analyze an additional sample from the location(s) described in paragraph (e)(2)(ii) of this section.

(i) Selected heat exchanger exit line(s), so that each heat exchanger or group of heat exchangers within a heat exchange system is covered by the selected monitoring location(s). The selected monitoring location may be at a point where discharges from multiple heat exchange systems are combined provided that the combined cooling water flow rate at the monitoring location does not exceed 165,000 gallons per minute.

(ii) The inlet water feed line for a once-through heat exchange system prior to any heat exchanger. If multiple heat exchange systems use the same water feed (*i.e.,* inlet water from the same primary water source), you may monitor at one representative location and use the monitoring results for that sampling location for all heat exchange systems that use that same water feed.

(3) *Monitoring method.* If you comply with the total strippable hydrocarbon concentration leak action level as specified in paragraph (e)(4) of this section, you must comply with the requirements in paragraph (e)(3)(i) of this section. If you comply with the total hydrocarbon mass emissions rate leak action level as specified in paragraph (e)(4) of this section, you must comply with the requirements in paragraphs (e)(3)(i) and (ii) of this section.

(i) You must determine the total strippable hydrocarbon concentration (in parts per million by volume (ppmv) as methane) at each monitoring location using the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (incorporated by reference, see § 63.14) using a flame ionization detector analyzer for on-site determination as described in Section 6.1 of the Modified El Paso Method.

(ii) You must convert the total strippable hydrocarbon concentration (in ppmv as methane) to a total hydrocarbon mass emissions rate (as methane) using the calculations in Section 7.0 of ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (incorporated by reference—see § 63.14).

(4) *Monitoring frequency and leak action level.* For each heat exchange system, you must comply with the applicable monitoring frequency and leak action level, as defined in paragraphs (e)(4)(i) through (iii) of this section. The monitoring frequencies specified in paragraphs (e)(4)(i) through (iii) of this section also apply to the inlet water feed line for a once-through heat exchange system, if you elect to monitor the inlet water feed as provided in paragraph (e)(2)(ii) of this section.

(i) For each heat exchange system that is part of an ethylene production affected source that commenced construction or reconstruction on or before December 6, 2000, you must monitor quarterly using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or, for heat exchange systems with a recirculation rate of 10,000 gallons per minute or less, you may monitor quarterly using a leak action level defined as a total hydrocarbon mass emissions rate from the heat exchange system (as methane) of 0.18 kg/hr. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor monthly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), quarterly monitoring for the heat exchange system may resume.

(ii) For each heat exchange system that is part of an ethylene production affected source that commences construction or reconstruction after December 6, 2000 and on or before October 9, 2019, you must monitor at the applicable frequency specified in paragraph (e)(4)(ii)(A) or (B) of this section using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or, for heat exchange systems with a recirculation rate of 10,000 gallons per minute or less, you may monitor at the applicable frequency specified in paragraph (e)(4)(ii)(A) or (B) of this section using a leak action level defined as a total hydrocarbon mass emissions rate from the heat exchange system (as methane) of 0.18 kg/hr.

(A) If you have completed the initial weekly monitoring for 6-months of the heat exchange system as specified in § 63.1086(a)(2)(ii) or (b)(1)(ii) then you must monitor monthly. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(B) If you have not completed the initial weekly monitoring for 6-months of the heat exchange system as specified in § 63.1086(a)(2)(ii) or (b)(1)(ii), or if you elect to comply with paragraph (e) of this section rather than paragraphs (a) through (d) of this section upon startup, then you must initially monitor weekly for 6-months beginning upon startup and monitor monthly thereafter. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has

been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(iii) For each heat exchange system that is part of an ethylene production affected source that commences construction or reconstruction after October 9, 2019, you must initially monitor weekly for 6-months beginning upon startup and monitor monthly thereafter using a leak action level defined as a total strippable hydrocarbon concentration (as methane) in the stripping gas of 6.2 ppmv or, for heat exchange systems with a recirculation rate of 10,000 gallons per minute or less, you may use a leak action level defined as a total hydrocarbon mass emissions rate from the heat exchange system (as methane) of 0.18 kg/hr if the heat exchange system has a recirculation rate of 10,000 gallons per minute or less. If a leak is detected as specified in paragraph (e)(5) of this section, then you must monitor weekly until the leak has been repaired according to the requirements in § 63.1087(c) or (d). Once the leak has been repaired according to the requirements in § 63.1087(c) or (d), monthly monitoring for the heat exchange system may resume.

(5) *Leak definition.* A leak is defined as described in paragraph (e)(5)(i) or (ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed is monitored as described in paragraph (e)(2)(ii) of this section, a leak is detected if the difference in the measurement value of the sample taken from a location specified in paragraph (e)(2)(i) of this section and the measurement value of the corresponding sample taken from the location specified in paragraph (e)(2)(ii) of this section equals or exceeds the leak action level.

(ii) For all other heat exchange systems, a leak is detected if a measurement value of the sample taken from a location specified in paragraph (e)(1)(i), (ii), or (e)(2)(i) of this section equals or exceeds the leak action level.

■ 10. Section 63.1087 is amended by revising the introductory text and by adding paragraphs (c) and (d) to read as follows:

§ 63.1087 What actions must I take if a leak is detected?

Except as specified in § 63.1085(f) and paragraphs (c) and (d) of this section, if a leak is detected, you must comply with the requirements in paragraphs (a) and (b) of this section unless repair is delayed according to § 63.1088.

* * * * *

(c) Beginning no later than the compliance dates specified in § 63.1081(a), if a leak is detected using the methods described in § 63.1086(e), you must repair the leak to reduce the concentration or mass emissions rate to below the applicable leak action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in § 63.1088(d). Repair must include re-monitoring at the monitoring location where the leak was identified according to the method specified in § 63.1086(e)(3) to verify that the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate is below the applicable leak action level. Repair may also include performing the additional monitoring in paragraph (d) of this section to verify that the total strippable hydrocarbon concentration is below the applicable leak action level. Actions that can be taken to achieve repair include but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing, or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(d) Beginning no later than the compliance dates specified in § 63.1081(a), if you detect a leak when monitoring a cooling tower return line according to § 63.1086(e)(1)(i), you may conduct additional monitoring of each heat exchanger or group of heat exchangers associated with the heat exchange system for which the leak was detected, as provided in § 63.1086(e)(1)(ii). If no leaks are detected when monitoring according to the requirements of § 63.1086(e)(1)(ii), the heat exchange system is considered to have met the repair requirements through re-monitoring of the heat exchange system, as provided in paragraph (c) of this section.

■ 11. Section 63.1088 is amended by revising the introductory text and by adding paragraph (d) to read as follows:

§ 63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

You may delay the repair of heat exchange systems if the leaking equipment is isolated from the process. At any time before the compliance dates specified in § 63.1081(a), you may also delay repair if repair is technically infeasible without a shutdown, and you meet one of the conditions in paragraphs (a) through (c) of this section. Beginning no later than the compliance dates specified in § 63.1081(a), paragraphs (a) through (c) of this section no longer apply; instead, you may delay repair if the conditions in paragraph (d) of this section are met.

* * * * *

(d) Beginning no later than the compliance dates specified in § 63.1081(a), you may delay repair when one of the conditions in paragraph (d)(1) or (2) of this section is met and the leak is less than the delay of repair action level specified in paragraph (d)(3) of this section. You must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, then you may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monitoring, the delay of repair action level is exceeded, then you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate is initially and remains less than the delay of repair action level for all monitoring periods during the delay of repair, then you may delay the repair for a maximum of 120 calendar days. You must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monitoring, the delay of repair action level is exceeded, then you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded the delay of repair action level.

(3) The delay of repair action level is a total strippable hydrocarbon concentration (as methane) in the stripping gas of 62 ppmv or, for heat exchange systems with a recirculation rate of 10,000 gallons per minute or less, the delay of repair action level is a total hydrocarbon mass emissions rate (as methane) or 1.8 kg/hr. The delay of repair action level is assessed as described in paragraph (d)(3)(i) or (ii) of this section, as applicable.

(i) For once-through heat exchange systems for which the inlet water feed

is monitored as described in § 63.1086(e)(2)(ii), the delay of repair action level is exceeded if the difference in the measurement value of the sample taken from a location specified in § 63.1086(e)(2)(i) and the measurement value of the corresponding sample taken from the location specified in § 63.1086(e)(2)(ii) equals or exceeds the delay of repair action level.

(ii) For all other heat exchange systems, the delay of repair action level is exceeded if a measurement value of the sample taken from a location specified in § 63.1086(e)(1)(i) and (ii) or § 63.1086(e)(2)(i) equals or exceeds the delay of repair action level.

■ 12. Section 63.1089 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.1089 What records must I keep?

* * * * *

(d) At any time before the compliance dates specified in § 63.1081(a), you must keep documentation of delay of repair as specified in § 63.1088(a) through (c). Beginning no later than the compliance dates specified in § 63.1081(a), the requirement to keep documentation of delay of repair as specified in § 63.1088(a) through (c) no longer applies; instead, you must keep documentation of delay of repair as specified in paragraphs (d)(1) through (4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration or mass emissions rate of the leak as first identified and the results of all subsequent monitoring events during the delay of repair.

(4) An estimate of the potential total hydrocarbon emissions from the leaking heat exchange system or heat exchanger for each required delay of repair monitoring interval following the applicable procedures in paragraphs (d)(4)(i) through (iii) of this section.

(i) If you comply with the total strippable hydrocarbon concentration leak action level, as specified in § 63.1086(e)(4), you must calculate the mass emissions rate by complying with the requirements of § 63.1086(e)(3)(ii) or by determining the mass flow rate of the cooling water at the monitoring location where the leak was detected. If the monitoring location is an individual cooling tower riser, determine the total cooling water mass flow rate to the cooling tower. Cooling water mass flow rates may be determined using direct measurement, pump curves, heat balance calculations, or other engineering methods. If you determine the mass flow rate of the cooling water, calculate the mass emissions rate by converting the stripping gas leak concentration (in ppmv as methane) to an equivalent liquid concentration, in parts per million by weight (ppmw), using equation 7–1 from ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' (incorporated by reference—see § 63.14) and multiply the equivalent liquid concentration by the mass flow rate of the cooling water.

(ii) For delay of repair monitoring intervals prior to repair of the leak, calculate the potential total hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the monitoring interval by multiplying the mass emissions rate, determined in § 63.1086(e)(3)(ii) or paragraph (d)(4)(i) of this section, by the duration of the delay of repair monitoring interval. The duration of the delay of repair monitoring interval is the time period starting at midnight on the day of the previous monitoring event or at midnight on the day the repair would have been completed if the repair had not been delayed, whichever is later, and ending at midnight of the day the of the current monitoring event.

(iii) For delay of repair monitoring intervals ending with a repaired leak, calculate the potential total hydrocarbon emissions for the leaking heat exchange system or heat exchanger for the final delay of repair monitoring interval by multiplying the duration of the final delay of repair monitoring interval by the mass emissions rate determined for the last monitoring event prior to the re-monitoring event used to verify the leak was repaired. The duration of the final delay of repair monitoring interval is the time period starting at midnight of the day of the last monitoring event prior to re-monitoring to verify the leak was repaired and ending at the time of the re-monitoring event that verified that the leak was repaired.

(e) At any time before the compliance dates specified in § 63.1081(a), if you validate a 40 CFR part 136 method for the HAP listed in Table 1 to this subpart according to the procedures in appendix D to this part, then you must keep a record of the test data and calculations used in the validation. On the compliance dates specified in § 63.1081(a), this requirement no longer applies.

■ 13. Section 63.1090 is amended by revising the introductory text and by adding paragraph (f) to read as follows:

§ 63.1090 What reports must I submit?

If you delay repair for your heat exchange system, you must report the delay of repair in the semiannual report required by § 63.1110(e). If the leak remains unrepaired, you must continue to report the delay of repair in semiannual reports until you repair the leak. Except as provided in paragraph (f) of this section, you must include the information in paragraphs (a) through (e) of this section in the semiannual report.

* * * * *

(f) For heat exchange systems subject to § 63.1085(e) and (f), Periodic Reports must include the information specified in paragraphs (f)(1) through (5) of this section, in lieu of the information specified in paragraphs (a) through (e) of this section.

(1) The number of heat exchange systems at the plant site subject to the monitoring requirements in § 63.1085(e) and (f) during the reporting period.

(2) The number of heat exchange systems subject to the monitoring requirements in § 63.1085(e) and (f) at the plant site found to be leaking during the reporting period.

(3) For each monitoring location where the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate was determined to be equal to or greater than the applicable leak definitions specified in § 63.1086(e)(5) during the reporting period, identification of the monitoring location (*e.g.,* unique monitoring location or heat exchange system ID number), the measured total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate, the date the leak was first identified, and, if applicable, the date the source of the leak was identified;

(4) For leaks that were repaired during the reporting period (including delayed repairs), identification of the monitoring location associated with the repaired leak, the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate measured during re-monitoring to verify repair, and the re-monitoring date (*i.e.,* the effective date of repair); and

(5) For each delayed repair, identification of the monitoring location associated with the leak for which repair is delayed, the date when the delay of repair began, the date the repair is expected to be completed (if the leak is not repaired during the reporting period), the total strippable hydrocarbon concentration or total hydrocarbon mass emissions rate and date of each monitoring event conducted on the delayed repair during the reporting period, and an estimate of the potential total hydrocarbon emissions over the reporting period associated with the delayed repair.

■ 14. Section 63.1095 is amended by:
■ a. Revising paragraph (a)(1) introductory text;
■ b. Adding paragraph (a)(1)(vi);
■ c. Revising paragraphs (a)(3), (b) introductory text, and (b)(1); and
■ d. Adding paragraph (b)(3).

The revisions and additions read as follows:

§ 63.1095 What specific requirements must I comply with?

* * * * *

(a) * * *

(1) Route the continuous butadiene stream to a treatment process or wastewater treatment system used to treat benzene waste streams that complies with the standards specified in 40 CFR 61.348. Comply with the requirements of 40 CFR part 61, subpart FF; with the changes in Table 2 to this subpart, and as specified in paragraphs (a)(1)(i) through (vi) of this section.

* * * * *

(vi) Beginning no later than the compliance dates specified in § 63.1081(b), if you use a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare to comply with 40 CFR part 61, subpart FF, then you must comply with the requirements § 63.1103(e)(4) in lieu of 40 CFR 61.349(a)(2)(iii) and (d), 40 CFR 61.354(c)(3), 40 CFR 61.356(f)(2)(i)(D) and (j)(7), and 40 CFR 61.357(d)(7)(iv)(F).

* * * * *

(3) Before July 6, 2023, if the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), comply with the requirements of this section at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111. Beginning on July 6, 2023, if the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), you must comply with the requirements of this section at all times.

(b) *Waste streams that contain benzene.* For waste streams that contain benzene, you must comply with the requirements of 40 CFR part 61, subpart FF, except as specified in Table 2 to this subpart and paragraph (b)(3) of this section. You must manage and treat waste streams that contain benzene as specified in either paragraph (b)(1) or (2) of this section.

(1) If the total annual benzene quantity from waste at your facility is less than 10 Mg/yr, as determined according to 40 CFR 61.342(a), manage and treat spent caustic waste streams and dilution steam blowdown waste streams according to 40 CFR 61.342(c)(1) through (c)(3)(i). Before July 6, 2023, the requirements of this paragraph (b)(1) shall apply at all times except during periods of startup, shutdown, and malfunction, if the startup, shutdown, or malfunction precludes the ability of the affected source to comply with the requirements of this section and the owner or operator follows the provisions for periods of startup, shutdown, and malfunction, as specified in § 63.1111. Beginning on July 6, 2023, the requirements of this paragraph (b)(1) shall apply at all times.

* * * * *

(3) Beginning no later than the compliance dates specified in § 63.1081(b), if you use a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare to comply with 40 CFR part 61, subpart FF, then you must comply with the requirements of § 63.1103(e)(4) in lieu of 40 CFR 61.349(a)(2)(iii) and (d), 40 CFR 61.354(c)(3), 40 CFR 61.356(f)(2)(i)(D) and (j)(7), and 40 CFR 61.357(d)(7)(iv)(F).

■ 15. Table 2 to subpart XX of part 63 is amended by revising the first three entries to row 1 and the first two entries to row 2 to read as follows:

TABLE 2 TO SUBPART XX OF PART 63—REQUIREMENTS OF 40 CFR PART 61, SUBPART FF, NOT INCLUDED IN THE REQUIREMENTS FOR THIS SUBPART AND ALTERNATE REQUIREMENTS

If the total annual benzene quantity for waste from your facility is * * *	Do not comply with:	Instead, comply with:
1. Less than 10 Mg/yr	40 CFR 61.340	§ 63.1093.
	40 CFR 61.342(c)(3)(ii), (d), and (e)	There is no equivalent requirement.
	40 CFR 61.342(f)	§ 63.1096.
* * * * *	* * * * *	* * * * *
2. Greater than or equal to 10 Mg/yr	40 CFR 61.340	§ 63.1093.
	40 CFR 61.342(f)	§ 63.1096.
* * * * *	* * * * *	* * * * *

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

■ 16. Section 63.1100 is amended by:
■ a. Revising the heading to Table 1 to § 63.1100(a);
■ b. Revising the entries for ''Carbon Black Production,'' ''Cyanide Chemicals Manufacturing,'' ''Ethylene Production,'' and ''Spandex Production'';
■ c. Revising footnote c to Table 1 to § 63.1100(a);
■ d. Revising paragraphs (b), (g) introductory text, and (g)(4)(ii);
■ e. Adding paragraph (g)(4)(iii);
■ f. Revising paragraph (g)(5); and
■ g. Adding paragraph (g)(7).

The revisions and additions read as follows:

§ 63.1100 Applicability.

(a) * * *

TABLE 1 TO § 63.1100(a)—SOURCE CATEGORY MACT [a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Wastewater streams	Other	Source category MACT requirements
* *		*	*		*	*	*
Carbon Black Production	No	Yes	No	No	No	No	§ 63.1103(f).
Cyanide Chemicals Manufacturing.	Yes	Yes	Yes	Yes	Yes	No	§ 63.1103(g).
Ethylene Production	Yes	Yes	Yes	Yes	Yes	Yes [c]	§ 63.1103(e).
* *		*	*		*	*	*
Spandex Production	Yes	Yes	No	No	No	Yes [d]	§ 63.1103(h).

[a] Maximum achievable control technology.
[b] Fiber spinning lines using spinning solution or suspension containing acrylonitrile.
[c] Heat exchange systems as defined in § 63.1082(b).
[d] Fiber spinning lines.

(b) *Subpart A requirements.* The following provisions of subpart A of this part (General Provisions), §§ 63.1 through 63.5, and §§ 63.12 through 63.15, apply to owners or operators of affected sources subject to this subpart. Beginning no later than the compliance dates specified in § 63.1102(c), for ethylene production affected sources, §§ 63.7(a)(4), (c), (e)(4), and (g)(2), and 63.10(b)(2)(vi) also apply.

* * * * *

(g) *Overlap with other regulations.* Paragraphs (g)(1) through (7) of this section specify the applicability of this subpart YY emission point requirements when other rules may apply. Where this subpart YY allows an owner or operator an option to comply with one or another regulation to comply with this subpart YY, an owner or operator must report which regulation they choose to comply with in the Notification of Compliance Status report required by § 63.1110(a)(4).

(4) * * *

(ii) After the compliance dates specified in § 63.1102, equipment that must be controlled according to this subpart YY and subpart H of this part is in compliance with the equipment leak requirements of this subpart YY if it complies with either set of requirements. For ethylene production affected sources, the requirement in § 63.1103(e)(9)(i) also applies. The owner or operator must specify the rule with which they will comply in the Notification of Compliance Status report required by § 63.1110(a)(4).

(iii) Beginning no later than the compliance dates specified in § 63.1102(c), for ethylene production affected sources, equipment that must be controlled according to this subpart YY and subpart VVa of 40 CFR part 60 is required only to comply with the equipment leak requirements of this subpart, except the owner or operator must also comply with the calibration drift assessment requirements specified at 40 CFR 60.485a(b)(2) if they are required to do so in subpart VVa of 40 CFR part 60. When complying with the calibration drift assessment requirements at 40 CFR 60.485a(b)(2), the requirement at 40 CFR 60.486a(e)(8)(v) to record the instrument reading for each scale used applies.

(5) *Overlap of this subpart YY with other regulations for wastewater for source categories other than ethylene production.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F, G, and H of this part (collectively known as the ''HON'') shall be deemed to be in compliance with the requirements of this subpart if it complies with either set of requirements. In any instance where a source subject to this subpart is collocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats both Group 1 wastewaters and wastewater residuals from the source subject to this subpart and wastewaters from the SOCMI source, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in §§ 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for wastewater treatment under this subpart.

* * * * *

(7) *Overlap of this subpart YY with other regulations for flares for the ethylene production source category.* (i) Beginning no later than the compliance dates specified in § 63.1102(c), flares that are subject to 40 CFR 60.18 or § 63.11 and used as a control device for an emission point subject to the requirements in Table 7 to § 63.1103(e) are required to comply only with § 63.1103(e)(4). At any time before the compliance dates specified in § 63.1102(c), flares that are subject to 40 CFR 60.18 or § 63.11 and elect to comply with § 63.1103(e)(4) are required to comply only with § 63.1103(e)(4).

(ii) Beginning no later than the compliance dates specified in § 63.1102(c), flares subject to § 63.987 and used as a control device for an emission point subject to the requirements in Table 7 to § 63.1103(e) are only required to comply with § 63.1103(e)(4).

(iii) Beginning no later than the compliance dates specified in § 63.1102(c), flares subject to the requirements in 40 CFR part 63, subpart CC and used as a control device for an emission point subject to the requirements in Table 7 to § 63.1103(e) are only required to comply with the flare requirements in 40 CFR part 63, subpart CC. This paragraph does not apply to multi-point pressure assisted flares.

■ 17. Section 63.1101 is amended by revising the definitions of ''Pressure relief device or valve'' and ''Shutdown'' to read as follows:

§ 63.1101 Definitions.

* * * * *

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices. This definition does not apply to ethylene production affected sources.

* * * * *

Shutdown means the cessation of operation of an affected source or equipment that is used to comply with this subpart, or the emptying and degassing of a storage vessel. For the purposes of this subpart, shutdown includes, but is not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. Shutdown includes the decoking of ethylene cracking furnaces.

* * * * *

■ 18. Section 63.1102 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 63.1102 Compliance schedule.

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production, § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production, § 63.1103(c)(1)(i) for hydrogen fluoride production, § 63.1103(d)(1)(i) for polycarbonate production, § 63.1103(e)(1)(i) for ethylene production, § 63.1103(f)(1)(i) for carbon black production, § 63.1103(g)(1)(i) for cyanide chemicals manufacturing, or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart YY according to the schedule in paragraph (a)(1) or (2) of this section, as appropriate, except as provided in paragraph (b) of this section. Affected sources in ethylene production also must comply according to paragraph (c) of this section. Proposal and effective dates are specified in Table 1 to this section.

* * * * *

(c) All ethylene production affected sources that commenced construction or reconstruction on or before October 9, 2019, must be in compliance with the requirements listed in paragraphs (c)(1) through (13) of this section upon initial startup or July 6, 2023, whichever is later. All ethylene production affected sources that commenced construction or reconstruction after October 9, 2019, must be in compliance with the requirements listed in paragraphs (c)(1) through (13) of this section upon initial startup, or July 6, 2020, whichever is later.

(1) Overlap requirements specified in § 63.1100(g)(4)(iii) and (7), if applicable.

(2) The storage vessel requirements specified in paragraphs (b)(1)(iii) and (c)(1)(ii) of Table 7 to § 63.1103(e), and the degassing requirements specified in § 63.1103(e)(10).

(3) The ethylene process vent requirements specified in paragraph (d)(1)(ii) of Table 7 to § 63.1103(e).

(4) The transfer rack requirements specified in § 63.1105(a)(5).

(5) The equipment requirements specified in paragraph (f)(1)(ii) of Table 7 to § 63.1103(e) and § 63.1107(h).

(6) The bypass line requirements specified in paragraph (i) of Table 7 to § 63.1103(e), and § 63.1103(e)(6).

(7) The decoking requirements for ethylene cracking furnaces specified in paragraph (j) of Table 7 to § 63.1103(e), and § 63.1103(e)(7) and (8).

(8) The flare requirements specified in § 63.1103(e)(4).

(9) The maintenance vent requirements specified in § 63.1103(e)(5).

(10) The requirements specified in § 63.1103(e)(9).

(11) The requirements in § 63.1108(a)(4)(i), (b)(1)(ii), (b)(2), and (b)(4)(ii)(B).

(12) The recordkeeping requirements specified in § 63.1109(e) through (i).

(13) The reporting requirements specified in § 63.1110(a)(10), (d)(1)(iv) and (v), and (e)(4) through (8).

* * * * *

■ 19. Section 63.1103 is amended:

■ a. By revising the definition of ''In organic hazardous air pollutant or in organic HAP service'' in paragraph (b)(2);

■ b. By revising paragraphs (e)(1)(i) introductory text, (e)(1)(i)(F), and (e)(1)(ii)(J);

■ c. In paragraph (e)(2) by;

■ i. Adding in alphabetical order a definition for ''Decoking operation'';

■ ii. Revising the definition of ''Ethylene process vent'';

■ iii. Adding in alphabetical order a definition for ''Force majeure event'';

■ iv. Removing the definition of ''Heat exchange system'';

■ v. Adding in alphabetical order definitions for ''Periodically discharged,'' ''Pressure-assisted multi-point flare,'' ''Pressure relief device,'' ''Radiant tube(s),'' and ''Relief valve'';

■ d. By revising paragraph (e)(3);

■ e. By adding paragraphs (e)(4) through (10); and

■ e. By revising Table 7 to § 63.1103(e).

The revisions and additions read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

(b) * * *

(2) * * *

In organic hazardous air pollutant or in organic HAP service means, for acrylic and modacrylic fiber production affected sources, that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 10 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

* * * * *

(e) * * *

(1) * * *

(i) *Affected source.* For the ethylene production (as defined in paragraph (e)(2) of this section) source category, the affected source comprises all emission points listed in paragraphs (e)(1)(i)(A) through (G) of this section that are associated with an ethylene production unit that is located at a major source, as defined in section 112(a) of the Act.

* * * * *

(F) All heat exchange systems (as defined in § 63.1082(b)) associated with an ethylene production unit.

* * * * *

(ii) * * *

(J) Air emissions from all ethylene cracking furnaces.

* * * * *

(2) * * *

Decoking operation means the coke combustion activity that occurs inside the radiant tube(s) in the ethylene cracking furnace firebox. Coke combustion activities during decoking can also occur in other downstream equipment such as the process gas outlet piping and transfer line exchangers or quench points.

Ethylene process vent means a gas stream with a flow rate greater than 0.005 standard cubic meters per minute containing greater than 20 parts per million by volume HAP that is continuously discharged during operation of an ethylene production unit. On and after July 6, 2023, ethylene process vent means a gas stream with a flow rate greater than 0.005 standard cubic meters per minute containing greater than 20 parts per million by volume HAP that is continuously or periodically discharged during operation of an ethylene production unit. Ethylene process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene process vents do not include:

(A) Pressure relief device discharges;

(B) Gaseous streams routed to a fuel gas system, including any flares using fuel gas, of which less than 50 percent

of the fuel gas is derived from an ethylene production unit;

(C) Gaseous streams routed to a fuel gas system whereby any flares using fuel gas, of which 50 percent or more of the fuel gas is derived from an ethylene production unit, comply with § 63.1103(e)(4) beginning no later than the compliance dates specified in § 63.1102(c);

(D) Leaks from equipment regulated under this subpart;

(E) Episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction until July 6, 2023;

(F) In situ sampling systems (online analyzers) until July 6, 2023; and

(G) Coke combustion emissions from decoking operations beginning no later than the compliance dates specified in § 63.1102(c).

* * * * *

Force majeure event means a release of HAP, either directly to the atmosphere from a pressure relief device or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the ethylene production unit (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the ethylene production unit that impacts the ethylene production unit's ability to operate.

* * * * *

Periodically discharged means gas stream discharges that are intermittent for which the total organic HAP concentration is greater than 20 parts per million by volume and total volatile organic compound emissions are 50 pounds per day or more. These intermittent discharges are associated with routine operations, maintenance activities, startups, shutdowns, malfunctions, or process upsets and do not include pressure relief device discharges or discharges classified as maintenance vents.

Pressure-assisted multi-point flare means a flare system consisting of multiple flare burners in staged arrays whereby the vent stream pressure is used to promote mixing and smokeless operation at the flare burner tips. Pressure-assisted multi-point flares are designed for smokeless operation at velocities up to Mach = 1 conditions (*i.e.,* sonic conditions), can be elevated or at ground level, and typically use cross-lighting for flame propagation to combust any flare vent gases sent to a particular stage of flare burners.

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Radiant tube(s) means any portion of the tube coil assembly located within the ethylene cracking furnace firebox whereby a thermal cracking reaction of hydrocarbons (in the presence of steam) occurs. Hydrocarbons and steam pass through the radiant tube(s) of the ethylene cracking furnace during normal operation and coke is removed from the inside of the radiant tube(s) during decoking operation.

Relief valve means a type of pressure relief device that is designed to re-close after the pressure relief.

* * * * *

(3) *Requirements.* The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in Table 7 to this section. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, except for paragraphs (d), (g), (h) through (j), (l)(1), and (n). An owner or operator must perform the applicability assessment procedures and methods for equipment leaks specified in § 63.1107. General compliance, recordkeeping, and reporting requirements are specified in § § 63.1108 through 63.1112. Before July 6, 2023, minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. A startup, shutdown, and malfunction plan is not required on and after July 6, 2023 and the requirements specified in § 63.1111 no longer apply; however, for historical compliance purposes, a copy of the plan must be retained and available on-site for five years after July 6, 2023. Except as specified in paragraph (e)(4)(i) of this section, procedures for approval of alternate means of emission limitations are specified in § 63.1113.

(4) *Flares.* Beginning no later than the compliance dates specified in § 63.1102(c), if a steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point flare is used as a control device for an emission point subject to the requirements in Table 7 to this section, then the owner or operator must meet the applicable requirements for flares as specified in §§ 63.670 and 63.671 of subpart CC, including the provisions in Tables 12 and 13 to subpart CC of this part, except as specified in paragraphs (e)(4)(i) through (xiv) of this section. This requirement also applies to any flare using fuel gas from a fuel gas system, of which 50 percent or more of the fuel gas is derived from an ethylene production unit, being used to control an emission point subject to the requirements in Table 7 of this section. For purposes of compliance with this paragraph, the following terms are defined in § 63.641 of subpart CC: Assist air, assist steam, center steam, combustion zone, combustion zone gas, flare, flare purge gas, flare supplemental gas, flare sweep gas, flare vent gas, lower steam, net heating value, perimeter assist air, pilot gas, premix assist air, total steam, and upper steam.

(i) The owner or operator may elect to comply with the alternative means of emissions limitation requirements specified in of § 63.670(r) of subpart CC in lieu of the requirements in § 63.670(d) through (f) of subpart CC, as applicable. However, instead of complying with § 63.670(r)(3) of subpart CC, the owner or operator must submit the alternative means of emissions limitation request following the requirements in § 63.1113.

(ii) Instead of complying with § 63.670(o)(2)(i) of subpart CC, the owner or operator must develop and implement the flare management plan no later than the compliance dates specified in § 63.1102(c).

(iii) Instead of complying with § 63.670(o)(2)(iii) of subpart CC, if required to develop a flare management plan and submit it to the Administrator, then the owner or operator must also submit all versions of the plan in portable document format (PDF) to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). If you claim some of the information in your flare management plan is confidential business information (CBI), submit a version with the CBI omitted via CEDRI. A complete plan, including information claimed to

be CBI and clearly marked as CBI, must be mailed to the following address: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Ethylene Production Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

(iv) Section 63.670(o)(3)(ii) of subpart CC and all references to § 63.670(o)(3)(ii) of subpart CC do not apply. Instead, the owner or operator must comply with the maximum flare tip velocity operating limit at all times.

(v) Substitute ''ethylene production unit'' for each occurrence of ''petroleum refinery.''

(vi) Each occurrence of ''refinery'' does not apply.

(vii) Except as specified in paragraph (e)(4)(vii)(G) of this section, if a pressure-assisted multi-point flare is used as a control device for an emission point subject to the requirements in Table 7 to this section, then the owner or operator must comply with the requirements specified in paragraphs (e)(4)(vii)(A) through (F) of this section.

(A) The owner or operator is not required to comply with the flare tip velocity requirements in § 63.670(d) and (k) of subpart CC;

(B) The owner or operator must substitute ''800'' for each occurrence of ''270'' in § 63.670(e) of subpart CC;

(C) The owner or operator must determine the 15-minute block average NHVvg using only the direct calculation method specified in § 63.670(l)(5)(ii) of subpart CC;

(D) Instead of complying with § 63.670(b) and (g) of subpart CC, if a pressure-assisted multi-point flare uses cross-lighting on a stage of burners rather than having an individual pilot flame on each burner, the owner or operator must operate each stage of the pressure-assisted multi-point flare with a flame present at all times when regulated material is routed to that stage of burners. Each stage of burners that cross-lights in the pressure-assisted multi-point flare must have at least two pilots with at least one continuously lit and capable of igniting all regulated material that is routed to that stage of burners. Each 15-minute block during which there is at least one minute where no pilot flame is present on a stage of burners when regulated material is routed to that stage is a deviation of the standard. Deviations in different 15-minute blocks from the same event are considered separate deviations. The pilot flame(s) on each stage of burners that use cross-lighting must be continuously monitored by a thermocouple or any other equivalent device used to detect the presence of a flame;

(E) Unless the owner or operator of a pressure-assisted multi-point flare chooses to conduct a cross-light performance demonstration as specified in this paragraph, the owner or operator must ensure that if a stage of burners on the flare uses cross-lighting, that the distance between any two burners in series on that stage is no more than 6 feet when measured from the center of one burner to the next burner. A distance greater than 6 feet between any two burners in series may be used provided the owner or operator conducts a performance demonstration that confirms the pressure-assisted multi-point flare will cross-light a minimum of three burners and the spacing between the burners and location of the pilot flame must be representative of the projected installation. The compliance demonstration must be approved by the permitting authority and a copy of this approval must be maintained onsite. The compliance demonstration report must include: A protocol describing the test methodology used, associated test method QA/QC parameters, the waste gas composition and NHVcz of the gas tested, the velocity of the waste gas tested, the pressure-assisted multi-point flare burner tip pressure, the time, length, and duration of the test, records of whether a successful cross-light was observed over all of the burners and the length of time it took for the burners to cross-light, records of maintaining a stable flame after a successful cross-light and the duration for which this was observed, records of any smoking events during the cross-light, waste gas temperature, meteorological conditions (*e.g.,* ambient temperature, barometric pressure, wind speed and direction, and relative humidity), and whether there were any observed flare flameouts; and

(F) The owner or operator of a pressure-assisted multi-point flare must install and operate pressure monitor(s) on the main flare header, as well as a valve position indicator monitoring system for each staging valve to ensure that the flare operates within the proper range of conditions as specified by the manufacturer. The pressure monitor must meet the requirements in Table 13 to subpart CC of this part.

(G) If a pressure-assisted multi-point flare is operating under the requirements of an approved alternative means of emission limitations, the owner or operator shall either continue to comply with the terms of the alternative means of emission limitations or comply with the provisions in paragraphs (e)(4)(vii)(A) through (F) of this section.

(viii) If an owner or operator chooses to determine compositional analysis for net heating value with a continuous process mass spectrometer, the owner or operator must comply with the requirements specified in paragraphs (e)(4)(viii)(A) through (G) of this section.

(A) The owner or operator must meet the requirements in § 63.671(e)(2). The owner or operator may augment the minimum list of calibration gas components found in § 63.671(e)(2) with compounds found during a pre-survey or known to be in the gas through process knowledge.

(B) Calibration gas cylinders must be certified to an accuracy of 2 percent and traceable to National Institute of Standards and Technology (NIST) standards.

(C) For unknown gas components that have similar analytical mass fragments to calibration compounds, the owner or operator may report the unknowns as an increase in the overlapped calibration gas compound. For unknown compounds that produce mass fragments that do not overlap calibration compounds, the owner or operator may use the response factor for the nearest molecular weight hydrocarbon in the calibration mix to quantify the unknown component's NHV_{vg}.

(D) The owner or operator may use the response factor for n-pentane to quantify any unknown components detected with a higher molecular weight than n-pentane.

(E) The owner or operator must perform an initial calibration to identify mass fragment overlap and response factors for the target compounds.

(F) The owner or operator must meet applicable requirements in Performance Specification 9 of 40 CFR part 60, appendix B, for continuous monitoring system acceptance including, but not limited to, performing an initial multi-point calibration check at three concentrations following the procedure in Section 10.1 and performing the periodic calibration requirements listed for gas chromatographs in Table 13 to subpart CC of this part, for the process mass spectrometer. The owner or operator may use the alternative sampling line temperature allowed under Net Heating Value by Gas Chromatograph in Table 13 to subpart CC of this part.

(G) The average instrument calibration error (CE) for each calibration compound at any calibration concentration must not differ by more than 10 percent from the certified cylinder gas value. The CE for each

component in the calibration blend must be calculated using the following equation:

$$CE = \frac{C_m - C_a}{C_a} x\ 100$$

Where:

C_m = Average instrument response (ppm)
C_a = Certified cylinder gas value (ppm)

(ix) An owner or operator using a gas chromatograph or mass spectrometer for compositional analysis for net heating value may choose to use the CE of $NHV_{measured}$ versus the cylinder tag value NHV as the measure of agreement for daily calibration and quarterly audits in lieu of determining the compound-specific CE. The CE for NHV at any calibration level must not differ by more than 10 percent from the certified cylinder gas value. The CE for must be calculated using the following equation:

$$CE = \frac{NHV_{measured} - NHV_a}{NHV_a} x\ 100$$

Where:

$NHV_{measured}$ = Average instrument response (Btu/scf)
NHV_a = Certified cylinder gas value (Btu/scf)

(x) Instead of complying with § 63.670(p) of subpart CC, the owner or operator must keep the flare monitoring records specified in § 63.1109(e).

(xi) Instead of complying with § 63.670(q) of subpart CC, the owner or operator must comply with the reporting requirements specified in § 63.1110(d) and (e)(4).

(xii) When determining compliance with the pilot flame requirements specified in § 63.670(b) and (g), substitute ''pilot flame or flare flame'' for each occurrence of ''pilot flame.''

(xiii) When determining compliance with the flare tip velocity and combustion zone operating limits specified in § 63.670(d) and (e), the requirement effectively applies starting with the 15-minute block that includes a full 15 minutes of the flaring event. The owner or operator is required to demonstrate compliance with the velocity and NHVcz requirements starting with the block that contains the fifteenth minute of a flaring event. The owner or operator is not required to demonstrate compliance for the previous 15-minute block in which the event started and contained only a fraction of flow.

(xiv) In lieu of meeting the requirements in §§ 63.670 and 63.671 of subpart CC, an owner or operator may submit a request to the Administrator for approval of an alternative test method in accordance with § 63.7(f). The alternative test method must be able to demonstrate on an ongoing basis at least once every 15-minutes that the flare meets 96.5% combustion efficiency and provide a description of the alternative recordkeeping and reporting that would be associated with the alternative test method. The alternative test method request may also include a request to use the alternative test method in lieu of the pilot or flare flame monitoring requirements of 63.670(g).

(5) *Maintenance vents.* Unless an extension is requested in accordance with the provisions in § 63.6(i) of subpart A, beginning no later than the compliance dates specified in § 63.1102(c), an owner or operator may designate an ethylene process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. The owner or operator must comply with the applicable requirements in paragraphs (e)(5)(i) through (iii) of this section for each maintenance vent.

(i) Prior to venting to the atmosphere, remove process liquids from the equipment as much as practical and depressurize the equipment to either: A flare meeting the requirements specified in paragraph (e)(4) of this section, or a non-flare control device meeting the requirements specified in § 63.982(c)(2) of subpart SS, until one of the following conditions, as applicable, is met.

(A) The vapor in the equipment served by the maintenance vent has a lower explosive limit (LEL) of less than 10 percent.

(B) If there is no ability to measure the LEL of the vapor in the equipment based on the design of the equipment, the pressure in the equipment served by the maintenance vent is reduced to 5 pounds per square inch gauge (psig) or less. Upon opening the maintenance vent, active purging of the equipment cannot be used until the LEL of the vapors in the maintenance vent (or inside the equipment if the maintenance is a hatch or similar type of opening) is less than 10 percent.

(C) The equipment served by the maintenance vent contains less than 50 pounds of total volatile organic compounds (VOC).

(D) If, after applying best practices to isolate and purge equipment served by a maintenance vent, none of the applicable criterion in paragraphs (e)(5)(i)(A) through (C) of this section can be met prior to installing or removing a blind flange or similar equipment blind, then the pressure in the equipment served by the maintenance vent must be reduced to 2 psig or less before installing or removing the equipment blind. During installation or removal of the equipment blind, active purging of the equipment may be used provided the equipment pressure at the location where purge gas is introduced remains at 2 psig or less.

(ii) Except for maintenance vents complying with the alternative in paragraph (e)(5)(i)(C) of this section, the owner or operator must determine the LEL or, if applicable, equipment pressure using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer's specifications.

(iii) For maintenance vents complying with the alternative in paragraph (e)(5)(i)(C) of this section, the owner or operator must determine mass of VOC in the equipment served by the maintenance vent based on the equipment size and contents after considering any contents drained or purged from the equipment. Equipment size may be determined from equipment design specifications. Equipment contents may be determined using process knowledge.

(6) *Bypass lines.* Beginning on the compliance dates specified in § 63.1102(c), the use of a bypass line at any time on a closed vent system to divert emissions subject to the requirements in Table 7 to § 63.1103(e) to the atmosphere or to a control device not meeting the requirements specified in Table 7 of this subpart is an emissions standards violation. If the owner or operator is subject to the bypass monitoring requirements of § 63.983(a)(3) of subpart SS, then the owner or operator must continue to comply with the requirements in § 63.983(a)(3) of subpart SS and the recordkeeping and reporting requirements in §§ 63.998(d)(1)(ii) and 63.999(c)(2) of subpart SS, in addition to paragraph (e)(9) of this section, the

recordkeeping requirements specified in § 63.1109(g), and the reporting requirements specified in § 63.1110(e)(6). For purposes of compliance with this paragraph, the phrase ''Except for equipment needed for safety purposes such as pressure relief devices, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines'' in § 63.983(a)(3) does not apply; instead, the exemptions specified in paragraph (e)(6)(i) and (ii) of this section apply.

(i) Except for pressure relief devices subject to 40 CFR 63.1107(h)(4), equipment such as low leg drains and equipment subject to the requirements specified in paragraph (f) of Table 7 to § 63.1103(e) are not subject to this paragraph (e)(6) of this section.

(ii) Open-ended valves or lines that use a cap, blind flange, plug, or second valve and follow the requirements specified in § 60.482–6(a)(2), (b), and (c) or follow requirements codified in another regulation that are the same as § 60.482–6(a)(2), (b), and (c) are not subject to this paragraph (e)(6) of this section.

(7) *Decoking operation standards for ethylene cracking furnaces.* Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must comply with paragraph (e)(7)(i) of this section and also use at least two of the control measures specified in paragraphs (e)(7)(ii) through (v) of this section to minimize coke combustion emissions from the decoking of the radiant tube(s) in each ethylene cracking furnace.

(i) During normal operations, conduct daily inspections of the firebox burners and repair all burners that are impinging on the radiant tube(s) as soon as practical, but not later than 1 calendar day after the flame impingement is found. The owner or operator may delay burner repair beyond 1 calendar day using the procedures specified in paragraphs (e)(7)(i)(A) and (B) of this section provided the repair cannot be completed during normal operations, the burner cannot be shutdown without significantly impacting the furnace heat distribution and firing rate, and action is taken to reduce flame impingement as much as possible during continued operation. An inspection may include, but is not limited to: visual inspection of the radiant tube(s) for localized bright spots (this may be confirmed with a temperature gun), use of luminescent powders injected into the burner to illuminate the flame pattern, or identifying continued localized coke build-up that causes short runtimes between decoking cycles. A repair may include, but is not limited to: Taking the burner out of service, replacing the burner, adjusting the alignment of the burner, adjusting burner configuration, making burner air corrections, repairing a malfunction of the fuel liquid removal equipment, or adding insulation around the radiant tube(s).

(A) If a shutdown for repair would cause greater emissions than the potential emissions from delaying repair, repair must be completed following the next planned decoking operation (and before returning the ethylene cracking furnace back to normal operations) or during the next ethylene cracking furnace complete shutdown (when the ethylene cracking furnace firebox is taken completely off-line), whichever is earlier.

(B) If a shutdown for repair would cause lower emissions than the potential emissions from delaying repair, then shutdown of the ethylene cracking furnace must immediately commence and the repair must be completed before returning the ethylene cracking furnace back to normal operations.

(ii) During decoking operations, beginning before the expected end of the air-in decoke time, continuously monitor (or use a gas detection tube or equivalent sample technique every three hours to monitor) the CO_2 concentration in the combined decoke effluent downstream of the last component being decoked for an indication that the coke combustion in the ethylene cracking furnace radiant tube(s) is complete. The owner or operator must immediately initiate procedures to stop the coke combustion once the CO_2 concentration at the outlet consistently reaches a level that indicates combustion of coke is complete and site decoke completion assurance procedures have been concluded.

(iii) During decoking operations, continuously monitor the temperature at the radiant tube(s) outlet when air is being introduced to ensure the coke combustion occurring inside the radiant tube(s) is not so aggressive (*i.e.,* too hot) that it damages either the radiant tube(s) or ethylene cracking furnace isolation valve(s). The owner or operator must immediately initiate procedures to reduce the temperature at the radiant tube(s) outlet once the temperature reaches a level that indicates combustion of coke inside the radiant tube(s) is too aggressive.

(iv) After decoking, but before returning the ethylene cracking furnace back to normal operations, verify that decoke air is no longer being added.

(v) After decoking, but before returning the ethylene cracking furnace back to normal operations and/or during normal operations, inject materials into the steam or feed to reduce coke formation inside the radiant tube(s) during normal operation.

(8) *Ethylene cracking furnace isolation valve inspections.* Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must conduct ethylene cracking furnace isolation valve inspections as specified in paragraphs (e)(8)(i) and (ii) of this section.

(i) Prior to decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) being decoked is completely isolated from the ethylene production process so that no emissions generated from decoking operations are sent to the ethylene production process. If poor isolation is identified, then the owner or operator must rectify the isolation issue prior to continuing decoking operations to prevent leaks into the ethylene production process.

(ii) Prior to returning the ethylene cracking furnace to normal operations after a decoking operation, inspect the applicable ethylene cracking furnace isolation valve(s) to confirm that the radiant tube(s) that was decoked is completely isolated from the decoking pot or furnace firebox such that no emissions are sent from the radiant tube(s) to the decoking pot or furnace firebox once the ethylene cracking furnace returns to normal operation. If poor isolation is identified, then the owner or operator must rectify the isolation issue prior to continuing normal operations to prevent product from escaping to the atmosphere through the decoking pot or furnace firebox.

(9) *Startup, shutdown, and malfunction referenced provisions.* Beginning no later than the compliance dates specified in § 63.1102(c), the referenced provisions specified in paragraphs (e)(9)(i) through (xx) of this section do not apply when demonstrating compliance with paragraph (e)(3) of this section.

(i) The second sentence of § 63.181(d)(5)(i) of subpart H.

(ii) The second sentence of § 63.983(a)(5) of subpart SS.

(iii) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.984(a) of subpart SS.

(iv) The phrase ''except during periods of start-up, shutdown and malfunction as specified in the referencing subpart'' in § 63.985(a) of subpart SS.

(v) The phrase ''other than start-ups, shutdowns, or malfunctions'' in § 63.994(c)(1)(ii)(D) of subpart SS.

(vi) Section 63.996(c)(2)(ii) of subpart SS.

(vii) The last sentence of § 63.997(e)(1)(i) of subpart SS.

(viii) Section 63.998(b)(2)(iii) of subpart SS.

(ix) The phrase ''other than periods of startups, shutdowns, and malfunctions'' from § 63.998(b)(5)(i)(A) of subpart SS.

(x) The phrase ''other than a start-up, shutdown, or malfunction'' from § 63.998(b)(5)(i)(B)(3) of subpart SS.

(xi) The phrase ''other than periods of startups, shutdowns, and malfunctions'' from § 63.998(b)(5)(i)(C) of subpart SS.

(xii) The phrase ''other than a start-up, shutdown, or malfunction'' from § 63.998(b)(5)(ii)(C) of subpart SS.

(xiii) The phrase ''except as provided in paragraphs (b)(6)(i)(A) and (B) of this section'' from § 63.998(b)(6)(i) of subpart SS.

(xiv) The second sentence of § 63.998(b)(6)(ii) of subpart SS.

(xv) Section 63.998(c)(1)(ii)(D) through (G) of subpart SS.

(xvi) Section 63.998(d)(3) of subpart SS.

(xvii) The phrase ''may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or'' from § 63.1024(f)(4)(i) of subpart UU.

(xviii) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1026(e)(1)(ii)(A) of subpart UU.

(xix) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1028(e)(1)(i)(A) of subpart UU.

(xx) The phrase ''(except periods of startup, shutdown, or malfunction)'' from § 63.1031(b)(1) of subpart UU.

(10) *Storage vessel degassing.* Beginning no later than the compliance dates specified in § 63.1102(c), for each storage vessel subject to paragraph (b) or (c) of Table 7 to § 63.1103(e), the owner or operator must comply with paragraphs (e)(10)(i) through (iii) of this section during storage vessel shutdown operations (*i.e.,* emptying and degassing of a storage vessel) until the vapor space concentration in the storage vessel is less than 10 percent of the LEL. The owner or operator must determine the LEL using process instrumentation or portable measurement devices and follow procedures for calibration and maintenance according to manufacturer's specifications.

(i) Remove liquids from the storage vessel as much as practicable;

(ii) Comply with one of the following:

(A) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section.

(B) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(1) and paragraph (e)(9) of this section.

(C) Reduce emissions of total organic HAP by 98 weight-percent by routing emissions to a fuel gas system or process and meet the requirements specified in § 63.982(d) and paragraph (e)(9) of this section.

(iii) Maintain records necessary to demonstrate compliance with the requirements in § 63.1108(a)(4)(ii) including, if appropriate, records of existing standard site procedures used to empty and degas (deinventory) equipment for safety purposes.

TABLE 7 TO § 63.1103(E)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
(a) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥4 cubic meters but <95 cubic meters.	(i) Fill the vessel through a submerged pipe; or (ii) Comply with the requirements for storage vessels with capacities ≥95 cubic meters.
(b) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and the capacity of the vessel is ≥95 cubic meters.	(i) Except as specified in paragraph (b)(1)(iii) of this table, comply with the requirements of subpart WW of this part; or (ii) Except as specified in paragraph (b)(1)(iii) of this table, reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1). (iii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with paragraph (b)(1)(iii)(A), (B), (C), or (D) of this table, and (e)(10) of this section. (A) Comply with the requirements of subpart WW of this part; or (B) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (C) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(1) and (e)(9) of this section; or (D) Reduce emissions of total organic HAP by 98 weight-percent by routing emissions to a fuel gas system[(a)] or process and meet the requirements specified in § 63.982(d) and (e)(9) of this section.

TABLE 7 TO § 63.1103(E)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
(c) A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP.	(1) The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals.	(i) Except as specified in paragraph (c)(1)(ii) of this table, reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices and meet the requirements of § 63.982(a)(1). (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with paragraph (c)(1)(ii)(A), (B), or (C) of this table, and (e)(10) of this section. (A) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (B) Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(1) and (e)(9) of this section; or (C) Reduce emissions of total organic HAP by 98 weight-percent by routing emissions to a fuel gas system[a] or process and meet the requirements specified in § 63.982(d) and (e)(9) of this section.
(d) An ethylene process vent (as defined in paragraph (e)(2) of this section).	(1) The process vent is at an existing source and the vent stream has a flow rate ≥0.011 scmm and a total organic HAP concentration ≥50 parts per million by volume on a dry basis; or the process vent is at a new source and the vent stream has a flow rate ≥0.008 scmm and a total organic HAP concentration ≥30 parts per million by volume on a dry basis.	(i) Except as specified in paragraph (d)(1)(ii) of this table, reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3% oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices and meet the requirements specified in § 63.982(b) and (c)(2). (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with the maintenance vent requirements specified in paragraph (e)(5) of this section and either paragraph (d)(1)(ii)(A) or (B) of this table. (A) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3-percent oxygen; whichever is less stringent, by venting emissions through a closed vent system to a flare and meet the requirements of § 63.983 and paragraphs (e)(4) and (9) of this section; or (B) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3-percent oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of non-flare control devices and meet the requirements specified in § 63.982(c)(2) and (e)(9) of this section.
(e) A transfer rack (as defined in paragraph (e)(2) of this section).	(1) Materials loaded have a true vapor pressure of total organic HAP ≥3.4 kilopascals and ≥76 cubic meters per day (averaged over any consecutive 30-day period) of HAP-containing material is loaded.	(i) Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume on a dry basis corrected to 3-percent oxygen; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices as specified in § 63.1105 and meet the requirements specified in paragraph (e)(9) of this section.; or

TABLE 7 TO § 63.1103(E)—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
		(ii) Install process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in § 63.1105 and meet the requirements specified in paragraph (e)(9) of this section.[a]
(f) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.	(1) The equipment contains or contacts ≥5 weight-percent organic HAP; and the equipment is not in vacuum service.	(i) Except as specified in paragraph (f)(1)(ii) of this table, comply with the requirements of subpart UU of this part. (ii) Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements of paragraph (e)(9) of this section and subpart UU of this part, except instead of complying with the pressure relief device requirements of § 63.1030 of subpart UU, meet the requirements of § 63.1107(h), and in lieu of the flare requirement of § 63.1034(b)(2)(iii), comply with the requirements specified in paragraph (e)(4) of this section.[a]
(g) Processes that generate waste (as defined in paragraph (e)(2) of this section.	(1) The waste stream contains any of the following HAP: Benzene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene.	Comply with the waste requirements of subpart XX of this part. For ethylene production unit waste stream requirements, terms have the meanings specified in subpart XX.
(h) A heat exchange system (as defined in § 63.1082(b)).	.....	Comply with the heat exchange system requirements of subpart XX of this part.
(i) A closed vent system that contains one or more bypass lines.	(1) The bypass line could divert a vent stream directly to the atmosphere or to a control device not meeting the requirements in this table.	Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements specified in paragraphs (e)(6) and (9) of this section.
(j) A decoking operation associated with an ethylene cracking furnace.	.....	Beginning no later than the compliance dates specified in § 63.1102(c), comply with the requirements specified in paragraphs (e)(7) and (8) of this section.

[a] Beginning no later than the compliance dates specified in § 63.1102(c), any flare using fuel gas from a fuel gas system, of which 50 percent or more of the fuel gas is derived from an ethylene production unit as determined on an annual average basis, must be in compliance with paragraph (e)(4) of this section.

* * * * *

■ 20. Section 63.1104 is amended by revising paragraph (c) to read as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

* * * * *

(c) *Applicability assessment requirement.* The TOC or organic HAP concentrations, process vent volumetric flow rates, process vent heating values, process vent TOC or organic HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessments for process vent control applicability assessment requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. For acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and ethylene production affected sources, operations during periods of malfunction shall not constitute representative conditions for the purpose of an applicability test. For all other affected sources, operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an applicability test.

* * * * *

■ 21. Section 63.1105 is amended by revising paragraph (a) introductory text and adding paragraph (a)(5) to read as follows:

§ 63.1105 Transfer racks.

(a) *Design requirements.* Except as specified in paragraph (a)(5) of this section, the owner or operator shall equip each transfer rack with one of the control options listed in paragraphs (a)(1) through (5) of this section.

* * * * *

(5) Beginning no later than the compliance dates specified in § 63.1102(c), if emissions are vented through a closed vent system to a flare at an ethylene production affected source, then the owner or operator must comply with the requirements specified in § 63.1103(e)(4) instead of the requirements in § 63.987 and the provisions regarding flare compliance assessments at § 63.997(a) through (c).

* * * * *

■ 22. Section 63.1107 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 63.1107 Equipment leaks.

(a) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in organic HAP service is presumed to be in organic HAP service unless an owner or operator demonstrates that the piece of equipment is not in organic HAP service. For a piece of equipment to be considered not in organic HAP service, it must be determined that the percent organic HAP content can be reasonably expected not to exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source on an annual average basis. For purposes of determining the percent

organic HAP content of the process fluid that is contained in or contacts equipment, Method 18 of 40 CFR part 60, appendix A shall be used. For purposes of determining the percent organic HAP content of the process fluid that is contained in or contacts equipment for the ethylene production affected sources, the following methods shall be used for equipment: For equipment in gas and vapor service, as that term is defined in Subpart UU of this part, shall use Method 18 of 40 CFR part 60, appendix A; for equipment in liquid service, as that term is defined in Subpart UU of this part, shall use a combination of Method 18 of 40 CFR part 60, appendix A, SW–846–8260B (incorporated by reference, see § 63.14); and SW–846–8270D (incorporated by reference, see § 63.14), as appropriate.

* * * * *

(h) *Ethylene production pressure release requirements.* Beginning no later than the compliance dates specified in § 63.1102(c), except as specified in paragraph (h)(4) of this section, owners or operators of ethylene production affected sources must comply with the requirements specified in paragraphs (h)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 63.1030 of subpart UU or § 63.165 of subpart H. Beginning no later than the compliance dates specified in § 63.1102(c), except as specified in paragraphs (h)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraphs (h)(3) and (6) through (8) of this section for all pressure relief devices.

(1) *Operating requirements.* Except during a pressure release, operate each pressure relief device in organic HAP gas or vapor service with an instrument reading of less than 500 ppm above background as measured by the method in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H.

(2) *Pressure release requirements.* For pressure relief devices in organic HAP gas or vapor service, the owner or operator must comply with the applicable requirements in paragraphs (h)(2)(i) through (iii) of this section following a pressure release.

(i) If the pressure relief device does not consist of or include a rupture disk, conduct instrument monitoring, as specified in § 63.1023(b) of subpart UU or § 63.180(b) and (c) of subpart H, no later than 5 calendar days after the pressure relief device returns to organic HAP gas or vapor service following a pressure release to verify that the pressure relief device is operating with an instrument reading of less than 500 ppm.

(ii) If the pressure relief device includes a rupture disk, either comply with the requirements in paragraph (h)(2)(i) of this section (and do not replace the rupture disk) or install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release.

(iii) If the pressure relief device consists only of a rupture disk, install a replacement disk as soon as practicable after a pressure release, but no later than 5 calendar days after the pressure release. The owner or operator must not initiate startup of the equipment served by the rupture disk until the rupture disc is replaced.

(3) *Pressure release management.* Except as specified in paragraphs (h)(4) and (5) of this section, the owner or operator must comply with the requirements specified in paragraphs (h)(3)(i) through (v) of this section for all pressure relief devices in organic HAP service.

(i) The owner or operator must equip each affected pressure relief device with a device(s) or use a monitoring system that is capable of:

(A) Identifying the pressure release;

(B) Recording the time and duration of each pressure release; and

(C) Notifying operators immediately that a pressure release is occurring. The device or monitoring system must be either specific to the pressure relief device itself or must be associated with the process system or piping, sufficient to indicate a pressure release to the atmosphere. Examples of these types of devices and systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, or pressure monitor.

(ii) The owner or operator must apply at least three redundant prevention measures to each affected pressure relief device and document these measures. Examples of prevention measures include:

(A) Flow, temperature, liquid level and pressure indicators with deadman switches, monitors, or automatic actuators. Independent, non-duplicative systems within this category count as separate redundant prevention measures.

(B) Documented routine inspection and maintenance programs and/or operator training (maintenance programs and operator training may count as only one redundant prevention measure).

(C) Inherently safer designs or safety instrumentation systems.

(D) Deluge systems.

(E) Staged relief system where the initial pressure relief device (with lower set release pressure) discharges to a flare or other closed vent system and control device.

(iii) If any affected pressure relief device releases to atmosphere as a result of a pressure release event, the owner or operator must perform root cause analysis and corrective action analysis according to the requirement in paragraph (h)(6) of this section and implement corrective actions according to the requirements in paragraph (h)(7) of this section. The owner or operator must also calculate the quantity of organic HAP released during each pressure release event and report this quantity as required in § 63.1110(e)(8)(iii). Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(iv) The owner or operator must determine the total number of release events that occurred during the calendar year for each affected pressure relief device separately. The owner or operator must also determine the total number of release events for each pressure relief device for which the root cause analysis concluded that the root cause was a force majeure event, as defined in § 63.1103(e)(2).

(v) Except for pressure relief devices described in paragraphs (h)(4) and (5) of this section, the following release events from an affected pressure relief device are a violation of the pressure release management work practice standards.

(A) Any release event for which the root cause of the event was determined to be operator error or poor maintenance.

(B) A second release event not including force majeure events from a single pressure relief device in a 3-calendar year period for the same root cause for the same equipment.

(C) A third release event not including force majeure events from a single pressure relief device in a 3-calendar year period for any reason.

(4) *Pressure relief devices routed to a control device, process, fuel gas system, or drain system.* (i) If all releases and potential leaks from a pressure relief device are routed through a closed vent system to a control device, back into the process, a fuel gas system, or drain system, then the owner or operator is not required to comply with paragraph (h)(1), (2), or (3) of this section.

(ii) Before the compliance dates specified in § 63.1102(c), both the

closed vent system and control device (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in § 63.982(b) and (c)(2). Beginning no later than the compliance dates specified in § 63.1102(c), both the closed vent system and control device (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in §§ 63.982(c)(2), 63.983, and 63.1103(e)(4). For purposes of compliance with this paragraph, the phrase ''Except for equipment needed for safety purposes such as pressure relief devices'' in § 63.983(a)(3) does not apply.

(iii) The drain system (if applicable) referenced in paragraph (h)(4)(i) of this section must meet the applicable requirements specified in § 61.346 or § 63.136.

(5) *Pressure relief devices exempted from pressure release management requirements.* The following types of pressure relief devices are not subject to the pressure release management requirements in paragraph (h)(3) of this section.

(i) Pressure relief devices in heavy liquid service, as defined in § 63.1020 of subpart UU.

(ii) Thermal expansion relief valves.

(iii) Pressure relief devices on mobile equipment.

(iv) Pilot-operated pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, a fuel gas system, or drain system.

(v) Balanced bellows pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, a fuel gas system, or drain system.

(6) *Root cause analysis and corrective action analysis.* A root cause analysis and corrective action analysis must be completed as soon as possible, but no later than 45 days after a release event. Special circumstances affecting the number of root cause analyses and/or corrective action analyses are provided in paragraphs (h)(6)(i) through (iv) of this section.

(i) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices that are installed on the same equipment to release.

(ii) You may conduct a single root cause analysis and corrective action analysis for a single emergency event that causes two or more pressure relief devices to release, regardless of the equipment served, if the root cause is reasonably expected to be a *force majeure* event, as defined in § 63.1103(e)(2).

(iii) Except as provided in paragraphs (h)(6)(i) and (ii) of this section, if more than one pressure relief device has a release during the same time period, an initial root cause analysis must be conducted separately for each pressure relief device that had a release. If the initial root cause analysis indicates that the release events have the same root cause(s), the initial separate root cause analyses may be recorded as a single root cause analysis and a single corrective action analysis may be conducted.

(7) *Corrective action implementation.* Each owner or operator required to conduct a root cause analysis and corrective action analysis as specified in paragraphs (h)(3)(iii) and (6) of this section, must implement the corrective action(s) identified in the corrective action analysis in accordance with the applicable requirements in paragraphs (h)(7)(i) through (iii) of this section.

(i) All corrective action(s) must be implemented within 45 days of the event for which the root cause and corrective action analyses were required or as soon thereafter as practicable. If an owner or operator concludes that no corrective action should be implemented, the owner or operator must record and explain the basis for that conclusion no later than 45 days following the event.

(ii) For corrective actions that cannot be fully implemented within 45 days following the event for which the root cause and corrective action analyses were required, the owner or operator must develop an implementation schedule to complete the corrective action(s) as soon as practicable.

(iii) No later than 45 days following the event for which a root cause and corrective action analyses were required, the owner or operator must record the corrective action(s) completed to date, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(8) *Flowing pilot-operated pressure relief devices.* For ethylene production affected sources that commenced construction or reconstruction on or before October 9, 2019, owners or operators are prohibited from installing a flowing pilot-operated pressure relief device or replacing any pressure relief device with a flowing pilot-operated pressure relief device after July 6, 2023. For ethylene production affected sources that commenced construction or reconstruction after October 9, 2019, owners or operators are prohibited from installing and operating flowing pilot-operated pressure relief devices. For purpose of compliance with this paragraph, a flowing pilot-operated pressure relief device means the type of pilot-operated pressure relief device where the pilot discharge vent continuously releases emissions to the atmosphere when the pressure relief device is actuated.

■ 23. Section 63.1108 is amended by revising paragraphs (a) introductory text, (a)(4), (b)(1)(ii), (b)(2) introductory text, (b)(3), (b)(4)(i) introductory text, and (b)(4)(ii)(B) to read as follows:

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* The requirements of paragraphs (a)(1), (2), and (5) of this section apply to all affected sources except acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. The requirements of paragraph (a)(4) of this section apply only to acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. The requirements of paragraphs (a)(3), (6), and (7) of this section apply to all affected sources.

* * * * *

(4)(i) For acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources, the emission limitations and established parameter ranges of this part shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. Equipment leak requirements shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(ii) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty

to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

(b) * * *

(1) * * *

(ii) Excused excursions are not allowed for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. For all other affected sources, including ethylene production affected sources prior to the compliance dates specified in § 63.1102(c), an excused excursion, as described in § 63.998(b)(6)(ii), is not a violation.

(2) *Parameter monitoring: Excursions.* An excursion is not a violation in cases where continuous monitoring is required and the excursion does not count toward the number of excused excursions (as described in § 63.998(b)(6)(ii)), if the conditions of paragraph (b)(2)(i) or (ii) of this section are met, except that the conditions of paragraph (b)(2)(i) of this section do not apply for acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources. Nothing in this paragraph shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart or a subpart referenced by this subpart.

* * * * *

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator. This information may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan under § 63.1111, if applicable), review of operation and maintenance records, and inspection of the affected source, and alternatives approved as specified in § 63.1113.

(4) * * *

(i) *Applicability assessments.* Unless otherwise specified in a relevant test method required to assess control applicability, each test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in this subpart. The arithmetic mean of the results of the three runs shall apply when assessing applicability. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run if it meets the criteria specified in paragraphs (b)(4)(i)(A) through (D) of this section.

* * * * *

(ii) * * *

(B) For acrylic and modacrylic fiber production affected sources, polycarbonate production affected sources, and beginning no later than the compliance dates specified in § 63.1102(c), ethylene production affected sources, performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 24. Section 63.1109 is amended by adding paragraphs (e) through (i) to read as follows:

§ 63.1109 Recordkeeping requirements.

* * * * *

(e) *Ethylene production flare records.* For each flare subject to the requirements in § 63.1103(e)(4), owners or operators must keep records specified in paragraphs (e)(1) through (15) of this section in lieu of the information required in § 63.998(a)(1) of subpart SS.

(1) Retain records of the output of the monitoring device used to detect the presence of a pilot flame or flare flame as required in § 63.670(b) of subpart CC and the presence of a pilot flame as required in § 63.1103(e)(4)(vii)(D) for a minimum of 2 years. Retain records of each 15-minute block during which there was at least one minute that no pilot flame or flare flame is present when regulated material is routed to a flare for a minimum of 5 years. For each pressure-assisted multi-point flare that uses cross-lighting, retain records of each 15-minute block during which there was at least one minute that no pilot flame is present on each stage when regulated material is routed to a flare for a minimum of 5 years. You may reduce the collected minute-by-minute data to a 15-minute block basis with an indication of whether there was at least one minute where no pilot flame or flare flame was present.

(2) Retain records of daily visible emissions observations as specified in paragraphs (e)(2)(i) through (iv) of this section, as applicable, for a minimum of 3 years.

(i) To determine when visible emissions observations are required, the record must identify all periods when regulated material is vented to the flare.

(ii) If visible emissions observations are performed using Method 22 of 40 CFR part 60, appendix A–7, then the record must identify whether the visible emissions observation was performed, the results of each observation, total duration of observed visible emissions, and whether it was a 5-minute or 2-hour observation. Record the date and start time of each visible emissions observation.

(iii) If a video surveillance camera is used pursuant to § 63.670(h)(2) of subpart CC, then the record must include all video surveillance images recorded, with time and date stamps.

(iv) For each 2-hour period for which visible emissions are observed for more than 5 minutes in 2 consecutive hours, then the record must include the date and start and end time of the 2-hour period and an estimate of the cumulative number of minutes in the 2-hour period for which emissions were visible.

(3) The 15-minute block average cumulative flows for flare vent gas and, if applicable, total steam, perimeter assist air, and premix assist air specified to be monitored under § 63.670(i) of subpart CC, along with the date and time interval for the 15-minute block. If multiple monitoring locations are used to determine cumulative vent gas flow, total steam, perimeter assist air, and premix assist air, then retain records of the 15-minute block average flows for each monitoring location for a minimum of 2 years, and retain records of the 15-minute block average cumulative flows that are used in subsequent calculations

for a minimum of 5 years. If pressure and temperature monitoring is used, then retain records of the 15-minute block average temperature, pressure, and molecular weight of the flare vent gas or assist gas stream for each measurement location used to determine the 15-minute block average cumulative flows for a minimum of 2 years, and retain records of the 15-minute block average cumulative flows that are used in subsequent calculations for a minimum of 5 years.

(4) The flare vent gas compositions specified to be monitored under § 63.670(j) of subpart CC. Retain records of individual component concentrations from each compositional analysis for a minimum of 2 years. If an NHVvg analyzer is used, retain records of the 15-minute block average values for a minimum of 5 years.

(5) Each 15-minute block average operating parameter calculated following the methods specified in § 63.670(k) through (n) of subpart CC, as applicable.

(6) All periods during which operating values are outside of the applicable operating limits specified in § 63.670(d) through (f) of subpart CC and § 63.1103(e)(4)(vii) when regulated material is being routed to the flare.

(7) All periods during which the owner or operator does not perform flare monitoring according to the procedures in § 63.670(g) through (j) of subpart CC.

(8) For pressure-assisted multi-point flares, if a stage of burners on the flare uses cross-lighting, then a record of any changes made to the distance between burners.

(9) For pressure-assisted multi-point flares, all periods when the pressure monitor(s) on the main flare header show burners are operating outside the range of the manufacturer's specifications. Indicate the date and time for each period, the pressure measurement, the stage(s) and number of burners affected, and the range of manufacturer's specifications.

(10) For pressure-assisted multi-point flares, all periods when the staging valve position indicator monitoring system indicates a stage of the pressure-assisted multi-point flare should not be in operation and when a stage of the pressure-assisted multi-point flare should be in operation and is not. Indicate the date and time for each period, whether the stage was supposed to be open, but was closed or vice versa, and the stage(s) and number of burners affected.

(11) Records of periods when there is flow of vent gas to the flare, but when there is no flow of regulated material to the flare, including the start and stop time and dates of periods of no regulated material flow.

(12) Records when the flow of vent gas exceeds the smokeless capacity of the flare, including start and stop time and dates of the flaring event.

(13) Records of the root cause analysis and corrective action analysis conducted as required in § 63.670(o)(3) of subpart CC and § 63.1103(e)(4)(iv), including an identification of the affected flare, the date and duration of the event, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.670(o)(5)(i) of subpart CC.

(14) For any corrective action analysis for which implementation of corrective actions are required in § 63.670(o)(5) of subpart CC, a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(15) Records described in § 63.10(b)(2)(vi).

(f) *Ethylene production maintenance vent records.* For each maintenance vent opening subject to the requirements in § 63.1103(e)(5), the owner or operator must keep the applicable records specified in (f)(1) through (5) of this section.

(1) The owner or operator must maintain standard site procedures used to deinventory equipment for safety purposes (*e.g.,* hot work or vessel entry procedures) to document the procedures used to meet the requirements in § 63.1103(e)(5). The current copy of the procedures must be retained and available on-site at all times. Previous versions of the standard site procedures, as applicable, must be retained for 5 years.

(2) If complying with the requirements of § 63.1103(e)(5)(i)(A) and the LEL at the time of the vessel opening exceeds 10 percent, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and the LEL at the time of the vessel opening.

(3) If complying with the requirements of § 63.1103(e)(5)(i)(B) and either the vessel pressure at the time of the vessel opening exceeds 5 psig or the LEL at the time of the active purging was initiated exceeds 10 percent, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, the pressure of the vessel or equipment at the time of discharge to the atmosphere and, if applicable, the LEL of the vapors in the equipment when active purging was initiated.

(4) If complying with the requirements of § 63.1103(e)(5)(i)(C), records of the estimating procedures used to determine the total quantity of VOC in equipment and the type and size limits of equipment that contain less than 50 pounds of VOC at the time of maintenance vent opening. For each maintenance vent opening of equipment that contains greater than 50 pounds of VOC for which the deinventory procedures specified in paragraph (f)(1) of this section are not followed or for which the equipment opened exceeds the type and size limits established in the records specified in this paragraph, records that identify the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere.

(5) If complying with the requirements of § 63.1103(e)(5)(i)(D), identification of the maintenance vent, the process units or equipment associated with the maintenance vent, records documenting actions taken to comply with other applicable alternatives and why utilization of this alternative was required, the date of maintenance vent opening, the equipment pressure and LEL of the vapors in the equipment at the time of discharge, an indication of whether active purging was performed and the pressure of the equipment during the installation or removal of the blind if active purging was used, the duration the maintenance vent was open during the blind installation or removal process, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere for each applicable maintenance vent opening.

(g) *Ethylene production bypass line records.* For each flow event from a bypass line subject to the requirements in § 63.1103(e)(6), the owner or operator must maintain records sufficient to determine whether or not the detected flow included flow requiring control. For each flow event from a bypass line requiring control that is released either directly to the atmosphere or to a control device not meeting the requirements specified in Table 7 to § 63.1103(e), the owner or operator must include an estimate of the volume of

gas, the concentration of organic HAP in the gas and the resulting emissions of organic HAP that bypassed the control device using process knowledge and engineering estimates.

(h) *Decoking operation of ethylene cracking furnace records.* For each decoking operation of an ethylene cracking furnace subject to the standards in § 63.1103(e)(7) and (8), the owner or operator must keep the records specified in paragraphs (h)(1) through (6) of this section.

(1) Records that document the day and time each inspection specified in § 63.1103(e)(7)(i) took place, the results of each inspection, and any repairs made to correct the flame impingement; and for any repair that is delayed beyond 1 calendar day, the records specified in paragraphs (h)(1)(i) through (iii) of this section.

(i) The reason for the delay.

(ii) An estimate of the emissions from shutdown for repair and an estimate of the emissions likely to result from delay of repair, and whether the requirements at § 63.1103(e)(7)(i)(A) or (B) were met.

(iii) The date the repair was completed or, if the repair has not been completed, a schedule for completing the repair.

(2) If the owner or operator chooses to monitor the CO_2 concentration during decoking as specified in § 63.1103(e)(7)(ii), then for each decoking cycle, records must be kept for all measured CO_2 concentration values beginning before the expected end of the air-in decoke time, the criterion used to begin the CO_2 monitoring, and the target used to indicate combustion is complete. The target record should identify any time period the site routinely extends air addition beyond the specified CO_2 concentration and any decoke completion assurance procedures used to confirm all coke has been removed prior to stopping air addition that occurs after the CO_2 target is reached.

(3) If the owner or operator chooses to monitor the temperature at the radiant tube(s) outlet during decoking as specified in § 63.1103(e)(7)(iii), then for each decoking cycle, records must be kept for all measured temperature values and the target used to indicate a reduction in temperature of the inside of the radiant tube(s) is necessary.

(4) If the owner or operator chooses to comply with § 63.1103(e)(7)(iv), then records must be kept that document that decoke air is no longer being added after each decoking cycle.

(5) If the owner or operator chooses to treat steam or feed to reduce coke formation as specified in § 63.1103(e)(7)(v), then records must be kept that document that the planned treatment occurred.

(6) For each decoking operation of an ethylene cracking furnace subject to the requirements in § 63.1103(e)(8), the owner or operator must keep records that document the day each inspection took place and the results of each inspection where an isolation problem was identified including any repairs made to correct the problem.

(i) *Ethylene production pressure relief devices records.* For each pressure relief device subject to the pressure release management work practice standards in § 63.1107(h)(3), the owner or operator must keep the records specified in paragraphs (i)(1) through (3) of this section.

(1) Records of the prevention measures implemented as required in § 63.1107(h)(3)(ii).

(2) Records of the number of releases during each calendar year and the number of those releases for which the root cause was determined to be a force majeure event. Keep these records for the current calendar year and the past five calendar years.

(3) For each release to the atmosphere, the owner or operator must keep the records specified in paragraphs (i)(3)(i) through (iv) of this section.

(i) The start and end time and date of each pressure release to the atmosphere.

(ii) Records of any data, assumptions, and calculations used to estimate of the mass quantity of each organic HAP released during the event.

(iii) Records of the root cause analysis and corrective action analysis conducted as required in § 63.1107(h)(3)(iii), including an identification of the affected pressure relief device, a statement noting whether the event resulted from the same root cause(s) identified in a previous analysis and either a description of the recommended corrective action(s) or an explanation of why corrective action is not necessary under § 63.1107(h)(7)(i).

(iv) For any corrective action analysis for which implementation of corrective actions are required in § 63.1107(h)(7), a description of the corrective action(s) completed within the first 45 days following the discharge and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

■ 25. Section 63.1110 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(7), and (a)(9) introductory text;

■ b. Adding paragraph (a)(10);

■ c. Revising paragraphs (d)(1) introductory text and (d)(1)(i);

■ d. Adding paragraphs (d)(1)(iv) and (v);

■ e. Revising paragraph (e)(1);

■ f. Adding paragraphs (e)(4) through (8); and

■ g. Revising paragraphs (g)(1) and (2).

The revisions and additions read as follows:

§ 63.1110 Reporting requirements.

(a) *Required reports.* Each owner or operator of an affected source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Each owner or operator of an acrylic and modacrylic fiber production affected source or polycarbonate production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(9) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable. Beginning no later than the compliance dates specified in § 63.1102(c), each owner or operator of an ethylene production affected source subject to this subpart shall also submit the reports listed in paragraph (a)(10) of this section in addition to the reports listed in paragraphs (a)(1) through (8) of this section, as applicable.

* * * * *

(7) Startup, Shutdown, and Malfunction Reports described in § 63.1111 (except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources).

* * * * *

(9) Within 60 days after the date of completing each performance test (as defined in § 63.2), the owner or operator must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraph (a)(9)(i) or (ii) of this section.

* * * * *

(10)(i) Beginning no later than the compliance dates specified in § 63.1102(c), within 60 days after the date of completing each performance test required by this subpart, the owner or operator must submit the results of the performance test following the procedures specified in paragraphs (a)(10)(i)(A) through (C) of this section.

(A) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test to the EPA via

CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(B) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(C) *CBI.* If you claim some of the information submitted under paragraph (a)(10)(i)(A) or (B) of this section is CBI, then the owner or operator must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via EPA's CDX as described in paragraphs (a)(10)(i)(A) and (B) of this section.

(ii) Beginning no later than the compliance dates specified in § 63.1102(c), the owner or operator must submit all subsequent Notification of Compliance Status reports required under paragraph (a)(4) of this section in PDF format to the EPA via CEDRI, which can be accessed through EPA's CDX (*https://cdx.epa.gov/*). All subsequent Periodic Reports required under paragraph (a)(5) of this section must be submitted to the EPA via CEDRI using the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart beginning no later than the compliance dates specified in § 63.1102(c) or once the report template has been available on the CEDRI website for one year, whichever date is later. The date report templates become available will be listed on the CEDRI website. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is CBI, then submit a complete report, including information claimed to be CBI, to the EPA. Periodic Reports must be generated using the appropriate template on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, U.S. EPA Mailroom (E143–01), Attention: Ethylene Production Sector Lead, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(iii) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, the owner or operator must meet the requirements outlined in paragraphs (a)(10)(iii)(A) through (G) of this section.

(A) The owner or operator must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(B) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(C) The outage may be planned or unplanned.

(D) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(E) The owner or operator must provide to the Administrator a written description identifying:

(*1*) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(*2*) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(*3*) Measures taken or to be taken to minimize the delay in reporting; and

(*4*) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(F) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(G) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(iv) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, the owner or operator must meet the requirements outlined in paragraphs (a)(10)(iv)(A) through (E) of this section.

(A) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this paragraph, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(B) The owner or operator must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(C) The owner or operator must provide to the Administrator:

(*1*) A written description of the force majeure event;

(*2*) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(*3*) Measures taken or to be taken to minimize the delay in reporting; and

(*4*) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(D) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(E) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

* * * * *

(d) * * *

(1) *Contents.* The owner or operator shall submit a Notification of Compliance Status for each affected source subject to this subpart containing the information specified in paragraphs (d)(1)(i) and (ii) of this section. For pressure relief devices subject to the requirements of § 63.1107(e)(3), the owner or operator of an acrylic and modacrylic fiber production affected source or polycarbonate production affected source shall also submit the information listed in paragraph (d)(1)(iii) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring. For flares subject to the requirements of § 63.1103(e)(4), the owner or operator of an ethylene production affected source shall also submit the information listed in paragraph (d)(1)(iv) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for flare monitoring. For pressure relief devices subject to the pressure release management work practice standards in § 63.1107(h)(3), the owner or operator of an ethylene production affected source shall also submit the information listed in paragraph (d)(1)(v) of this section in a supplement to the Notification of Compliance Status within 150 days after the first applicable compliance date for pressure relief device monitoring.

(i) Except as specified in paragraphs (d)(1)(iv) and (v) of this section, the Notification of Compliance Status shall include the information specified in this subpart and the subparts referenced by this subpart. Alternatively, this information can be submitted as part of a title V permit application or amendment.

* * * * *

(iv) For each flare subject to the requirements in § 63.1103(e)(4), in lieu of the information required in § 63.987(b) of subpart SS, the Notification of Compliance Status shall include flare design (*e.g.,* steam-assisted, air-assisted, non-assisted, or pressure-assisted multi-point); all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the initial visible emissions demonstration required by § 63.670(h) of subpart CC, as applicable; and all periods during the compliance determination when the pilot flame or flare flame is absent.

(v) For pressure relief devices subject to the requirements of § 63.1107(h), the Notification of Compliance Status shall include the information specified in paragraphs (d)(1)(v)(A) and (B) of this section.

(A) A description of the monitoring system to be implemented, including the relief devices and process parameters to be monitored, and a description of the alarms or other methods by which operators will be notified of a pressure release.

(B) A description of the prevention measures to be implemented for each affected pressure relief device.

* * * * *

(e) * * *

(1) *Contents.* Except as specified in paragraphs (e)(4) through (8) of this section, Periodic Reports shall include all information specified in this subpart and subparts referenced by this subpart.

* * * * *

(4) *Ethylene production flare reports.* For each flare subject to the requirements in § 63.1103(e)(4), the Periodic Report shall include the items specified in paragraphs (e)(4)(i) through (vi) of this section in lieu of the information required in § 63.999(c)(3) of subpart SS.

(i) Records as specified in § 63.1109(e)(1) for each 15-minute block during which there was at least one minute when regulated material is routed to a flare and no pilot flame or flare flame is present. Include the start and stop time and date of each 15-minute block.

(ii) Visible emission records as specified in § 63.1109(e)(2)(iv) for each period of 2 consecutive hours during which visible emissions exceeded a total of 5 minutes.

(iii) The periods specified in § 63.1109(e)(7). Indicate the date and start time for the period, and the net heating value operating parameter(s) determined following the methods in § 63.670(k) through (n) of subpart CC as applicable.

(iv) For flaring events meeting the criteria in § 63.670(o)(3) of subpart CC and § 63.1103(e)(4)(iv):

(A) The start and stop time and date of the flaring event.

(B) The length of time that emissions were visible from the flare during the event.

(C) Results of the root cause and corrective actions analysis completed during the reporting period, including the corrective actions implemented during the reporting period and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

(v) For pressure-assisted multi-point flares, the periods of time when the pressure monitor(s) on the main flare header show the burners operating outside the range of the manufacturer's specifications.

(vi) For pressure-assisted multi-point flares, the periods of time when the staging valve position indicator monitoring system indicates a stage should not be in operation and is or when a stage should be in operation and is not.

(5) *Ethylene production maintenance vent reports.* For maintenance vents subject to the requirements § 63.1103(e)(5), Periodic Reports must include the information specified in paragraphs (e)(5)(i) through (iv) of this section for any release exceeding the applicable limits in § 63.1103(e)(5)(i). For the purposes of this reporting requirement, owners or operators complying with § 63.1103(e)(5)(i)(D) must report each venting event conducted under those provisions and include an explanation for each event as to why utilization of this alternative was required.

(i) Identification of the maintenance vent and the equipment served by the maintenance vent.

(ii) The date and time the maintenance vent was opened to the atmosphere.

(iii) The LEL, vessel pressure, or mass of VOC in the equipment, as applicable, at the start of atmospheric venting. If the 5 psig vessel pressure option in § 63.1103(e)(5)(i)(B) was used and active purging was initiated while the LEL was 10 percent or greater, also include the LEL of the vapors at the time active purging was initiated.

(iv) An estimate of the mass of organic HAP released during the entire atmospheric venting event.

(6) *Bypass line reports.* For bypass lines subject to the requirements in § 63.1103(e)(6), Periodic Reports must include the date, time, duration, estimate of the volume of gas, the concentration of organic HAP in the gas and the resulting mass emissions of organic HAP that bypass a control device. For periods when the flow indicator is not operating, report the date, time, and duration.

(7) *Decoking operation reports.* For decoking operations of an ethylene cracking furnace subject to the requirements in § 63.1103(e)(7) and (8), Periodic Reports must include the information specified in paragraphs (e)(7)(i) through (iii) of this section.

(i) For each control measure selected to minimize coke combustion emissions as specified in § 63.1103(e)(7)(ii) through (v), report instances where the control measures were not followed.

(ii) Report instances where an isolation valve inspection was not conducted according to the procedures specified in § 63.1103(e)(8).

(iii) For instances where repair was delayed beyond 1 calendar day as specified in § 63.1103(e)(7)(i), report the information specified in § 63.1109(h)(1).

(8) *Ethylene production pressure relief devices reports.* For pressure relief devices subject to the requirements of § 63.1107(h), Periodic Reports must include the information specified in paragraphs (e)(8)(i) through (iii) of this section.

(i) For pressure relief devices in organic HAP gas or vapor service, pursuant to § 63.1107(h)(1), report any instrument reading of 500 ppm or greater.

(ii) For pressure relief devices in organic HAP gas or vapor service subject to § 63.1107(h)(2), report confirmation that any monitoring required to be done during the reporting period to show compliance was conducted.

(iii) For pressure relief devices in organic HAP service subject to § 63.1107(h)(3), report each pressure release to the atmosphere, including duration of the pressure release and estimate of the mass quantity of each organic HAP released; the results of any root cause analysis and corrective action analysis completed during the reporting period, including the corrective actions implemented during the reporting period; and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

* * * * *

(g) * * *

(1) *Submission to the Environmental Protection Agency.* All reports and notifications required under this subpart shall be sent to the appropriate EPA Regional Office and to the delegated State authority, except that request for permission to use an alternative means of emission limitation as provided for in § 63.1113 shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to submit a copy of any reports or notifications at its discretion, except that electronic reporting to CEDRI cannot be waived, and as such, compliance with the provisions of this paragraph does not relieve owners or operators of affected facilities of the requirement to submit electronic reports required in this subpart to the EPA.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this subpart, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this subpart for that report or notification, except that performance test reports and performance evaluation reports required under paragraph (a)(10) of this section must be submitted to CEDRI in the format specified in that paragraph.

* * * * *

■ 26. Section 63.1111 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c) introductory text to read as follows:

§ 63.1111 Startup, shutdown, and malfunction.

(a) *Startup, shutdown, and malfunction plan.* Before July 6, 2023, the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (a) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(b) *Startup, shutdown, and malfunction reporting requirements.* Before July 6, 2023, the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (b) apply to all affected sources except for acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

* * * * *

(c) *Malfunction recordkeeping and reporting.* Before July 6, 2023, the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources and polycarbonate production affected sources. On and after July 6, 2023, the requirements of this paragraph (c) apply only to acrylic and modacrylic fiber production affected sources, ethylene production affected sources, and polycarbonate production affected sources.

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■ 27. Section 63.1112 is amended by revising paragraph (d)(2) to read as follows:

§ 63.1112 Extension of compliance, and performance test, monitoring, recordkeeping and reporting waivers and alternatives.

* * * * *

(d) * * *

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request. Electronic reporting to the EPA cannot be waived, and as such, compliance with the provisions of this paragraph does not relieve owners or operators of affected facilities of the requirement to submit electronic reports required in this subpart to the EPA.

* * * * *

■ 28. Section 63.1113 is amended by revising paragraph (a)(2) to read as follows:

§ 63.1113 Procedures for approval of alternative means of emission limitation.

(a) * * *

(2) Any such notice shall be published only after public notice and an opportunity for public comment.

* * * * *

■ 29. Section 63.1114 is amended by revising paragraph (b) introductory text and adding paragraph (b)(6) to read as follows:

§ 63.1114 Implementation and enforcement.

* * * * *

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E to this part, the authorities contained in paragraphs (b)(1) through (6) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

* * * * *

(6) Approval of an alternative to any electronic reporting to EPA required by this subpart.

[FR Doc. 2020–05898 Filed 7–2–20; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Farm Credit Administration

National Credit Union Administration

12 CFR Parts 22, 208, 339, et al.

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket ID OCC–2020–0008]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. OP–1720]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–ZA16

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AD42

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

RIN 3133–AF14

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notification and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and NCUA (collectively, the Agencies) propose to reorganize, revise, and expand the Interagency Questions and Answers Regarding Flood Insurance and solicit comment on all aspects of the amendments. To help lenders meet their responsibilities under Federal flood insurance law and to increase public understanding of their flood insurance regulations, the Agencies have prepared proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. Significant topics addressed by the proposed revisions include the effect of major amendments to flood insurance laws with regard to the escrow of flood insurance premiums, the detached structure exemption, and force-placement procedures.

DATES: Comments on the proposed questions and answers must be submitted on or before September 4, 2020.

ADDRESSES: Interested parties are invited to submit written comments to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0008'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0008'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 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–2020–0008'' 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 provided 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 action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0008'' 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.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0008'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m. –5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo

identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. OP–1720, 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 in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form 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 3064–ZA16, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments.
- *Email: comments@fdic.gov.* Include RIN 3064–ZA16 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to 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.

Instructions: All submissions must include the agency name and RIN 3064–ZA16 for this rulemaking. Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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 comment 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 from our website at *http://www.fca.gov.* Once you are in 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.

NCUA: You may submit comments identified by RIN 3133–AF14 by any of the following methods (please send comments by one method only). *Please note that the NCUA is now accepting electronic comments only through the Federal eRulemaking portal, Regulations.gov:*

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Use the subject line ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' on the transmission cover sheet.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on the agency's website at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments. You may inspect paper copies of comments in the NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6540 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Rhonda L. Daniels, Compliance Specialist, Compliance Risk Policy Division, (202) 649–5405; or Sadia A. Chaudhary, Counsel, Chief Counsel's Office, (202) 649–6350, or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst (202) 452–2705 or Vivian W. Wong, Senior Counsel (202) 452– 3667, Division of Consumer and Community Affairs; Daniel Ericson, Senior Counsel (202) 452–3359, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, (202) 898–6526, *nchoudhury@FDIC.gov;* or Simin Ho, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–6907, *sho@FDIC.gov.*

FCA: Ira D. Marshall, Senior Policy, Analyst, Office of Regulatory Policy, (703) 883–4379, TTY (703) 883–4056; or Jennifer Cohn, Senior Counsel, Office of General Counsel, (703) 883– 4020, TTY (703) 883–4056.

NCUA: Sarah Chung, Senior Staff Attorney, Office of General Counsel, (703) 518–6540, or Lou Pham, Senior Credit Specialist, Office of Examination and Insurance, (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Act of 1968 created the National Flood Insurance Program (NFIP), which is administered by the Federal Emergency

Management Agency (FEMA).[1] The NFIP enables property owners in participating communities to purchase flood insurance if the community has adopted floodplain management ordinances and minimum standards for new and substantially damaged or improved construction. Thus, in participating communities, Federally-backed flood insurance is available for property owners in flood risk areas.

Congress expanded the NFIP by enacting the Flood Disaster Protection Act of 1973 (FDPA).[2] The FDPA made the purchase of flood insurance mandatory in connection with loans made by Federally-regulated lending institutions when the loans are secured by improved real estate or mobile homes located in a special flood hazard area (SFHA). The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the Federal flood insurance statutes.[3] The Reform Act required the OCC, Board, FDIC, Office of Thrift Supervision (OTS), and NCUA to revise their flood insurance regulations, and required the FCA to promulgate a flood insurance regulation for the first time.[4] The OCC, Board, FDIC, OTS, NCUA, and FCA [5] fulfilled these requirements by issuing a joint final rule in the summer of 1996.[6]

In connection with the 1996 joint rulemaking process, commenters asked the Agencies to clarify specific issues covering a wide spectrum of the proposed rule's provisions. The Agencies addressed many of these requests in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of the requests, guidance addressing technical compliance issues would be helpful and appropriate. The Federal Financial Institutions Examination Council (FFIEC) fulfilled that objective through the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers).[7]

After notice and comment, the Agencies comprehensively updated the 1997 Interagency Questions and Answers in July 2009 (2009 Interagency Questions and Answers) through significant revision and reorganization. As part of the 2009 effort, the Agencies also proposed five new Q&As for comment relating to insurable value and force placement of flood insurance.[8] As a result, the 2009 Interagency Questions and Answers included a total of 77 final Q&As, which superseded the 1997 Interagency Questions and Answers.[9]

On October 17, 2011, the Agencies finalized two of the five new proposed Q&As from 2009, one relating to insurable value and one relating to force placement, and withdrew one Q&A regarding insurable value.[10] The two finalized Q&As (2011 Interagency Questions and Answers) supplemented the 2009 Interagency Questions and Answers. As part of the same **Federal Register** notice, based on comments received, the Agencies proposed to significantly revise the remaining two Q&As regarding force placement of flood insurance that were initially proposed in 2009, and proposed revisions to a previously finalized Q&A on force placement for consistency with the re-proposed Q&As. These three revised Q&As were re-proposed for comment in the October 17, 2011, **Federal Register** notice.

Before the Agencies could finalize the three re-proposed Q&As, the Federal flood insurance statutes were amended by two major pieces of legislation, the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act) and the 2014 Homeowner Flood Insurance Affordability Act (HFIAA). The Biggert-Waters Act amended the requirements that the Agencies have authority to implement and enforce.[11] Among other things, the Biggert-Waters Act: (1) Required the Agencies to issue a rule regarding the escrow of premiums and fees for flood insurance; (2) clarified the requirement to force place insurance; and (3) required the Agencies to issue a rule to direct regulated lending institutions to accept ''private flood insurance,'' as defined by the Biggert-Waters Act, and to notify borrowers of the availability of private flood insurance.

In October 2013, the Agencies jointly issued proposed rules to implement the escrow, force placement, and private flood insurance provisions of the Biggert-Waters Act.[12] In March 2014, the HFIAA was enacted, which, among other things, amended the Biggert-Waters Act requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the mandatory flood insurance purchase requirements for certain detached structures.[13] The Agencies finalized the regulations to implement provisions in the Biggert-Waters Act and HFIAA under the Agencies' jurisdiction, except for the provisions related to private flood insurance, with a final rule issued in July 2015.[14] In February 2019, the Agencies finalized regulations that implement the private flood insurance related provisions of the Biggert-Waters Act.[15]

The Agencies are releasing for public comment proposed revisions and new Interagency Q&As in light of the significant changes to flood insurance requirements pursuant to the Biggert-Waters Act and HFIAA as well as regulations issued to implement these laws. Further, over the years, the lending industry has requested that the Agencies provide additional guidance on flood insurance compliance issues on many occasions, including at conferences and through interagency webinars. Finally, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), certain Agencies are directed to conduct a joint review of their regulations every 10 years and consider whether any of those regulations are outdated, unnecessary, or unduly burdensome.[16] As part of the joint

[1] Public Law 90–448, 82 Stat. 572 (1968).

[2] Public Law 93–234, 87 Stat. 975 (1973).

[3] Title V of Public Law 103–325, 108 Stat. 2255 (1994).

[4] Title V of Public Law 103–325, 108 Stat. 2255 (1994).

[5] Throughout this document ''the Agencies'' includes the OTS with respect to events that occurred prior to July 21, 2011, but does not include OTS with respect to events thereafter. Sections 311 and 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred OTS's functions to other agencies on July 21, 2011. The OTS's supervisory functions relating to Federal savings associations were transferred to the OCC, while those relating to state savings associations were transferred to the FDIC. *See also* 76 FR 39246 (Jul. 6, 2011).

[6] 61 FR 45684 (August 29, 1996).

[7] 62 FR 39523 (July 23, 1997). Throughout this document, ''Questions and Answers'' refers to the Interagency Questions and Answers Regarding Flood Insurance in its entirety; ''Q&A'' refers to an individual question and answer within the Questions and Answers.

[8] 74 FR 35914 (July 21, 2009).

[9] 74 FR 35914 (July 21, 2009).

[10] 76 FR 64175. The Agencies finalized Q&As 9 (insurable value) and 61 (force placement) and withdrew Q&A 10 (insurable value).

[11] Public Law 112–141, 126 Stat. 916 (2012).

[12] 78 FR 65108 (Oct. 30, 2013).

[13] Public Law 113–89, 128 Stat. 1020 (2014).

[14] 80 FR 43216 (July 21, 2015). Subsequently, on November 7, 2016, the Agencies re-proposed the private flood insurance provisions through a joint notice of proposed rulemaking (81 FR 78063).

[15] 84 FR 4953 (Feb. 20, 2019).

[16] Public Law 104–208, 110 Stat. 3001 (1996) (codified at 12 U.S.C. 3311). The most recent report to Congress required by EGRPRA was published by the Board, FDIC, OCC, and NCUA under the FFIEC in March 2017. The NCUA, although an FFIEC member, is not a ''federal banking agency'' within the meaning of EGRPRA and so is not required to participate in the review process. Nevertheless, NCUA elected to participate in the EGRPRA review and conducted its own parallel review of its regulations. The FCA is not subject to EGRPRA; however, it is directed by the Farm Credit System Reform Act of 1996 to conduct a regulatory review (*see* 12 U.S.C. 2252 note) and conducts such review every four years. The CFPB, although an FFIEC member, is not a ''federal banking agency'' within

review, the Board, FDIC, OCC and NCUA received comments on the Agencies' flood insurance rules. Several commenters asked for more guidance to the industry on flood insurance requirements, particularly with respect to renewal notices for force-placed insurance policies, the required amount of flood insurance, and flood insurance requirements for tenant-owned buildings and detached structures. One commenter specifically requested that the Interagency Flood Questions and Answers be updated. In the FFIEC's EGRPRA Joint Report to Congress, the Board, FDIC, and OCC indicated that they:

''agree with these EGRPRA commenters that additional agency guidance on flood insurance requirements would be helpful to the banking industry and that the Interagency Flood Q&As should be updated to address recent amendments to the flood insurance statutes. In fact, the agencies have begun work on revising the Interagency Flood Q&As to reflect the agencies' recently issued final rules implementing the Biggert-Waters Act and HFIAA requirements and to address other issues that have arisen since the last update in 2011. As part of this revision, the agencies also plan to address many of the flood insurance issues raised by EGRPRA commenters.'' [17]

Accordingly, the Agencies, in proposing these Interagency Questions and Answers for public comment, are addressing the commitment made in the EGRPRA Joint Report to Congress.

This 2020 proposal to reorganize, revise, and introduce new Interagency Q&As includes the introduction of new Q&As on escrow of flood insurance premiums, force placement of flood insurance, and the detached structures exemption. The Agencies are also proposing to revise and reorganize the existing Q&As into new categories by subject to enhance clarity and understanding for users, and improve efficiencies by making it easier to find information related to technical flood insurance topics. Once finalized, the new Interagency Questions and Answers will supersede the 2009 and the 2011 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies relative to loans in areas having special flood hazards. Along with the finalized new Interagency Questions and Answers, the Agencies plan to issue separately for notice and comment another set of proposed Q&As relating to the private flood insurance rule. In the interim, the Agencies have provided information regarding the private flood insurance rule that may serve as a resource in a webinar dated June 18, 2019.[18] In addition to guidance and interpretations issued by the Agencies, lenders should be aware of information related to the NFIP provided by FEMA that may address questions pertaining to NFIP requirements.

Public Comments

The Agencies invite specific public comment on the proposed new and revised Interagency Questions and Answers. If lenders, community groups, or other parties have unanswered questions or comments about the Agencies' flood insurance regulations, they should submit them to the Agencies. The Agencies will consider including these Q&As in future guidance. Comments are also invited on whether the proposed Q&As are stated clearly and how they might be revised to be easier to read.

Reorganization of Interagency Questions and Answers

For ease of reference and in light of the increased number of subjects covered that address complex issues, the Agencies propose to reorganize the Interagency Questions and Answers to provide a more logical flow of questions through the flood insurance process for lenders, servicers, regulators, and policyholders. The table below sets forth the current categories and the corresponding new, reorganized categories for purposes of comparison:

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Category from current table (from 2009 Q&A)	Reorganized category
I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation.	Determining the Applicability of Flood Insurance Requirements for Certain Loans [Applicability].
II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation.	Exemptions From the Mandatory Flood Insurance Purchase Requirements [Exemptions].
III. Exemptions From the Mandatory Flood Insurance Requirements	Coverage –NFIP/Private Flood Insurance [Coverage].
IV. Flood Insurance Requirements for Construction Loans	Required Use of Standard Flood Hazard Determination Form [SFHDF].
V. Flood Insurance Requirements for Nonresidential Buildings	Flood Insurance Determination Fees [Fees].
VI. Flood Insurance Requirements for Residential Condominiums	Flood Zone Discrepancies [Zone].
VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA.	Notice of Special Flood Hazards and Availability of Federal Disaster Relief [Notice].
VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights.	Determining the Appropriate Amount of Flood Insurance Required [Amount].
IX. Escrow Requirements	Flood Insurance Requirements for Construction Loans [Construction].
X. Force Placement	Flood Insurance Requirements for Residential Condominiums and Co-Ops [Condo and Co-Op].
XI. Private Flood Insurance	Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA [Other Security Interests].
XII. Required Use of Standard Flood Hazard Determination Form (SFHDF).	Requirement to Escrow Flood Insurance Premiums and Fees—General [Escrow].
XIII. Flood Determination Fees	Requirement to Escrow Flood Insurance Premiums and Fees—Small Lender Exception [Small Lender Exception].
XIV. Flood Zone Discrepancies	Requirement to Escrow Flood Insurance Premiums and Fees—Loan Exceptions [Loan Exceptions].
XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief.	Force Placement of Flood Insurance [Force Placement].

the meaning of EGRPRA and so is not required to participate in the review process.

[17] *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[18] *https://consumercomplianceoutlook.org/outlook-live/2019/interagency-flood-insurance-regulation-update/.*

TABLE OF CONTENTS—Continued

Category from current table (from 2009 Q&A)	Reorganized category
XVI. Mandatory Civil Money Penalties	Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights [Servicing].
XVII.	Mandatory Civil Money Penalties [Penalty].

Moreover, the Agencies also propose a new system of designation for the Q&As. Rather than numbering the Q&As successively through all the categories, each Q&A will be designated by the category to which it belongs and then designated in numerical order for that particular category. For example, Q&As in the first category, *Determining the Applicability of Flood Insurance Requirements for Certain Loans,* would be re-designated as Applicability 1, Applicability 2, etc. This numbering system would enable the Agencies to add or delete Q&As in the future without needing to significantly renumber or reorganize all of the Q&As. The Agencies specifically solicit comment as to the proposed re-designations, whether they would promote ease of reference and whether some other designation system might be more preferable.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, Biggert-Waters Flood Insurance Reform Act of 2012 and Homeowner Flood Insurance Affordability Act (codified at 42 U.S.C. 4001 *et seq*). ''Regulation'' refers to each agency's current final rule.[19]

Section-by-Section Analysis

Section I. Determining the Applicability of Flood Insurance Requirements for Certain Loans

The heading to proposed section I has been streamlined to provide greater clarity with no intended change in substance or meaning. This new proposed general applicability section would include current Q&As 1–7 relating to residential buildings and, for organizational purposes, would incorporate current section V's Q&As 24 and 25, which address flood insurance requirements for nonresidential buildings. The Agencies propose to re-designate current Q&A 1 as proposed Q&A Applicability 1 with only minor language modifications, with no intended change in substance or meaning. Current Q&A 24 would be re-designated as proposed Q&A Applicability 2 and revised so that the proposed answer depends on whether buildings with limited utility meet the detached structure exemption for purposes of mandating flood insurance for such buildings. Current Q&A 25 would be re-designated as proposed Q&A Applicability 3 and current Q&As 2, 3, 5–7 would be re-designated as proposed Q&As Applicability 4, 5, 6–8, respectively. Current Q&A 4 would be re-designated as proposed Q&A Applicability 9.

The Agencies are proposing revisions to proposed Q&A Applicability 3 to include an example to provide greater clarity and to improve readability, with no intended change in substance or meaning. Proposed Q&A Applicability 4 would be revised from current Q&A 2 to also address a lender's responsibility if a building or mobile home that secures a loan is not located within an SFHA. The proposed answer would be expanded to state that a lender may, at its discretion and subject to applicable State law, require flood insurance for property outside of SFHAs for risk management purposes as a condition of a loan being made. Proposed Q&As Applicability 5, 7, 8, and 9 would have only minor language modifications for greater clarity, with no intended change in substance or meaning. Proposed Q&A Applicability 6 would remain unchanged from current Q&A 5.

Lastly, the Agencies propose to add three new Q&As, Applicability 10, 11, and 12. Proposed new Q&A Applicability 10 would address a lender's obligations when participating in a multi-tranche credit facility, specifically whether a lender is expected to consider any triggering event and any cashless roll of which it becomes aware in any tranche. The proposed answer would provide that a multi-tranche credit facility is analogous to a loan syndication or participation and that the Agencies do not expect a lender participating in one tranche in a multi-tranche credit facility to be responsible for taking action to comply with flood insurance requirements in connection with a triggering event or cashless roll that occurs in a tranche in which the lender does not participate. Furthermore, the proposed answer clarifies that the Agencies expect a lender participating in a multi-tranche credit facility to perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with flood insurance requirements. Proposed new Q&A Applicability 11 would clarify that an automatic extension of a credit facility agreed upon by the borrower and lender in the original loan agreement would not constitute a triggering event for purposes of the federal flood insurance requirements. Proposed new Q&A Applicability 12, which would be based on guidance previously issued by the Agencies,[20] would address the applicability of the mandatory purchase requirement during a period of time when coverage under the NFIP is unavailable, such as due to a lapse in authorization or in appropriations. The proposed answer would clarify that during a period when NFIP coverage is not available, lenders may continue to make loans subject to the Regulation without flood insurance coverage, but must continue to make flood determinations, provide timely, complete and accurate notices to borrowers, and comply with other aspects of the Regulation. Lenders also should evaluate the safety and soundness and legal risks, and prudently manage those risks, during such periods when the NFIP is unavailable.

Section II. Exemptions From the Mandatory Flood Insurance Purchase Requirements

Current section III would be moved to proposed section II and significantly expanded with the addition of six new

[19] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

[20] *See* Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts, OCC Bulletin 2010–20 (OCC); Informal Guidance on the Lapse of FEMA's Authority to Issue Flood Insurance Contracts, CA Letter 10–3 (Board); Lapse of FEMA Authority to Issue Flood Insurance Policies, FIL–23–2010 (FDIC); Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts, Informational Memorandum June 3, 2010 (FCA), and Guidance on the Lapse of FEMA's Authority to Issue Flood Insurance Contracts, Letter No. 10–CU–08 (NCUA).

proposed Q&As pertaining to the exemption from the mandatory flood insurance purchase requirements for certain detached structures created by HFIAA. The heading to proposed section II has been revised to provide greater clarity with no intended change in substance or meaning. Current Q&A 18 would be included in this section, re-designated as proposed Q&A Exemptions 1, and would be revised to include the detached structure exemption in addition to the exemptions for State-owned property, and loans with a principal balance of less than $5,000 and an original repayment term of one year or less. The revised Q&A also would note that although an exemption may apply, a borrower may still elect to purchase flood insurance or a lender may still require flood insurance as a condition of making the loan for purposes of safety and soundness, depending on its risk analysis.

As stated above, the Agencies propose to add six new Q&As to address the application of the detached structure exemption and related lender obligations. The new proposed Q&As would be designated as Exemptions 2–7. This set of Q&As on the detached structure exemption responds to a request for more guidance related to this exemption in the EGRPRA report. Proposed new Q&A Exemptions 2 would be added to address whether a lender must take a security interest in the primary residential structure for a detached structure to be eligible for the detached structure exemption. The proposed answer would provide that although a lender does not have to take a security interest in the primary residential structure, it would need to evaluate the uses of the detached structures to confirm each is eligible for the exemption. Proposed new Q&A Exemptions 3 would clarify that a flood hazard determination is required for a detached structure even though flood insurance coverage is not required on such structure because it is used to identify the number and type of structures present on the property. Proposed new Q&A Exemptions 4 would provide that a lender or its servicer may cancel its flood insurance requirement on an eligible detached structure that is currently insured, but that a lender alternatively may want to continue to require flood insurance coverage for detached structures of relatively high value if such coverage would be beneficial to the borrower and the lender. Proposed new Q&A Exemptions 5 would address whether a property being re-mapped into an SFHA triggers a review of the intended use of each detached structure. Specifically, the proposed answer states that although there is no duty to monitor the status of a detached structure following the lender's initial determination, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on properties securing loans in its portfolio.

Proposed new Q&A Exemptions 6 would discuss whether a lender, following a review of its loan portfolio, may determine it would no longer require flood insurance on a detached structure in an SFHA if the structure does not provide contributory value. The Agencies propose to clarify that, while a lender or servicer could initiate such a review, the Regulation does not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on their contributory value, but instead on whether a specific exemption applies. Lastly, proposed new Q&A Exemptions 7 would address whether a building would qualify as a detached structure if it is joined to another building by a stairway or covered walkway. The proposed answer would provide that for purposes of the detached structure exemption, a structure is ''detached'' from the primary residential structure if it is not joined by any structural connection to that structure.

Section III. Coverage (NFIP/Private Flood Insurance)

For organizational purposes, current section XI would be moved to proposed section III, logically following the discussions of applicability and exemptions from flood insurance requirements. The heading to proposed section III would be expanded to cover the various types of flood insurance policies available to borrowers. Proposed section III would cover questions related to flood insurance policy coverage issues under the NFIP and private flood insurance. Current Q&A 63 would be deleted because it is inconsistent with the Agencies' final rule implementing the private flood insurance provision of the Biggert-Waters Act.[21] A new proposed Q&A Coverage 1 would be included to assist lenders in complying with the discretionary acceptance provision and mutual aid societies provision in the Agencies' final rule implementing the private flood insurance provision of the Biggert-Waters Act. Current Q&A 64, addressing the use of private flood insurance for portfolio-wide coverage, would be re-designated as proposed Coverage 2 and revised given that FEMA withdrew the *Mandatory Purchase of Flood Insurance Guidelines,* which is cross-referenced in current Q&A 64, with no intended change in substance or meaning. Additionally, a new proposed Q&A Coverage 3 would address when mandatory flood insurance is required to be in place.

Specifically, proposed new Coverage 1 would list several factors a lender may consider in determining whether a flood insurance policy issued by a private insurer or mutual aid plan provides sufficient protection of the loan. These factors may include whether: (1) A policy's deductibles are reasonable based on the borrower's financial condition; (2) the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force placement of flood insurance, if necessary; (3) the terms and conditions of the policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; (4) the flood insurance policy complies with applicable State insurance laws; and (5) the private insurance company has the financial solvency, strength, and ability to satisfy claims. A lender may include its analysis of such factors in documenting its conclusion of sufficient protection of the loan when accepting flood insurance coverage issued by a private insurer or mutual aid society in satisfaction of the mandatory purchase requirement.

Proposed Q&A Coverage 2 would be slightly revised to address when a lender may rely on a private insurance policy providing portfolio-wide coverage. The proposed answer would be revised by removing the reference to criteria set forth by FEMA and including language addressing a lender's reliance on a policy that provides portfolio-wide coverage. Lastly, proposed new Q&A Coverage 3 would explain when mandatory flood insurance on a designated loan needs to be in place during the closing process. The proposed answer would clarify that a lender should use the loan ''closing date'' to determine the date by which flood insurance should be in place for a designated loan. FEMA deems the ''closing date'' as the date the ownership of the property transfers to the new owner based on State law. The proposed answer further explains the difference between ''wet funding'' and ''dry funding'' States and how it impacts the ''closing date'' for purposes of flood insurance.

[21] 84 FR 4953 (Feb. 20, 2019).

IV. Required Use of Standard Flood Hazard Determination Form (SFHDF)

For organizational purposes, current section XII would be moved to proposed section IV. Accordingly, current Q&As 65–68 would be re-designated as proposed Q&As SFHDF 1–4, respectively, with only minor language modifications and no intended change in substance or meaning.

V. Flood Insurance Determination Fees

For organizational purposes, current section XIII would be moved to proposed section V. Current Q&As 69 and 70 would be re-designated as proposed Q&As Fees 1 and 2 with only minor changes and no intended change in substance or meaning.

VI. Flood Zone Discrepancies

For organizational purposes, current section XIV would be moved to proposed section VI. Current Q&As 71 and 72 would be re-designated as proposed Q&As Zone 1 and 2. The Agencies propose to revise current Q&A 71, re-designated as proposed Q&A Zone 1, to reflect a change in the Agencies' expectations regarding a lender's obligation when there is a discrepancy between the flood determination form and the flood insurance policy. A lender no longer would be required to attempt to resolve the discrepancy, but the lender should consider documenting the discrepancy in the loan file. If the flood determination form indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage and would not otherwise be required to attempt to resolve the discrepancy as previously indicated in current Q&A 71. The Agencies note in the proposed answer that the issue of flood zone discrepancies is an insurance rating issue, not a coverage issue. Proposed Q&A Zone 2 would clarify that a lender is not in violation of the Regulation if there is a discrepancy between the flood zone on the flood determination form and the flood zone on the policy declarations page. Lastly, proposed new Q&A Zone 3 would explain what a lender should do when a borrower disputes the lender's flood zone determination that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage.

VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

For organizational purposes, current section XV would be moved to proposed section VII. This section would include current Q&As 73–76 and 78–80 and would be re-designated as proposed Q&As Notice 1–7, respectively. Proposed Q&A Notice 1 would have minor language modifications for purposes of clarity with no change in meaning or substance. Proposed Q&A Notice 2 would be amended to conform more closely to the Regulation. As modified, the answer to proposed Q&A Notice 2 would state that a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction, even if the lender only learns where the mobile home will be located just prior to closing and delivery of the Notice of Special Flood Hazards would delay closing. Proposed Q&A Notice 3 would remain unchanged from current Q&A 75. For organizational purposes, current Q&As 76 and 77 would be consolidated, with no substantive changes, into proposed Q&A Notice 4 in this section. Current Q&A 78 would be re-designated as Notice 5 and revised to list examples of what constitutes an acceptable record of receipt. Current Q&As 79 and 80 would be re-designated as Q&As Notice 6 and 7, respectively, and would be revised nonsubstantively to provide additional clarity.

Section VIII. Determining the Appropriate Amount of Flood Insurance Required

The Agencies propose to move current section II to proposed section VIII. The heading to proposed section VIII would be amended for streamlining purposes. Current Q&As 8, 9, and 11–17 would be re-designated as Amount 1, Amount 2, and Amount 3–9 respectively. Proposed Q&A Amount 1 would discuss NFIP coverage limits more fully to include coverage for condominiums and contents coverage. The proposed answer would provide that for single-family and two-to-four family or individually-owned condominium units insured under the Dwelling Form policy, the maximum limit is $250,000. For a residential condominium building insured under the Residential Condominium Building Association Policy (RCBAP) form, the maximum amount of insurance available is $250,000 multiplied by the number of units. For all other buildings insured under the General Property Form, the maximum limit of building coverage available is $500,000. The maximum limit for contents insured under the Dwelling Form and RCBAP is $100,000 total (not per unit) and $500,000 for contents insured under the General Property Form. Proposed Q&A Amount 2, which defines ''insurable value,'' would be revised to remove references to the rescinded FEMA *Mandatory Purchase of Flood Insurance Guidelines* and to provide greater clarity with no intended change in substance or meaning.

Proposed Q&A Amount 3 would be revised to include more detailed definitions from the NFIP *Flood Insurance Manual* of the terms: Single family dwelling, 2–4 family residential building, and other residential building. Proposed Q&A Amount 4 would similarly be revised to provide a more detailed definition of nonresidential building as defined in the NFIP *Flood Insurance Manual.* Proposed Q&As Amount 5–9 would be revised to provide greater clarity with no intended change in substance or meaning.

IX. Flood Insurance Requirements for Construction Loans

Current section IV would be moved to proposed section IX and would include current Q&As 19–23, which would be re-designated as proposed Q&As Construction 1–5, respectively. The Agencies propose minor changes to proposed Q&As Construction 1 and Construction 2 for purposes of clarification. The Agencies would revise proposed Q&A Construction 3 to accurately cite to the NFIP *Flood Insurance Manual.* Proposed Q&A Construction 4 would address when a lender must require flood insurance in connection with a loan secured by a building in the course of construction and would be revised to incorporate the NFIP's change in policy regarding the 30-day waiting period. In particular, the Agencies propose that if a lender requires a borrower to have flood insurance in place at the time of loan origination, a borrower should obtain a provisional rating based on the construction designs and intended use of the building to enable the placement of coverage prior to receipt of the Elevation Certificate (EC), based on FEMA guidance. The proposed Q&A would state that in accordance with the NFIP requirement, it is expected that an EC will be secured and a full-risk rating completed within 60 days of the policy effective date. Under the proposed Q&A, failure to obtain the EC could result in reduced coverage limits at the time of loss. Alternatively, if the lender requires the borrower to have flood insurance in place before the lender disburses funds to pay for building construction, the lender should have adequate controls in place to ensure the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower due to FEMA's removal of the 30-day waiting period waiver. Proposed

Q&A Construction 5, addressing the 30-day waiting period in connection with a construction loan, also would be revised to reflect this change. Proposed new Q&A Construction 6 would explain that if a lender allows a borrower to defer the purchase of flood insurance until either the foundation slab has been poured and/or an EC has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled and roofed, the lender will need to begin escrowing flood insurance premiums and fees at the time of purchase of the flood insurance.

X. Flood Insurance Requirements for Residential Condominiums and Co-Ops

The heading to proposed section X would be expanded to include other multi-family dwellings such as cooperatives. This section would include current Q&As 26–33, which would be re-designated as proposed Q&As Condo and Co-Op 1–8, respectively. Proposed Q&As Condo and Co-Op 1, Condo and Co-Op 2, and Condo and Co-Op 7 would remain generally unchanged. Proposed Q&As Condo and Co-Op 3, 4, 5, 6, and 8 would have minor revisions to provide greater clarity or accurate references with no intended changes in substance or meaning. A new proposed Q&A Condo and Co-Op 9 would be added to proposed section X to address flood insurance requirements for loans secured by a unit in a cooperative building located in an SFHA. The proposed answer provides that a loan to a cooperative unit owner is not a designated loan subject to the Act or Regulation because the unit owner does not own a title to the building but simply the right to occupy a particular unit based on the cooperative ownership structure.

XI. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral (Contents) Located in an SFHA

The heading to section XI would be amended for purposes of clarity. This section would include current Q&As 34, 35 and 36–43, which would be re-designated as Other Security Interests 1, Other Security Interests 2, and Other Security Interests 4–9 and 11–12, respectively. Proposed Q&As Other Security Interests 1, 2, 5, 6, 8, 11, and 12 would remain substantively unchanged. A new proposed Q&A Other Security Interests 3 would be added to address flood insurance coverage requirements for a line of credit secured by improved real property located in an SFHA. The proposed answer would provide alternative approaches depending on when the lender requires flood insurance to be in place. Proposed Q&A Other Security Interests 4 would be amended slightly with no intended changes in substance or meaning. Proposed Q&A Other Security Interests 7 would be revised to clarify the application of Federal flood insurance requirements when both a building and its contents secure a loan. Proposed Q&A Other Security Interests 9 would be revised to clarify the impact of including language regarding contents taken as security for a loan in the loan agreement. Proposed new Q&A Other Security Interests 10 would indicate that flood insurance is required if the lender takes a security interest in contents regardless of whether that security interest is perfected.

XII. Requirement to Escrow Flood Insurance Premiums and Fees—General

With the passage of HFIAA, the escrow requirements for flood insurance premiums have been significantly revised through the introduction of new escrow requirements that are not dependent on whether other insurance or taxes are escrowed, lender and loan-related exceptions to those requirements, and the requirement for an escrow notice. Accordingly, the Agencies propose to revise the discussion of escrow requirements by designating four sections to address escrow considerations. The first section, proposed section XII, would include Q&As covering the general escrow requirement for flood insurance premiums and fees. The second section, proposed section XIII, would include Q&As related to the small lender exception to flood insurance escrow requirements. Proposed section XIV, the third section, would include Q&As related to loan-related exceptions to the requirement to escrow flood insurance premiums and fees. These sets of Q&As on the escrow of flood insurance premiums and fees respond to a request for more guidance related to the escrow requirement in the EGRPRA report.

Proposed new section XII would contain two Q&As from current section IX and five new proposed Q&As. Specifically, current Q&As 51 and 52 would be included in proposed section XII and re-designated as Escrow 5 and Escrow 1, respectively. Proposed Q&A Escrow 1 would be significantly revised from current Q&A 52 to address the general question of when escrow accounts for flood insurance premiums and fees must be established. The proposed revised answer would explain that the new escrow requirement applies only upon a triggering event and would not apply if either the small lender exception or any of the loan-related exceptions apply. The proposed revised answer also would address a lender's escrow obligations if the lender no longer qualifies for the small lender exception. Proposed new Q&A Escrow 2 would clarify that a lender must escrow flood insurance premium payments even if it does not escrow for taxes or homeowner's insurance. Proposed new Q&A Escrow 3 would state that a lender must escrow force-placed flood insurance premium payments because there is no exception for force-placed insurance under the Act or Regulation. Proposed new Q&A Escrow 4 would discuss whether flood insurance premium payments must be escrowed when a loan has not experienced a triggering event (a making, increase, renewal, or extension) but the loan has experienced a non-triggering event, such as a loan modification, a FEMA remapping, or the assumption of the loan by a new borrower. The Agencies explain in the proposed answer that, subject to certain exceptions, until a loan experiences a triggering event, the lender is not required to escrow flood insurance premiums and fees unless: (i) A borrower requests the escrow in connection with the requirement that the lender provide an option to escrow for outstanding loans; or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.

The Agencies propose revisions to current Q&A 51, which has been re-designated as proposed Q&A Escrow 5, to reflect updates to clarify that multi-family buildings or mixed-use properties are included in the definition of ''residential improved real estate'' and therefore are subject to the escrow requirement unless an exception applies. New proposed Q&A Escrow 6 would address the situation in which a junior lienholder determines that the primary lienholder does not have sufficient flood insurance coverage in place and is also not escrowing for flood insurance. The proposed answer would clarify that if the primary lienholder has not obtained adequate flood insurance, the junior lienholder would need to ensure adequate flood insurance is in place and also would need to escrow for that flood insurance. The proposed answer also would indicate that the escrow requirements would not apply to a junior lien that is a home equity line of credit (HELOC), since HELOCs have a separate escrow exception under the Act and Regulation. New proposed Q&A Escrow 7 addresses whether a lender or its servicer must escrow when real

property securing the loan is not located in an SFHA, but the borrower chooses to buy flood insurance, by clarifying that a lender or its servicer is not required to escrow premium payments but may choose to do so. Current Q&As 53 and 54 would be removed because they are no longer applicable.

XIII. Requirement to Escrow Flood Insurance Premiums and Fees—Small Lender Exception

As previously discussed, new section XIII would include seven new proposed Q&As related to the small lender exception to the requirement to escrow flood insurance premiums. New proposed Q&A Small Lender Exception 1 would specify that the $1 billion threshold for the small lender exception would be based on assets held at the regulated financial institution level and not at the holding company level. New proposed Q&A Small Lender Exception 2 would discuss whether a qualifying lender must escrow flood insurance premiums if it was previously required to escrow only under the Higher-Priced Mortgage Loan (HPML) rules [22] or under specific Federal housing programs prior to July 6, 2012. The proposed answer would clarify that the applicability of the first criterion of the small lender exception is dependent on whether the Federal or State law requirement to escrow was for the entire term of the loan. New proposed Q&A Small Lender Exception 3 would address whether a lender would be disqualified from the exemption if it escrowed funds on behalf of a third party. The Agencies' proposed answer would draw a distinction based on whether the lender established an individual escrow account for the loan. Specifically, the proposed answer would provide that if a lender collected escrow funds at closing and servicing of the loan was maintained by the lender, the lender would not qualify for the small lender exception because the lender would have had a policy of consistently and uniformly requiring the deposit of funds in an escrow account by establishing escrow accounts that the lender would service. However, if the lender collected the escrow funds at closing at the behest of a third party and then transferred those funds to the third party servicing that loan, the lender would qualify for the small lender exception under the proposed answer, provided the lender did not establish an individual escrow account and the lender transferred the escrow funds to the third party as soon as reasonably practicable. New proposed Q&A Small Lender Exception 4 would cover whether a lender would be eligible for the exception if it only escrows upon a borrower's request. As noted in the preamble to the 2015 Final Rule, the proposed answer would reiterate that a lender maintaining escrow accounts only on a borrower's request does not constitute a consistent or uniform policy of requiring escrow and therefore a lender could be eligible for the small lender exception if the other requirements are met.

New proposed Q&A Small Lender Exception 5 would discuss whether the option to escrow is required for: (1) All outstanding loans not excepted from the escrow requirement and secured by residential real estate and (2) outstanding loans not secured by buildings located in an SHFA. The proposed answer would clarify that the option to escrow notice requirement only applies to lenders who have a change in status and no longer qualify for the small lender exception. Such lenders will be required to provide the option to escrow notice by September 30 of the first calendar year in which the lender has had a change in status for all outstanding designated loans secured by residential improved real estate or a mobile home as of July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception. The proposed answer would also clarify that the option to escrow requirement does not apply to loans or lenders that are excepted by the Regulation from the escrow requirement nor does the notice requirement apply to loans not subject to the mandatory flood insurance purchase requirement. New proposed Q&A Small Lender Exception 6 would explain that a lender must send to a borrower a notice of the option to escrow flood insurance premium payments when the borrower has previously waived escrow for flood insurance because it is possible the borrower's circumstances have changed and, if offered another chance to escrow, the borrower may desire to do so. Lastly, new proposed Q&A Small Lender Exception 7 would make clear that lenders who qualify for the small lender exception are not required to provide borrowers with either the escrow notice or the option to escrow notice.

XIV. Requirement to Escrow Flood Insurance Premiums and Fees—Loan Exceptions

New section XIV would include five Q&As regarding the loan-related exceptions to the escrow requirement. Current Q&A 55 would be re-designated as proposed Q&A Loan Exceptions 1 and revised to address whether escrow accounts must be set up for commercial loans secured by residential buildings based on the new loan-related exceptions. Specifically, the proposed answer would clarify that extensions of credit primarily for business, commercial, or agricultural purposes are not subject to the escrow requirement even if such loans are secured by residential improved real estate or a mobile home. New proposed Q&A Loan Exceptions 2 would indicate that construction-permanent loans that have a construction phase before the loan converts into permanent financing do not qualify for the 12-month exception from escrow even if one phase of the loan is for 12 months or less. New proposed Q&A Loan Exceptions 3 would clarify that a subordinate lienholder must begin to escrow as soon as reasonably practicable after it becomes aware that it has moved into the primary lien position on a designated loan subject to the escrow requirement. Current Q&A 56 would be re-designated as proposed Q&A Loan Exceptions 4 and revised to address an escrow account for insured real property covered by an RCBAP. The proposed answer would note that while escrow is not required for property covered by an RCBAP, if the RCBAP coverage is inadequate and the borrower obtains a separate dwelling policy, escrow would be required for such a policy unless an escrow exception applies. Lastly, new proposed Q&A Loan Exceptions 5 would discuss whether there is an exception to the escrow requirement for loans secured by multi-family buildings. The Agencies would make clear in the proposed answer that escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes, even if the loan is secured by residential real estate such as a multi-family building, nor would it apply to a loan secured by a particular unit in a multi-family residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense. Otherwise, under the proposed answer, the escrow requirements generally would apply to

[22] Pursuant to the Dodd-Frank Act, an HPML loan is one where the Annual Percentage Rate exceeds certain specified thresholds with the result that certain consumer protections must be observed, such as the escrow of property taxes and insurance premiums. *See* section 129D of the Truth in Lending Act as amended by section 1461(a) of the Dodd-Frank Act, 15 U.S.C. 1639D. *See also* HPML escrow rules at 12 CFR 226.35(b)(3) (Board) and 12 CFR 1026.35(b) (Bureau of Consumer Financial Protection).

loans for units in multi-family residential buildings.

XV. Force Placement of Flood Insurance

For organizational purposes, the Agencies propose to move current section X to proposed section XV. This section would include current Q&As 57–62 and add ten new Q&As. This set of Q&As responds to a request for more guidance related to force placement of flood insurance from commenters through the EGRPRA process. Current Q&A 57, re-proposed in 2011 but not finalized, would be re-designated as proposed Q&A Force Placement 1 and would discuss the requirements that must be fulfilled before force placement can occur, as well as the notice requirements a lender must follow prior to force placing flood insurance. The Agencies explain in the proposed answer that if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required, then the lender or its servicer must notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required. The proposed answer further provides that before the lender or service must force place insurance, if the lender or servicer is aware that a borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should inform the borrower an additional amount of insurance is needed in order to comply with the Regulation. Finally, the proposed answer would specify that if the borrower fails to obtain flood insurance within 45 days after notification, then the lender or its servicer must purchase insurance on the borrower's behalf at that time. The proposed answer explains that the lender must force place flood insurance for the full amount required under the Regulation, or if the borrower purchases flood insurance that otherwise satisfies the flood insurance requirements, but in an insufficient amount, the lender would be required to force place only for the ''insufficient amount,'' that is, the difference between the amount the borrower insured and the amount of flood insurance required under the Regulation.

Additionally, while not required under the Act or the Regulation, the Agencies indicate that a lender or its servicer could include in the notice to the borrower the amount of flood insurance needed to satisfy the statutory requirement. By providing this information, the lender or its servicer can help ensure that a borrower obtains the appropriate amount of insurance.

New proposed Q&A Force Placement 2 would clarify that the Regulation requires the lender, or its servicer, to send the borrower the force-placement notice upon making a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation.

Current Q&A 58 would be re-designated as proposed Q&A Force Placement 3 and would remain unchanged. Proposed Q&A 60, re-proposed in 2011 but not finalized, would be re-designated as proposed Q&A Force Placement 4 and would discuss whether a lender can satisfy its notice requirement by sending the force-placement notice to the borrower prior to the expiration of the flood insurance policy. The Agencies would specifically state in the proposed answer that a lender or servicer must send a notice upon determining that the collateral property securing the loan is either not covered by flood insurance or the insurance is inadequate. Although the proposed answer provides that a lender may send notice prior to the expiration date as a courtesy, the lender or servicer is still required to send notice upon determining the flood insurance policy has actually lapsed or is determined to be insufficient in order to meet the statutory requirement. Current Q&A 61 would be re-designated as proposed Q&A Force Placement 5 and would contain minor revisions for clarity with no change in meaning or substance. New proposed Force Placement 6 would clarify that, once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after the original notice, the lender must purchase coverage on the borrower's behalf and may not extend the period for obtaining force-placed coverage by sending another force-placement notice during that time. New proposed Q&A Force Placement 7 would address when a force-placed policy should begin to provide coverage and give an example. Specifically, the proposed answer would state that a lender's new force-placed policy should begin to provide coverage the day after the borrower's existing policy expires. The proposed answer would also state that a lender or its servicer may not require the borrower to pay for double coverage and that the Regulation requires a lender or servicer to refund the borrower for any periods of overlap between the borrower's policy and the force-placed policy.

Current Q&A 59 would be re-designated as proposed Q&A Force Placement 8 and would be significantly revised to discuss more fully the minimum amount of flood insurance coverage that is statutorily required and to illustrate this point through a hypothetical example. Specifically, the proposed answer would illustrate that if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees that will be added to the loan balance.

Current Q&A 62 would be re-designated as proposed Q&A Force Placement 9 and would clarify that a lender or servicer may charge a borrower for the cost of force-placed insurance beginning on the date of lapse or insufficient coverage, and would not have to wait 45 days after providing notification to force place insurance. Lenders that monitor loans secured by property located in an SFHA for continuous coverage of flood insurance help ensure that they complete the force placement of flood insurance in a timely manner and minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. The proposed answer would explain that if a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, it may charge for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf, including premiums and fees incurred for coverage beginning on the date of lapse, if the lender has purchased a policy on the borrower's behalf and that policy was effective as of the date of the insufficient coverage.

The Agencies propose to add new Q&A Force Placement 10 to discuss whether the addition of the amount of force-placed insurance policy premiums and fees to the outstanding balance of a loan would constitute an ''increase'' that would trigger the applicability of flood insurance regulatory requirements. In the answer to proposed Q&A Force Placement 10, the Agencies discuss three options that the Agencies understand lenders currently use to

charge a borrower for force-placed flood insurance and the impact of each option on the amount of coverage. Under the proposed Q&A, the subsequent treatment of the flood insurance premiums and fees would depend on which method the lender chooses. Specifically, the proposed answer provides that if the lender chooses to add the premium and fees to the mortgage balance and the lender's loan contract includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt, such an advancement would be considered part of the loan and not an ''increase'' in the loan amount, and therefore would not be considered a triggering event. The proposed Q&A continues to explain that if, however, there is no explicit provision permitting such advancement in the loan contract, the addition of the force-placed premiums and fees would be considered an ''increase'' in the loan amount and would be a triggering event because no advancement of funds was contemplated as part of the loan. If the premiums and fees are added to an unsecured account or billed directly to the borrower, the proposed Q&A states that these approaches would not result in an increase in the loan balance and therefore would not be considered triggering events.

New proposed Q&A Force Placement 11 would address the sufficiency of evidence of flood insurance in connection with refunding premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance. The proposed answer would provide that as stated in the Regulation, a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance. The proposed answer would state that in that scenario, a lender must accept a policy declarations page that includes the existing flood insurance policy number and the identity of and contact information for, the insurance company or its agent and that the Regulation does not require that the declarations page include any additional information. In addition, the proposed answer would note that in situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does not specify what documentation would be sufficient. The proposed answer also provides that generally, it is appropriate, although not required by the Regulation, for lenders to accept a copy of the flood insurance application and premium payment as evidence of proof of purchase for new policies.

New proposed Q&A Force Placement 12 would reinforce the requirement that a lender is to refund any premiums and fees paid for by the borrower for force-placed insurance for any overlap period within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage without exception. Such refund is required even in situations in which a lender cannot obtain a refund from the insurance company because the borrower did not provide proof of coverage in a timely manner, or when the insurance company fails to provide the refund within 30 days.

New proposed Q&A Force Placement 13 would explain that a lender can rely on a force-placed insurance policy to satisfy the mandatory purchase requirement for a refinance or loan modification if the borrower does not purchase his or her own policy. Assuming the force-placed policy is in effect and otherwise satisfies the regulatory coverage standards, then that policy may satisfy the mandatory purchase requirement. The Agencies suggest in the proposed answer that lenders could encourage the borrower to purchase his or her own policy, likely at a reduced cost, prior to the loan closing.

In response to an issue raised in the EGRPRA report, new proposed Q&A Force Placement 14 would explain the process for renewal of force-placed coverage by requiring the lender to follow its normal communications practice with its insurance provider to renew the flood insurance policy on the borrower's behalf to ensure that flood insurance coverage remains in place. Under the proposed answer, the lender is not required to send a notice prior to force-placing insurance at the expiration of a force-placed policy. However, the proposed answer provides that the lender or its servicer, at its discretion, may notify the borrower about its plan to renew the force-placed policy.

New proposed Q&A Force Placement 15 would indicate that, although there is no explicit duty to monitor flood insurance coverage over the life of the loan in the Act or Regulation, for purposes of safety and soundness, many lenders obtain ''life-of-loan'' monitoring. The Agencies believe such a practice could help ensure that lenders complete the force placement of flood insurance in a timely manner upon lapse of a policy, that there is continuous coverage, and that lenders are promptly made aware of flood map changes.

New proposed Q&A Force Placement 16 would address what the Act and Regulation require a lender or its servicer to do if a lender or servicer receives a notice of remapping that states that a property will be remapped into an SFHA as of a future effective date. The proposed answer would clarify that if a lender or its servicer determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the loan is uninsured or underinsured, the lender or servicer must begin the force-placement process. For a loan secured by a property subject to a remapping that was not previously located in an SFHA, such a loan does not become a designated loan until the effective date of the map change. Therefore, when a lender or its servicer receives advance notice of a map change, the effective date of the map change is the date the lender or servicer must determine whether the property is covered by sufficient flood insurance. If the borrower does not purchase a flood insurance policy that begins on the effective date of the map change, the lender or its servicer must send the force-placement notice to the borrower.

XVI. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

The Agencies propose to move current section VIII to proposed section XVI as part of the overall reorganization of the Interagency Questions and Answers. Current Q&As 44 through 50 would be re-designated as proposed Q&As Servicing 1–7, respectively, with minor nonsubstantive modifications to account for the change in the title of the head of FEMA from ''Director'' to ''Administrator'' and for purposes of clarity.

XVII. Mandatory Civil Money Penalties

For organizational purposes, the Agencies propose to move current section XVI to proposed section XVII. Current Q&As 81 and 82 would be included in this section and re–designated as proposed Q&As Penalty 1 and 2, respectively. The changes proposed to the Q&As are for purposes of clarity and accuracy with no intended change in meaning or substance.

The Agencies solicit comments on all aspects of the revised and new proposed Q&As.

The following re-designation table is provided as an aid to assist the public in reviewing the proposed revisions to the 2009 and 2011 Interagency Questions and Answers.

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation.	Section I. Determining the Applicability of Flood Insurance Requirements for Certain Loans.
Section 1, Question 1	Section I, Applicability 1.
Section 1, Question 2	Section I, Applicability 4.
Section 1, Question 3	Section I, Applicability 5.
Section 1, Question 4	Section I, Applicability 9.
Section 1, Question 5	Section I, Applicability 6.
Section 1, Question 6	Section I, Applicability 7.
Section 1, Question 7	Section I, Applicability 8.
Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation.	Section VIII. Determining the Appropriate Amount of Flood Insurance Required.
Section II, Question 8	Section VIII, Amount 1.
Section II, Question 9	Section VIII, Amount 2.
Section II, Question 10	Deleted.
Section II, Question 11	Section VIII, Amount 3.
Section II, Question 12	Section VIII, Amount 4.
Section II, Question 13	Section VIII, Amount 5.
Section II, Question 14	Section VIII, Amount 6.
Section II, Question 15	Section VIII, Amount 7.
Section II, Question 16	Section VIII, Amount 8.
Section II, Question 17	Section VIII, Amount 9.
Section III. Exemptions from the Mandatory Flood Insurance Requirements.	Section II. Exemptions from the Mandatory Flood Insurance Purchase Requirements.
Section III, Question 18	Section II, Exemptions 1.
Section IV. Flood Insurance Requirements for Construction Loans	Section IX. Flood Insurance Requirements for Construction Loans.
Section IV, Question 19	Section IX. Construction 1.
Section IV, Question 20	Section IX. Construction 2.
Section IV, Question 21	Section IX. Construction 3.
Section IV, Question 22	Section IX. Construction 4.
Section IV, Question 23	Section IX. Construction 5.
Section V. Flood Insurance Requirements for Nonresidential Buildings.	
Section V, Question 24	Section I, Applicability 2.
Section V, Question 25	Section I, Applicability 3.
Section VI. Flood Insurance Requirements for Residential Condominiums.	Section X. Flood Insurance Requirements for Residential Condominiums and Co-Ops.
Section VI, Question 26	Section X, Condo and Co-Op 1.
Section VI, Question 27	Section X, Condo and Co-Op 2.
Section VI, Question 28	Section X, Condo and Co-Op 3.
Section VI, Question 29	Section X, Condo and Co-Op 4.
Section VI, Question 30	Section X, Condo and Co-Op 5.
Section VI, Question 31	Section X, Condo and Co-Op 6.
Section VI, Question 32	Section X, Condo and Co-Op 7.
Section VI, Question 33	Section X, Condo and Co-Op 8.
Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SHFA.	Section XI. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA.
Section VII, Question 34	Section XI, Other Security Interests 1.
Section VII, Question 35	Section XI, Other Security Interests 2.
Section VII, Question 36	Section XI, Other Security Interests 4.
Section VII, Question 37	Section XI, Other Security Interests 5.
Section VII, Question 38	Section XI, Other Security Interests 6.
Section VII, Question 39	Section XI, Other Security Interests 7.
Section VII, Question 40	Section XI, Other Security Interests 8.
Section VII, Question 41	Section XI, Other Security Interests 9.
Section VII, Question 42	Section XI, Other Security Interests 11.
Section VII, Question 43	Section XI, Other Security Interests 12.
Section VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights.	Section XVI. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights.
Section VII, Question 44	Section XVI, Servicing 1.
Section VII, Question 45	Section XVI, Servicing 2.
Section VII, Question 46	Section XVI, Servicing 3.
Section VII, Question 47	Section XVI, Servicing 4.
Section VII, Question 48	Section XVI, Servicing 5.
Section VII, Question 49	Section XVI, Servicing 6.
Section VII, Question 50	Section XVI, Servicing 7.
Section IX. Escrow Requirements	Section XII–VX. Requirement to Escrow Flood Insurance Premiums and Fees.
Section IX, Question 51	Section XII, Escrow 5.
Section IX, Question 52	Section XII, Escrow 1.
Section IX, Question 53	Deleted.
Section IX, Question 54	Deleted.
Section IX, Question 55	Section XIV, Loan Exception 1.
Section IX, Question 56	Section XIV, Loan Exception 4.
Section X. Force Placement	Section XV. Force Placement of Flood Insurance.

2009 & 2011 Interagency Q&A	Proposed Interagency Q&A
Section X, Question 57	Section XV, Force Placement 1.
Section X, Question 58	Section XV, Force Placement 3.
Section X, Question 59	Section XV, Force Placement 8.
Section X, Question 60	Section XV, Force Placement 4.
Section X, Question 61	Section XV, Force Placement 5.
Section X, Question 62	Section XV, Force Placement 9.
Section XI. Private Flood Insurance	Section III, Coverage—NFIP/Private Flood Insurance.
Section XI, Question 63	Section III, Coverage 1.
Section XI, Question 64	Section III, Coverage 2.
Section XII. Required Use of Standard Flood Hazard Determination Form (SFHDF).	Section IV. Required Use of Standard Flood Hazard Determination Form (SFHDF).
Section XII, Question 65	Section IV, SFHDF 1.
Section XII, Question 66	Section IV, SFHDF 2.
Section XII, Question 67	Section IV, SFHDF 3.
Section XII, Question 68	Section IV, SFHDF 4.
Section XIII. Flood Determination Fees	Section V. Flood Insurance Determination Fees.
Section XIII, Question 69	Section V, Fees 1.
Section XIII, Question 70	Section V, Fees 2.
Section XIV. Flood Zone Discrepancies	Section VI. Flood Zone Discrepancies.
Section XIV, Question 71	Section VI, Zone 1.
Section XIV, Question 72	Section VI, Zone 2.
Section XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief.	Section VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief.
Section XV, Question 73	Section VII, Notice 1.
Section XV, Question 74	Section VII, Notice 2.
Section XV, Question 75	Section VII, Notice 3.
Section XV, Question 76	Section VII, Notice 4.
Section XV, Question 77	Section VII, Notice 4.
Section XV, Question 78	Section VII, Notice 5.
Section XV, Question 79	Section VII, Notice 6.
Section XV, Question 80	Section VII, Notice 7.
Section XVI. Mandatory Civil Money Penalties	Section XVII. Mandatory Civil Money Penalties.
Section XVI, Question 81	Section XVI, Question 82.
Section XVII, Penalty 1	Section XVII, Penalty 2.

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of flood insurance law and regulations. For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised. ''Regulation'' refers to each agency's current final rule.[23] ''Lenders'' refers only to regulated lending institutions as defined in the Act.[24] ''Designated loan'' means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act. The OCC, Board, FDIC, FCA, and NCUA, (collectively, ''the Agencies'') are providing answers to questions pertaining to the following topics:

I. Determining the Applicability of Flood Insureance Requirements for Certain Loans

APPLICABILITY 1. Does the Regulation apply to a loan where the building or mobile home securing such loan is located in a community that does not participate in the National Flood Insurance Program (NFIP)?

Yes, the Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA.[25] If the building or mobile home is determined to be located in an SFHA, a lender is required to mail or deliver a written notice to the borrower.[26] In this

[23] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR 208.25 (Board), 12 CFR part 339 (FDIC), 12 CFR part 614, subpart S (FCA), and 12 CFR part 760 (NCUA).

[24] 42 U.S. Code 4003 (a)(10).

[25] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

[26] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

case, a lender, generally, may make a conventional loan without requiring flood insurance. However, because Federal agencies such as the Small Business Administration, Veterans Administration, or Federal Housing Administration are prohibited from guaranteeing or insuring a loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP, a lender would not be able to make a federally guaranteed or insured loan. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to avoid making a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would pose an unacceptable risk to the lender.

APPLICABILITY 2. Some borrowers have buildings with limited utility or value and, in many cases, the borrower would not replace them if lost in a flood. Must a lender require flood insurance for such buildings?

Lenders must require flood insurance on a building or mobile home when those structures are part of the property securing the loan and are located in an SFHA in a participating community.[27] However, flood insurance is not required on a structure that is part of a residential property but is detached from the primary residential structure of such property and does not serve as a residence.[28] If the limited utility or value structure does not qualify for the detached structure exemption, a lender may consider ''carving out'' the building from the security it takes on the loan to avoid having to require flood insurance on the structure. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether and how it would be able to market and sell the property securing its loan in the event of foreclosure.

APPLICABILITY 3. What are a lender's requirements under the Regulation for a loan secured by multiple buildings when some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in different communities and some of the communities participate in the NFIP and others do not?

A lender must determine whether any improved real property securing the loan is in an SFHA.[29] In cases in which the loan is secured by multiple buildings and some of the buildings are located in an SFHA in which flood insurance is available under the Act, but other buildings are not located in an SFHA (or are located in an SFHA, but not in a participating community), a lender is required to obtain flood insurance only on the buildings securing the loan that are located in an SFHA in which flood insurance is available under the Act.[30] For example, assume a loan is secured by five buildings as follows:

- Buildings 1 and 2 are located in an SFHA and the community participates in the NFIP;
- Building 3 is not located in an SFHA; and
- Buildings 4 and 5 are located in an SFHA, but the communities do not participate in the NFIP.

In this scenario, the lender is required to obtain insurance only on buildings 1 and 2. As a matter of safety and soundness, however, a lender may decide to require the purchase of flood insurance (from a private insurer) on buildings 4 and 5 because these buildings are located in an SFHA. Further, depending on the risk factors of building 3, the lender may elect to require flood insurance as a matter of safety and soundness, even if the building is not located in an SFHA.

APPLICABILITY 4. What is a lender's responsibility if a particular building or mobile home that secures a loan is not located within an SFHA, or is no longer located within an SFHA due to a map change?

Although a lender is not obligated to require mandatory flood insurance on a building or mobile home securing a loan that is not located within an SFHA or is no longer located within an SFHA, a lender may, at its discretion and taking into consideration State law, as appropriate, require flood insurance for property outside of SFHAs for safety and soundness purposes as a condition of a loan being made. Each lender should tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. For loans in which the property is no longer located in an SFHA, the borrower can elect to convert the existing NFIP standard-rated policy to a lower cost NFIP Preferred Risk Policy, if available.

APPLICABILITY 5. Does a lender's purchase from another lender of a loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act trigger any requirements under the Regulation?

No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation are triggered when a lender makes, increases, extends, or renews a designated loan.[31] A lender's purchase of a loan does not fall within any of those categories.

However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the requirements of the Regulation apply, including force placing insurance, if necessary.[32] Depending on the circumstances, the lender may need to conduct due diligence for safety and soundness reasons, which could include determining whether flood insurance on purchased loans is required. Additionally, if the purchasing lender subsequently refinances, extends, increases, or renews a designated loan, it must comply with the Regulation.[33]

APPLICABILITY 6. Does the Regulation apply to loans that are being restructured or modified?

It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.[34]

APPLICABILITY 7. Are table funded loans treated as new loan originations?

Yes. Table funding, as defined in the Regulation, means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person

[27] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[28] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

[29] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

[30] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[31] 12 CFR 22.2(e), 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (c)(1) (Board); 12 CFR 339.2, 339.3(a) (FDIC); 12 CFR 614.4925, 614.4930 (FCA); and 12 CFR 760.2, 760.3(a) (NCUA).

[32] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[33] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).

[34] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930 (FCA); and 12 CFR 760.3(a) (NCUA).

advancing the funds.[35] A loan made through a table funding process is treated as though the party advancing the funds has originated the loan.[36] The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

APPLICABILITY 8. Is a lender required by the Act or the Regulation to perform a review of its, or of its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?

No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage.[37] Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

APPLICABILITY 9. Do the mandatory purchase requirements under the Act and Regulation apply when a lender participates in a loan syndication or participation?

The acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of the Act or the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.

Nonetheless, as with purchased loans, depending upon the circumstances, the lender may undertake due diligence for safety and soundness purposes to protect itself against the risk of flood or other types of loss.

Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would be making a loan that triggers the requirements of the Act and Regulation.[38] Federal flood insurance requirements also would apply when a group of lenders refinances, extends, renews or increases a loan.[39] Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to determine whether the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent for compliance with flood insurance requirements over the term of the loan.

Applicability 10. Is a lender expected to consider any triggering event or any cashless roll of which it becomes aware in any tranche of a multi-tranche credit facility, regardless of whether the lender participates in the affected tranche?

No. Consistent with Q&A Applicability 9, the Agencies expect that a lender participating in a multi-tranche credit facility will perform upfront due diligence to determine whether the lead lender has adequate controls to monitor the loan on an ongoing basis for compliance with the flood insurance requirements. Even though each lender participating in a tranche in a multi-tranche credit facility remains individually responsible for compliance with the flood insurance requirements relating to structures securing the tranche in which it participates, this obligation can be achieved through the upfront due diligence process when determining the lead lender/administrative agent's ongoing monitoring for compliance with flood insurance requirements.

A multi-tranche credit facility is analogous in many respects to a loan syndication or participation. Q&A Applicability 9 addresses applicability of the mandatory purchase requirements when a lender participates in a loan syndication or participation. Similar to a loan syndication or participation, a multi-tranche credit facility involves one credit agreement that describes and governs all the tranches. In addition, similar to a loan syndication or participation, a multi-tranche credit facility typically has one lead lender that acts as the administrative agent for the credit facility and its tranches. Thus, the Agencies do not expect a lender participating in one tranche in a multi-tranche credit facility to be responsible for taking direct steps to comply with flood insurance requirements in connection with a triggering event (*i.e.,* making, increasing, extending or renewing) or cashless roll that occurs in a tranche in which the lender does not participate.

A multi-tranche commercial credit facility is a loan arrangement containing more than one type of loan or tranche. Each loan within the overall credit facility is made to the same borrower or group of related borrowers, but the loans may have different lenders and different terms and conditions. For example, a credit facility might have one tranche that is a revolving line of credit with a one-year maturity date and one or more additional tranches that are fixed rate loans with different interest rates and different maturity dates. Various lenders may participate in each tranche. Generally, the tranches share the same collateral and there is one credit agreement that describes and governs all the tranches.

Under most multi-tranche credit facility agreements, a triggering event can occur within a particular tranche without any requirement to notify and obtain the consent of the lenders not participating in that tranche. Lenders may also participate in a ''cashless roll,'' which is an exchange of an existing loan for a new or amended loan without any transfer of cash. A cashless roll may be used to replace or supplement existing tranches, but not to increase the total amount of committed debt; therefore, this is not considered a triggering event.

Applicability 11. Does an automatic extension of a credit facility, that was agreed upon by the borrower and the lender at loan origination and memorialized in the loan agreement, constitute a triggering event (i.e., making, increasing, extending or renewing) that would trigger the federal flood insurance requirements?

No. An automatic extension of a credit facility that was agreed upon by the lender and the borrower at loan origination and memorialized in the loan agreement does not constitute a

[35] 12 CFR 22.2(m) (OCC); 12 CFR 208.25(b)(11) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[36] 12 CFR 22.3(b) (OCC); 12 CFR 208.25(c)(2) (Board); 12 CFR 339.3(b) (FDIC); 12 CFR 614.4930(b) (FCA); and 12 CFR 760.3(b) (NCUA).

[37] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[38] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[39] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

triggering event (*i.e.,* making, increasing, extending or renewing) that would trigger the federal flood insurance requirements, because the automatic extension was agreed to in the original loan contract.

Applicability 12. What is the applicability of the mandatory purchase requirement during a period of time when coverage under the NFIP is not available?

During a period when coverage under the NFIP is not available, such as due to a lapse in authorization or in appropriations, lenders may continue to make loans subject to the Regulation without requiring flood insurance coverage. However, lenders must continue to make flood determinations,[40] provide timely, complete, and accurate notices to borrowers,[41] and comply with other applicable parts of the Regulation.

In addition, lenders should evaluate safety and soundness and legal risks and prudently manage those risks during a period when coverage under the NFIP is not available. Lenders should take appropriate measures or consider possible options in consultation with the borrower to mitigate loss exposures in the event of a flood during such periods. For example,

- Lenders may determine the risk of loss is sufficient to justify a postponement in closing the loan until the NFIP coverage is available again.
- Lenders may require the borrower to obtain private flood insurance if available, as a condition of closing the loan. However, after considering the cost of the private flood policy, a lender or the borrower may decide to postpone closing rather than incur a long-term obligation to address a possible short-term lapse.
- Lenders may make the loan without requiring the borrower to apply for flood insurance and pay the premium while NFIP coverage is unavailable. However, this option poses a number of risks that should be carefully evaluated. Moreover, once NFIP coverage becomes available again, the Agencies expect that flood insurance will be obtained for these loans, including, if necessary, by force placement.[42] Before making such loans, lenders should make borrowers aware of the flood insurance requirements and that force-placed insurance is typically more costly than borrower-obtained insurance. Lenders also should have a process to identify these loans to ensure that insurance is promptly purchased when NFIP coverage becomes available subsequent to their closing.

II. Exemptions From the Mandatory Flood Insurance Purchase Requirements

Exemptions 1. What are the exemptions from the mandatory purchase requirement?

There are only three exemptions from the mandatory requirement to purchase flood insurance on a designated loan. The first applies to State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA.[43] The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.[44] The third applies to any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of the detached structure exemption, a ''structure that is a part of residential property'' is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. In addition, a structure is ''detached'' from the primary residential structure if it is not joined by any structural connection to that structure. Furthermore, whether a structure ''does not serve as a residence'' is based upon the good faith determination of the lender that the structure is not intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.[45] If one of these exemptions applies, a borrower may still elect to purchase flood insurance. Also, a lender may require flood insurance as a condition of making the loan, as a matter of safety and soundness.

Exemptions 2. Does a lender have to take a security interest in the primary residential structure for detached structures to be eligible for the detached structure exemption? For example, suppose the house on a farm is not collateral, but all of the outbuildings including the barn, the equipment storage shed, and the silo (which are used for farm production), and a detached garage where the homeowner keeps his car, are taken as collateral. May the lender apply the detached structure exemption to the outbuildings?

The lender does not have to take a security interest in the primary residential structure for detached structures to be eligible for the exemption, but the lender needs to evaluate the uses of detached structures to determine if they are eligible.[46] The term ''a structure that is part of a residential property'' in the detached structure exemption applies only to structures for which there is a residential use and not to structures for which there is a commercial, agricultural, or other business use.[47] In this example, only the garage is serving a residential use, so it could qualify for the exemption. The barn, equipment storage shed, and silo, which are used for farm production, would not qualify for the exemption.

Exemptions 3. Do detached structures require a flood hazard determination to be performed even if coverage is not required?

Because a flood hazard determination is often needed to identify the number and types of structures on the property, conducting a flood hazard determination remains necessary for the lender to be able to comply with the flood insurance requirements.[48]

Exemptions 4. If a borrower currently has a flood insurance policy on a detached structure that is part of residential property and the detached structure does not serve as a residence, may the lender or its servicer cancel its requirement to carry flood insurance on that structure?

Yes. If a borrower has a flood insurance policy on a detached structure that is part of a residential

[40] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

[41] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

[42] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[43] 12 CFR 22.4(a) (OCC); 12 CFR 208.25(d)(1) (Board); 12 CFR 339.4(a) (FDIC); 12 CFR 614.4932(a) (FCA); and 12 CFR 760.4(a) (NCUA).

[44] 12 CFR 22.4(b) (OCC); 12 CFR 208.25(d)(2) (Board); 12 CFR 339.4(b) (FDIC); 12 CFR 614.4932(b) (FCA); and 12 CFR 760.4(b) (NCUA).

[45] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

[46] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

[47] 12 CFR 22.4(c)(1) (OCC); 12 CFR 208.25(d)(3)(i) (Board); 12 CFR 339.4(c)(1) (FDIC); 12 CFR 614.4932(c)(1) (FCA); and 12 CFR 760.4(c)(1) (NCUA).

[48] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

property and does not serve as a residence, the lender is no longer mandated by the Act to require flood insurance on that structure.[49] The lender may allow the borrower to cancel the policy. If warranted as a matter of safety and soundness, the lender may continue to require flood insurance coverage on the detached structure.

Exemptions 5. If a property is remapped into an SFHA, does that trigger a review of the intended use of each detached structure?

No. A lender must examine the status of a detached structure upon a qualifying triggering event—*i.e.,* making, increasing, extending, or renewing a loan.[50] A remapping is not a triggering event. There is no duty to monitor the status of a detached structure following the lender's initial determination. However, regardless of the absence of such requirement in the Regulation, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio. Consistent with existing obligations under the Regulation, if a lender determines at any time that a property has become subject to the mandatory flood insurance purchase requirement and, as a result, the collateral is uninsured or underinsured, the lender has a duty to inform the borrower of the obligation to obtain or increase insurance coverage and to purchase flood insurance on the borrower's behalf, as necessary.[51]

Exemptions 6. May a lender review current loans in its portfolio as the flood insurance policies renew and determine that it will no longer require flood insurance on a detached structure in an SFHA if the structure does not contribute to the value of the property securing the loan?

A lender or servicer could initiate such a review; however, the Regulation does not permit the exemption of structures from the mandatory flood insurance purchase requirement based solely on whether the detached structure contributes value to the overall residential property securing the loan.[52] In the case of any residential property, flood insurance is not required on any structure that is part of such property as long as it is detached from the primary residential structure and does not serve as a residence.[53] In addition, there are other exemptions that could apply: The exemption for State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA or the exemption for property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.[54]

Exemptions 7. If a loan is secured by a residential property and is joined to another building by a stairway or covered walkway, for purposes of Federal flood insurance requirements, would the other building qualify as a detached structure?

For purposes of the detached structure exemption, a structure is ''detached'' from the primary residential structure if it is not joined by any structural connection to that structure.[55] That is, a structure is ''detached'' if it stands alone. This definition is consistent with the coverage provision of the NFIP's Standard Flood Insurance Policy (SFIP) for additions and extensions to the dwelling unit. In this case, the connected structure would not qualify as a detached structure because it is attached to the primary residence.

For purposes of insurance coverage under the NFIP, FEMA provides that if one building is attached to another through a covered breezeway or similar connection, it may be insured as one building under one policy or may be insured separately under two policies. *See* the FEMA NFIP *Flood Insurance Manual* for guidance.

III. Coverage—NFIP/Private Flood Insurance

Coverage 1. What are some factors to consider when determining whether a flood insurance policy issued by a private insurer provides sufficient protection of a loan secured by improved real property located in an SFHA, consistent with general safety and soundness principles?

Some factors, among others, that a lender could consider in determining whether a policy provides sufficient protection of a loan include whether: (1) A policy's deductibles are reasonable based on the borrower's financial condition; (2) the insurer provides adequate notice of cancellation to the mortgagor and mortgagee to allow for timely force placement of flood insurance, if necessary; (3) the terms and conditions of the policy with respect to payment per occurrence or per loss and aggregate limits are adequate to protect the regulated lending institution's interest in the collateral; (4) the flood insurance policy complies with applicable State insurance laws; and (5) the private insurance company has the financial solvency, strength, and ability to satisfy claims.

Coverage 2. May a lender rely on a private insurance policy providing portfolio-wide coverage to meet the flood insurance purchase requirement or the force placement requirement under the Regulation?

No. A private insurance policy that provides a lender portfolio-wide coverage may provide protection to the lender in certain circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies providing portfolio-wide coverage may be useful protection for the lender for a gap in coverage in the period of time before a force-placed policy takes effect. However, even if a lender has portfolio-wide coverage to address gaps, the lender must still ensure the flood insurance purchase requirement is satisfied at the time a loan is made, increased, renewed or extended, and the lender must still force place coverage on the borrower's behalf in a timely manner, as required,[56] and may not rely on a private insurance policy that provides portfolio-wide coverage as a substitute for a force-placed policy.

Coverage 3. When does mandatory flood insurance on a designated loan need to be in place during the closing process?

The Regulation states that a lender cannot ''make'' a loan secured by a property in an SFHA without adequate flood insurance coverage being in place.[57] A lender should use the loan ''closing date'' to determine the date by which flood insurance must be in place for a designated loan. FEMA deems the ''closing date'' as the day the ownership

[49] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

[50] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[51] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[52] 12 CFR 22.4 (OCC); 12 CFR 208.25(d) (Board); 12 CFR 339.4 (FDIC); 12 CFR 614.4932 (FCA); and 12 CFR 760.4 (NCUA).

[53] 12 CFR 22.4(c) (OCC); 12 CFR 208.25(d)(3) (Board); 12 CFR 339.4(c) (FDIC); 12 CFR 614.4932(c) (FCA); and 12 CFR 760.4(c) (NCUA).

[54] 12 CFR 22.4(a) and (b) (OCC); 12 CFR 208.25(d)(1) and (2) (Board); 12 CFR 339.4(a) and (b) (FDIC); 12 CFR 614.4932(a) and (b) (FCA); and 12 CFR 760.4(a) and (b) (NCUA).

[55] 12 CFR 22.4(c)(2) (OCC); 12 CFR 208.25(d)(3)(ii) (Board); 12 CFR 339.4(c)(2) (FDIC); 12 CFR 614.4932(c)(2) (FCA); and 12 CFR 760.4(c)(2) (NCUA).

[56] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[57] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

of the property transfers to the new owner based on State law.

''Wet funding'' and ''dry funding,'' which varies by State, refer to when a mortgage is considered officially closed. In a ''wet'' settlement State, the signing of closing documents, funding, and transfer of title occur all on the same day. By contrast, in a ''dry'' settlement State, documents are signed on one date, but loan funding and/or transfer of title/recording occur on subsequent date(s). Therefore, in ''dry'' settlement States, the ''closing date'' is the date of property transfer, regardless of loan signing or funding date.

It is also important to note that the application and premium payment for NFIP flood insurance must be provided at or prior to the closing date since this impacts the FEMA flood insurance effective date and any resulting 30-day waiting period for new policies not made in connection with a triggering event. This application requirement applies for properties located in both dry and wet settlement States. *See* NFIP *Flood Insurance Manual.*

IV. Required Use of Standard Flood Hazard Determination Form (SFHDF)

SFHDF 1. Does the SFHDF replace the borrower notification form?

No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act.[58] The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform the borrower(s) about flood insurance requirements and the availability of Federal disaster relief assistance.[59]

SFHDF 2. May a lender provide the SFHDF to the borrower?

Yes. Although not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so they can better understand their flood risk. The Agencies note that under the FEMA process for a Letter of Determination Review (LODR), a lender would also need to make the determination available to the borrower. FEMA requires that the lender and the borrower request the LODR jointly within 45-days of the notification of the requirement to purchase flood insurance for a fee. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

SFHDF 3. May the SFHDF be used in electronic format?

Yes.[60] In the final rule adopting the SFHDF, FEMA stated: ''If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form.'' It should be noted that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

SFHDF 4. May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?

It depends. The Act (42 U.S.C. 4104b(e)) permits a lender to rely on a previous flood determination using the SFHDF when it increases, extends, renews, or purchases a loan secured by a building or a mobile home. Under the Act, the ''making'' of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. These loans are extended by the same lender, to the same borrower, and are secured by the same improved real estate, and, therefore, these types of transactions are the functional equivalent of an increase of a loan.

When the loan involves a refinancing or assumption made by a lender different from the one who obtained the original determination, this would constitute the making of a new loan, thereby requiring a new determination.

V. Flood Insurance Determination Fees

Fees 1. When can lenders or servicers charge the borrower a fee for making a determination?

There are four instances under the Act and Regulation when the borrower can be charged a fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination reflects a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination reflects FEMA's publication of a notice or compendium that affects the area in which the security property is located, or FEMA requires a determination as to whether the building securing the loan is located in an SFHA; or
- When the determination results in force placement of insurance.[61]

Loan or other contractual documents between the parties may also permit the imposition of fees.

Fees 2. May charges made for life-of-loan reviews by flood determination firms be passed along to the borrower?

Yes, with limitations noted below. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan (*i.e.,* life-of-loan monitoring). The fee charged for the service at loan closing is a composite fee for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly authorized by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the composite determination/life-of-loan

[58] 12 CFR 22.6(a) (OCC); 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6 (FDIC); 12 CFR 614.4940 (FCA); and 12 CFR 760.6 (NCUA).

[59] 12 CFR 22.9 (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9 (FDIC); 12 CFR 614.4955 (FCA); and 12 CFR 760.9 (NCUA).

[60] 12 CFR 22.6(b) (OCC); 12 CFR 208.25(f)(2) (Board); 12 CFR 339.6(b) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(b) (NCUA).

[61] 12 CFR 22.8(b) (OCC); 12 CFR 208.25(h)(2) (Board); 12 CFR 339.8(b) (FDIC); 12 CFR 614.4950(b) (FCA); and 12 CFR 760.8(b) (NCUA).

monitoring fee may be charged only if the events specified in the answer to Q&A Fees 1 occur.[62] Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because such life-of loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.[63]

VI. Flood Zone Discrepancies

Zone 1. What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

If a lender receives a policy declarations page that has a flood zone designation that is different from the flood zone shown on the SFHDF, it should consider documenting the discrepancy in the loan file. If the SFHDF indicates that the building securing the loan is in an SFHA, the lender must require the appropriate amount of insurance coverage in accordance with the Act and Regulation,[64] but the lender is not otherwise required to resolve a discrepancy between the flood zone designation on the SFHDF and the designation on the flood insurance policy declarations page provided by the borrower. This guidance applies to any flood zone discrepancy that arises in connection with a mortgage loan that is made, increased, extended or renewed. In addition, the guidance applies to any building that has been rated in accordance with NFIP procedures.

For a policy issued under the NFIP, if a misrating is discovered at the time of loss resulting from an incorrect flood zone, and a policyholder has underpaid the flood insurance premium, a policyholder may keep the contracted coverage limits if an additional premium is paid. Once paid, a revised declarations page will be issued showing the corrected flood zone. The lender will receive a copy of the declarations page and may receive a copy of the underpayment notice.

If the borrower does not pay the additional premium, resulting in inadequate coverage, lenders must proceed with force-placement procedures.[65] On the other hand, if a policyholder has overpaid the flood insurance premium as a result of a misrating, FEMA may allow a refund of insurance premiums under certain circumstances. *See NFIP Flood Insurance Manual* for specific instructions. Private policies may resolve flood zone discrepancies differently.

Zone 2. Is a lender in violation of the Regulation if there is discrepancy between the flood zone on the SFHDF and the flood insurance policy declarations page?

No, a lender is not in violation of the Regulation if there is a discrepancy between the flood zone on the SFHDF and the flood zone on the policy declarations page. As provided in Q&A Zone 1, a lender should consider documenting any zone discrepancy in the loan file.

Zone 3. What should a lender do when the lender's flood zone determination specifies that a building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, but the borrower disputes that determination?

If a borrower disputes a lender's determination that the building securing the loan is located in an SFHA requiring mandatory flood insurance coverage, the parties involved in making the determination are encouraged to resolve the flood zone discrepancy before contacting FEMA for a final determination. If the flood zone discrepancy cannot be resolved, an appeal may be filed with FEMA. Depending on the nature of the dispute, FEMA has different options for review, including:

- Letters of Determination Review (LODR), and
- Letters of Map Change (LOMC), which include Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Letters of Map Revision Based on Fill (LOMR–F).

Lenders and borrowers should consult FEMA guidance on the appropriate process to follow, any applicable fees, and any deadlines by which the request to review must be made. However, as long as the lender's flood determination specifies that a building securing the loan is located in an SFHA and requires mandatory flood insurance coverage, sufficient coverage must be in place in accordance with the Act and the Regulation until FEMA has determined that the building is not in an SFHA.[66] As noted in Q&A Zone 1, if there is sufficient insurance coverage in place, lenders are not required to resolve flood zone discrepancies between the flood zone determination form and the flood insurance policy.

VII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

Notice 1. Does the Notice of Special Flood Hazards have to be provided to each borrower for a real estate related loan?

No. The Notice of Special Flood Hazards must be provided to one borrower when the lender determines that the property securing the loan is or will be located in an SFHA.[67] In a transaction involving multiple borrowers, the lender need only provide the Notice of Special Flood Hazards to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the Notice of Special Flood Hazards will be provided.

Notice 2. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the requirement to provide the Notice of Special Flood Hazards applied in these situations?

As required by the Regulation, a lender must provide the Notice of Special Flood Hazards to the borrower within a reasonable time before the completion of the transaction.[68] If a lender determines that a mobile home securing a designated loan will be located in an SFHA just prior to closing, the lender may need to delay the closing until the Notice of Special Flood Hazards has been provided in accordance with the Regulation.

In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such ''home only'' transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions. However, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be

[62] 12 CFR 22.8 (OCC); 12 CFR 208.25(h) (Board); 12 CFR 339.8 (FDIC); 12 CFR 614.4950 (FCA); and 12 CFR 760.8 (NCUA).

[63] 12 U.S.C. 2607. *See* 12 CFR 1024.14(c).

[64] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[65] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a)(FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[66] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[67] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

[68] 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and a force-placement notice must be given to the borrower under those provisions.[69] If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.[70]

Notice 3. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.[71]

Notice 4. What will constitute appropriate form of notice to the servicer?

Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.[72]

In the case of a servicer affiliated with the lender, the Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither the Act nor the Regulation contains an exception for affiliates.[73]

Notice 5. How long must the lender maintain the record of receipt by the borrower of the Notice of Special Flood Hazards?

The record of receipt provided by the borrower must be maintained for the period of time that the lender owns the loan.[74] Examples of a record of receipt include: The borrower's signed acknowledgment of receipt of the Notice of Special Flood Hazards; the borrower's initials on a form that acknowledges receipt; or a certified return receipt if the Notice of Special Flood Hazards was mailed to the borrower. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

Notice 6. Can a lender rely on a previous Notice of Special Flood Hazards if it is less than seven years old, and it is the same property, same borrower, and same lender?

The Regulation does not address waiving the requirement to provide the Notice of Special Flood Hazards to the borrower. Although subsequent transactions by the same lender with respect to the same property are the functional equivalent of a renewal and do not require a new determination, the lender must still provide a new Notice of Special Flood Hazards to the borrower.[75]

Notice 7. Is use of the sample form of Notice of Special Flood Hazards mandatory?

Although lenders are required to provide a Notice of Special Flood Hazards to a borrower when they make, increase, extend, or renew a loan secured by an improved structure located in an SFHA,[76] use of the sample form of Notice of Special Flood Hazards provided in Appendix A of the Regulation is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised Notice of Special Flood Hazards must provide the borrower with at least the minimum information required by the Act and Regulation.[77] Therefore, lenders should consult the Act and Regulation to determine the information needed.

VIII. Determining the Appropriate Amount of Flood Insurance Required

Amount 1. The Regulation states that the amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' What is meant by the ''maximum limit of coverage available for the particular type of property under the Act''?

''The maximum limit of coverage available for the particular type of property under the Act'' depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available for buildings located in a participating community under the Regular Program. For single-family and two-to-four family dwellings and individually owned condominium units insured under the Dwelling Form policy, the maximum limit is $250,000. For a residential condominium building insured under the Residential Condominium Building Association Policy (RCBAP) form, the maximum amount of insurance available is $250,000 multiplied by the number of units. For all other buildings insured under the General Property Form, the maximum limit of building coverage available is $500,000. This includes all non-residential buildings, mixed-use condominium buildings not eligible for coverage under the RCBAP, and other residential buildings of five or more families, such as cooperatives or apartment buildings in the non-condominium form of ownership. (In participating communities that are under the emergency program phase, the maximum limits of insurance are different.) The maximum limit for contents insured under the Dwelling Form and RCBAP is $100,000 ($100,000 total, not per unit) and $500,000 for contents insured under the General Property Form. *See* NFIP *Flood Insurance Manual.*

In addition to the maximum caps under the NFIP, the Regulation also provides that ''flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself,'' which is commonly referred to as the ''insurable value'' of a structure.[78] The NFIP does not insure

[69] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[70] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[71] 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

[72] 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

[73] 12 U.S.C. 4104a(a)(1); 12 CFR 22.9(c) (OCC); 12 CFR 208.25(i)(2) (Board); 12 CFR 339.9(c) (FDIC); 12 CFR 614.4955(c) (FCA); and 12 CFR 760.9(c) (NCUA).

[74] 12 CFR 22.9(d) (OCC); 12 CFR 208.25(i)(3) (Board); 12 CFR 339.9(d) (FDIC); 12 CFR 614.4955(d) (FCA); and 12 CFR 760.9(d) (NCUA).

[75] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

[76] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

[77] 12 U.S.C. 4104a(a)(3); 12 CFR 22.9(b) (OCC); 12 CFR 208.25(i)(1) (Board); 12 CFR 339.9(b) (FDIC); 12 CFR 614.4955(b) (FCA); and 12 CFR 760.9(b) (NCUA).

[78] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

land; therefore, land values are not included in the calculation.[79]

An NFIP policy will not cover an amount exceeding the ''insurable value'' of the structure, so the maximum amount of insurance coverage is the applicable limit available under the NFIP or the insurable value, whichever is less. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA.)[80]

Amount 2. What is the ''insurable value'' of a building and how is it used to determine the required amount of flood insurance?

The insurable value of the building may generally be the same as 100 percent Replacement Cost Value (RCV), which is the cost to replace the building with the same kind of material and construction without deduction for depreciation. In calculating the amount of insurance to require, the lender and borrower (either by themselves or in consultation with the flood insurance provider or other appropriate professional) may choose from a variety of approaches or methods to establish the insurable value. They may use an appraisal based on a cost-value (not market-value) approach, a construction-cost calculation, the insurable value used on a hazard insurance policy (recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary; for example, most hazard policies do not cover foundations), or any other reasonable approach, so long as it can be supported.

In cases involving certain residential or condominium properties, insurance policies under the NFIP should be written to, and the insurance loss payout usually would be the equivalent of, RCV. However, lenders should avoid a situation in which the insured borrower pays for more coverage than the insured would recover in the event of a loss. Therefore, to strictly link insurable value to RCV is not always practical. In cases involving nonresidential properties, and even some residential properties, the insurance loss payout might be based on actual cash value, which is RCV less physical depreciation. Insurance policies written at RCV for these properties would require an insured to pay for coverage that exceeds the amount the NFIP or private insurer would pay in the event of a loss, and this situation should be avoided. Therefore, it is reasonable for lenders, in determining the amount of flood insurance required, to consider the extent of recovery allowed under the NFIP or private policy for the type of property being insured. Doing so would allow the lender to assist the borrower in avoiding situations in which the insured pays for coverage that exceeds the amount the insured would recover in the event of a loss.

Lenders should be equally mindful of avoiding situations in which, as a result of insuring at a level below RCV, they underinsure property.

Amount 3. What are examples of residential buildings?

A residential building is a non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a *single-family, 2–4 family,* or *other residential building.*

The NFIP provides the following definitions:

A *single family* dwelling is either a residential single-family building in which the total floor area devoted to non-residential uses is less than 50 percent of the building's total floor area, *or* a single-family residential unit within a 2–4 family building, other-residential building, business, or non-residential building, in which commercial uses within the unit are limited to less than 50 percent of the unit's total floor area.

A *2–4 family residential building* is a residential building, including an apartment building, containing 2–4 residential spaces and in which commercial uses are limited to less than 25 percent of the building's total floor area. This category includes apartment buildings and condominium buildings. This excludes hotels and motels with normal room rentals for less than 6 months.

An *other residential building* is a residential building that is designed for use as a residential space for 5 or more families or a mixed-use building in which the total floor area devoted to non-residential uses is less than 25 percent of the total floor area within the building. This category includes condominium and apartment buildings as well as hotels, motels, tourist homes, and rooming houses where the normal occupancy of a guest is 6 months or more. Additional examples of other residential buildings include dormitories and assisted-living facilities.

For more complete information, refer to the NFIP *Flood Insurance Manual.*

Amount 4. What are examples of nonresidential buildings?

A nonresidential building is one in which the named insured is a commercial enterprise primarily carried out to generate income and the coverage is for:

- A building designed as a non-habitational building;
- A mixed-use building in which the total floor area devoted to residential uses is 50 percent or less of the total floor area within the building if the residential building is a single-family property; *or* 75 percent or less of the total floor area within the building for all other residential properties; *or*
- A building designed for use as office or retail space, wholesale space, hospitality space, or for similar uses.

In addition, the NFIP describes other non-residential buildings as including, but not limited to, churches, schools, farm buildings (including grain bins and silos), garages, pool houses, clubhouses, and recreational buildings.

For more complete information, refer to the NFIP *Flood Insurance Manual.*

Amount 5. How much insurance is required on a building located in an SFHA in a participating community?

The amount of insurance required by the Act and Regulation is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:

[79] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[80] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

○ The maximum limit available for the type of structure; or

○ The ''insurable value'' of the structure.[81]

Example: (Calculating insurance required on a nonresidential building):

Loan security includes one equipment shed located in an SFHA in a participating community under the Regular Program.

• Outstanding loan principal balance is $300,000.

• Maximum amount of insurance available under the NFIP:

○ Maximum limit available for type of structure is $500,000 per building (nonresidential building).

○ Insurable value of the equipment shed is $30,000.

The minimum amount of insurance required by the Regulation for the equipment shed is $30,000.

Amount 6. Is flood insurance required for each building when the real estate security contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?

Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together.[82] The total amount of required flood insurance is the lesser of:

• The outstanding principal balance of the loan(s); or

• The maximum amount of insurance available under the NFIP, which is the lesser of:

○ The maximum limit available for the type of structures; or

○ The ''insurable value'' of the structures.

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must be covered in accordance with the statutory requirement.

Example: Lender makes a loan in the principal amount of $150,000 secured by five nonresidential buildings, only three of which are located in SFHAs within participating communities.

• Outstanding loan principal is $150,000.

• Maximum amount of insurance available under the NFIP.

○ Maximum limit available for the type of structure is $500,000 per building for nonresidential buildings (or $1.5 million total); or

○ Insurable value ($100,000 for each nonresidential building for which insurance is required, or $300,000 total).

Amount of insurance required for the three buildings is $150,000. This amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered in accordance with the statutory requirement.

Amount 7. If the insurable value of a building or mobile home securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?

No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself. [83] Since the NFIP policy does not cover land value, lenders determine the amount of insurance necessary based on the insurable value of the improvements.

Amount 8. Can a lender require more flood insurance than the minimum required by the Regulation?

Yes. Lenders are permitted to require more than the minimum amount of flood insurance required by the Regulation, taking into consideration applicable State and Federal law and safe and sound banking practices, as appropriate. However, the borrower or lender may have to seek such coverage outside the NFIP. Although a lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral, it should consider the extent of recovery allowed under the NFIP or a private policy for the type of property being insured to assist the borrower in avoiding paying for coverage that exceeds the amount the insured would recover in the event of a loss.

Amount 9. Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?

Yes. However, it may not be a sound business practice for a lender, as a matter of policy, to always allow the borrower to use the maximum deductible. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid the mandatory purchase requirement for flood insurance.[84]

IX. Flood Insurance Requirements For Construction Loans

Construction 1. Is a loan secured only by land, which is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s), a designated loan that requires flood insurance?

No. A designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act.[85] Any loan secured only by land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

Construction 2. Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?

Yes. A lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act.[86] If the building or mobile home is located or will be located in an SFHA, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination.[87] The lender must then comply with the mandatory purchase

[81] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[82] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[83] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[84] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[85] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[86] 12 CFR 22.6(a) (OCC): 12 CFR 208.25(f)(1) (Board); 12 CFR 339.6(a) (FDIC); 12 CFR 614.4940(a) (FCA); and 12 CFR 760.6(a) (NCUA).

[87] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

requirement under the Act and Regulation.[88]

Construction 3. Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?

Yes. Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises. (NFIP *Flood Insurance Manual*).

The NFIP *Flood Insurance Manual* defines ''start of construction'' in the case of new construction as ''either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation.''

Although an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

Construction 4. When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?

Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan.[89] The NFIP rules provide lenders an option to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA by requiring borrowers to have a flood insurance policy in place at the time of loan origination. Such a policy is issued based upon the construction designs and intended use of the building. A borrower should obtain a provisional rating (available only if certain criteria are met) to enable the placement of coverage prior to receipt of the Elevation Certificate (EC). In accordance with the NFIP requirement, it is expected that an EC will be secured and a full-risk rating completed within 60 days of the policy effective date. Failure to obtain the EC could result in reduced coverage limits at the time of a loss. (*See* NFIP *Flood Insurance Manual*).

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an EC has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed. However, in order to comply with the Regulation,[90] the lender must require the borrower to have flood insurance for the security property in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials). If the lender elects this approach and does not require the borrower to obtain flood insurance at loan origination, then it should have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower. (*See* NFIP *Flood Insurance Manual*). (*See also* Q&A Construction 5).

Construction 5. Does the 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?

Yes. Under the NFIP, a 30-day waiting period applies anytime a lender requires flood insurance not in connection with the making, increasing, renewing or extending of a designated loan. Therefore, a 30-day waiting period will apply if a lender allows a borrower to delay the purchase of flood insurance in connection with a construction loan. (NFIP *Flood Insurance Manual*). (*See also* Q&A Construction 4).

Construction 6. If a lender allows a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an Elevation Certificate has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled and roofed, when must the lender begin escrowing flood insurance premiums and fees?

If the lender allows a borrower to defer the purchase of flood insurance until either the foundation slab has been poured and/or an Elevation Certificate has been issued, or if the building to be constructed will have its lowest floor below Base Flood Elevation when the building is walled and roofed, a lender must escrow flood insurance premiums and fees at the time of purchase of the flood insurance, unless one of the escrow exceptions applies.[91]

X. Flood Insurance Requirements for Residential Condominiums and Co-Ops

Condo and Co-Op 1. Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?

Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act.[92] The mandatory purchase requirements also apply to loans secured by other residential condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

Condo and Co-Op 2. What is an NFIP Residential Condominium Building Association Policy (RCBAP)?

The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum

[88] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[89] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[90] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[91] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[92] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

Condo and Co-Op 3. What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story residential condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?

To comply with the Regulation, the lender must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the residential condominium unit; or
  - The ''insurable value'' allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.[93]

FEMA requires agents to provide on the declarations page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the replacement cost value and number of units on the RCBAP declarations page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender determines that the borrower is underinsured, it must require the purchase of supplemental coverage.[94] However, coverage under the supplemental policy may be limited depending on other coverage that may be applicable including the RCBAP insuring the condominium building and the terms and conditions of the policy.

Assuming that the maximum amount of coverage available under the NFIP is less than the outstanding principal balance of the loan, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain flood insurance coverage if there is no RCBAP, as explained in proposed Q&A Condo and Co-Op 4, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in Q&A Condo and Co-Op 5.

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance purchase requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000)). (NFIP *Flood Insurance Manual*)

The requirement discussed in this Q&A applies to any loan that is made, increased, extended, or renewed after October 1, 2007. This requirement does not apply to any loans made prior to October 1, 2007, until a triggering event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new triggering event, loans made prior to October 1, 2007, will be considered compliant if the lender complied with the Agencies' previous guidance that an RCBAP with 80 percent RCV coverage was sufficient. FEMA issued guidance effective October 1, 2007, requiring NFIP insurers to add the RCV of the condominium building and the number of units to the RCBAP declarations page of all new and renewed policies.

Condo and Co-Op 4. What action must a lender take for an individual unit owner/borrower if there is no RCBAP coverage?

If there is no RCBAP on the residential condominium building, then the lender must require the individual unit owner/borrower to obtain coverage in an amount sufficient to meet the requirements outlined in Q&A Condo and Co-Op 3.[95]

Under the NFIP, a Dwelling Policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP coverage.

Example: The lender makes a loan in the principal amount of $175,000 secured by a residential condominium unit in a 50-unit residential condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase flood insurance coverage in the amount of at least $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance purchase requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

Condo and Co-Op 5. What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?

If the lender determines that flood insurance coverage purchased under the

[93] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA) and 12 CFR 760.3(a) (NCUA).

[94] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA) and 12 CFR 760.3(a) (NCUA).

[95] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*See* Q&A Condo and Co-Op 3). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase supplemental coverage in an amount sufficient to meet the Regulation's flood insurance requirements.[96] The amount of supplemental coverage required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance purchase requirements (*See* Q&A Condo and Co-Op 4).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or $160,000 per unit).

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit ($250,000); or
  - Insurable value of the unit based on 100 percent of the building's replacement value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase supplemental flood insurance coverage in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance purchase requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance purchase requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. For example, the NFIP Dwelling Policy provides individual unit owners with supplemental building coverage that is in excess to the RCBAP. The policies are coordinated such that the Dwelling Policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the Dwelling Policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Condo and Co-Op 6. What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?

If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements.[97] The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance purchase requirement (*See* Q&A Condo and Co-Op 3). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance policy in an amount sufficient to meet the Regulation's mandatory flood insurance purchase requirement (*See* Q&As Condo and Co-Op 4 & 5). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance on the borrower's behalf.[98]

Condo and Co-Op 7. How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?

In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a coinsurance penalty, is determined as follows (subject to all other relevant conditions in the policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (Inadequate Insurance Amount To Avoid Penalty)

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $180,000.

Amount of the loss: $150,000.

Deductible: $500.

Step A: 180,000 ÷ 200,000 = .90 (90% of what should be carried to avoid coinsurance penalty)

Step B: 150,000 × .90 = 135,000

Step C: 135,000 − 500 = 134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500).

Example 2: (Adequate Insurance Amount To Avoid Penalty)

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $200,000.

Amount of the loss: $150,000.

Deductible: $500.

Step A: 200,000 ÷ 200,000 = 1.00 (100% of what should be carried to avoid coinsurance penalty)

[96] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[97] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[98] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

Step B: 150,000 × 1.00 = 150,000
Step C: 150,000 − 500 = 149,500

In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty. The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

Condo and Co-Op 8. What are the major factors involved with the individual unit owner's NFIP Dwelling Policy's coverage limitations with respect to the condominium association's RCBAP coverage?

The following examples demonstrate how the unit owner's NFIP Dwelling Policy may cover in certain loss situations:

Example 1: RCBAP

If the unit owner purchases building coverage under the Dwelling Policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the Dwelling Policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost allocated to that unit.

The loss assessment coverage under the Dwelling Policy will not cover the association's policy deductible purchased by the condominium association.

If building elements within units have also been damaged, the Dwelling Policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: No RCBAP

If the unit owner purchases building coverage under the Dwelling Policy and there is no RCBAP, the Dwelling Policy covers assessments against unit owners for damages to common areas up to the Dwelling Policy limit.

However, if there is damage to the building elements of the unit (*e.g.,* inside the individual unit) as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the Dwelling Policy.

Condo and Co-Op 9. What flood insurance requirements apply to a loan secured by a share in a cooperative building that is located in an SFHA?

It is important to recognize the difference between ownership of a condominium and a cooperative. Although an owner of a condominium owns title to real property, a cooperative unit holder holds stock in a corporation with the right to occupy a particular unit, but owns no title to the building. As a result, a loan to a cooperative unit owner, secured by the owner's share in the cooperative, is not a designated loan that is subject to the Act or the Regulation.

Although there is no requirement under the Act or Regulation to purchase flood insurance on the cooperative building if the loan is secured by the unit owner's share in the cooperative, for safety and soundness purposes, residential or nonresidential cooperative buildings may be insured by the association or corporation under the General Property Form. The entity that owns the cooperative building, not the individual unit members, is the named insured.

XI. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral (Contents) Located in an SFHA

Other Security Interests 1. Is a home equity loan considered a designated loan that requires flood insurance?

Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.[99]

Other Security Interests 2. Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?

No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations.[100] However, a request made for an increase in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* Q&A SFHDF 4).

Other Security Interests 3. What is the amount of flood insurance coverage required on a line of credit secured by a residential improved real estate?

A lender may take the following alternative approaches:

- For administrative convenience in complying with the flood insurance requirements, upon origination, a lender may require the purchase of flood insurance for the total amount of all loans or the maximum amount of flood insurance coverage available, whichever is less; [101] or
- A lender may actively review its records throughout the year to determine whether the appropriate amount of flood insurance coverage is maintained, considering the draws made against the line or repayments made to the account. In those instances in which there is no policy on the collateral at time of origination, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. Lenders that choose to actively review the line should inform the borrower that this option may have more risks, such as inadequate flood insurance coverage during the 30-day waiting period for an NFIP flood policy to become effective. Lenders should be prepared to initiate force-placement procedures if at any time the lender determines a lack of adequate flood insurance coverage for a designated line of credit, as required under the Regulation.[102]

Other Security Interests 4. When a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for most residential buildings and $500,000 for other buildings), or the insurable value of the building or mobile home.[103] The junior lienholder should also have the borrower add the junior lienholder's name as mortgagee/loss payee to the

[99] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[100] 12 CFR 22.2(e) and 22.3(a) (OCC); 12 CFR 208.25(b)(5) and (c)(1) (Board); 12 CFR 339.2 and 339.3(a) (FDIC); 12 CFR 614.4925 and 614.4930(a) (FCA); and 12 CFR 760.2 and 760.3(a) (NCUA).

[101] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[102] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[103] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

A junior lienholder should work with the senior lienholder, the borrower, or with both of these parties, to determine how much flood insurance is needed to cover improved real estate collateral. A junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

Junior lienholders also have the option of pulling a borrower's credit report and using the information from that document to establish how much flood insurance is necessary upon increasing, extending, or renewing a junior lien, thus protecting the interests of the junior lienholder, the senior lienholder(s), and the borrower. In the limited situation in which a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the lender may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance relating to the senior lien was adequate at the time) continues to be sufficient.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage, which the borrower satisfied by obtaining an NFIP policy. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require additional flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000) through an NFIP policy, then its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on improved real estate with a fair market value of $150,000. The insurable value of the residential building on the improved real estate is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $80,000 loss payment towards the insurable value of $90,000.

Other Security Interests 5. If a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be ''making'' a new loan.[104] In either situation, the lender will need to determine whether the amount of insurance in effect is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the junior lien loan), the insurable value, or the maximum amount of coverage available on the improved real estate. This will hold true whether the subordinate lien loan is a home equity loan or some other type of junior lien loan.

Other Security Interests 6. If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?

No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is, a loan secured by a building or mobile home located or to be located in an SFHA, ''unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.'' [105] In this example, the loan is not a designated loan because it is not secured by a building or mobile home; rather, the collateral is the inventory alone.

Other Security Interests 7. Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?

Yes. Flood insurance is required for the building located in the SFHA and any personal property securing the loan.[106] The method for allocating flood insurance coverage among multiple buildings, as described in Q&A Amount 6, would be the same method for allocating flood insurance coverage among contents and buildings. That is, both contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes so long as some reasonable amount of insurance is allocated to each category.

Example: Lender A makes a loan for $200,000 that is secured by a warehouse with an insurable value of $150,000 and

[104] 12 CFR 22.3(a), 22.6(a) (OCC); 12 CFR 208.25(c)(1) and (f)(1) (Board); 12 CFR 339.3(a), 339.6(a) (FDIC); 12 CFR 614.4930(a), 614.4940(a) (FCA); and 12 CFR 760.3(a), 760.6(a) (NCUA).

[105] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[106] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

inventory in the warehouse worth $100,000. The Act and Regulation require that flood insurance coverage be obtained for the lesser of the outstanding principal balance of the loan or the maximum amount of flood insurance that is available under the NFIP. The maximum amount of insurance that is available for both building and contents is $500,000 for each category. In this situation, Federal flood insurance requirements could be satisfied by placing $150,000 worth of flood insurance coverage on the warehouse, thus insuring it to its insurable value, and $50,000 worth of contents flood insurance coverage on the inventory, thus providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $100,000.

Other Security Interests 8. If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?

No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

Other Security Interests 9. Does the Regulation apply when the lender takes a security interest in improved real estate and contents located in an SFHA only as an ''abundance of caution''?

Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate and contents located in an SFHA, then flood insurance is required.[107]

The language in the loan agreement determines whether the contents are taken as security for the loan. If a lender intends to take a security interest in the contents, the loan agreement should include language indicating that the contents are security for the loan. If the lender does not intend to take a security interest in the contents, the loan agreement should not include language to this effect, including language inserted out of an ''abundance of caution.''

Other Security Interests 10. Is flood insurance required if the lender takes a security interest in contents located in a building in an SFHA securing the loan but does not perfect the security interest?

Yes, flood insurance is required. The language in the loan agreement determines whether the contents are taken as security for the loan. If the lender takes a security interest in contents located in a building in an SFHA securing the loan, flood insurance is required for the contents, regardless of whether that security interest is perfected.[108]

Other Security Interests 11. If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?

No. A designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act.[109] In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

Other Security Interests 12. If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?

Yes. In this scenario, a loan is made on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA and owned by that third party. Under these circumstances, the security of improved real estate in an SFHA is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.[110]

XII. Requirement to Escrow Flood Insurance Premiums and Fees—General

Escrow 1. When must escrow accounts be established for flood insurance purposes?

A lender, or a servicer acting on its behalf, must escrow all premiums and fees for any flood insurance required under the mandatory purchase of flood insurance requirement for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016. The escrow must be payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan, unless the loan or lender is subject to one of the exceptions.[111]

A lender is not required to escrow for flood insurance if it qualifies for the small lender exception [112] or the loan qualifies for one of the following loan-related exceptions [113] in the Regulation:

- A loan that is an extension of credit primarily for business, commercial, or agricultural purposes;
- A loan that is in a subordinate position to a senior lien secured by the same property for which the borrower has obtained adequate flood insurance coverage;
- A loan that is covered by a condominium association, cooperative, homeowners association or other applicable group's adequate flood insurance policy;
- A loan that is a home equity line of credit;
- A loan that is a nonperforming loan that is 90 or more days past due; or
- A loan that has a term not longer than 12 months.

If a lender no longer qualifies for the small lender exception, it must escrow all premiums and fees for any flood insurance required under the mandatory purchase of flood insurance requirement for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after July 1 of the first calendar year in which a lender has a change in status, unless a loan qualifies for another exception.[114]

[107] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[108] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[109] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[110] 12 CFR 22.2(e) (OCC); 12 CFR 208.25(b)(5) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[111] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[112] 12 CFR 22.5(c) (OCC); 12 CFR 208.25(e)(3) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

[113] 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

[114] 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC);

Continued

If a lender, other than a lender that qualifies for the small lender exception, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that an exception from the escrow requirement that previously applied to a particular loan no longer applies to the loan, the lender must escrow flood insurance premiums and fees as soon as reasonably practicable.[115]

Escrow 2. If a lender does not escrow for taxes or homeowner's insurance, is it required to escrow for flood insurance under the Regulation? If yes, is the lender obligated to escrow for taxes and other insurance because it escrows for flood insurance pursuant to the rule?

If a lender or its servicer is required to escrow for flood insurance under the Regulation, it must do so even if it does not escrow for taxes or other insurance.[116] A lender or servicer is not, however, obligated to escrow for taxes and other insurance solely because it must escrow for flood insurance pursuant to the Regulation, though there may be other laws or regulations that require that additional escrow.

Escrow 3. Are lenders required to escrow force-placed insurance?

Yes, the Regulation requires lenders or their servicers to escrow flood insurance premiums for any residential designated loan made, increased, extended, or renewed on or after January 1, 2016, unless the lender or the loan qualifies for an exception from the escrow requirement.[117] The Act and Regulation do not include an exception to the escrow requirement for force-placed insurance.

Escrow 4. Does the requirement to escrow flood insurance premiums and fees apply when a loan does not experience a triggering event, such as when the loan is modified without being increased, extended, or renewed; the loan is assumed by another borrower; or the building securing the loan is remapped into a Special Flood Hazard Area (SFHA)?

No, subject to certain exceptions. The Regulation provides that a lender or its servicer is required to escrow flood insurance premiums and fees when a designated loan is made, increased, extended, or renewed (a triggering event), unless either the lender or the loan is excepted from the escrow requirement.[118] Until the loan experiences a triggering event, the lender is not required to escrow flood insurance premiums and fees, unless: (i) A borrower requests the escrow in connection with the requirement that the lender provide an option to escrow for outstanding loans; [119] or (ii) the lender determines that a loan exception to the escrow requirement no longer applies.[120]

Escrow 5. Are multi-family buildings or mixed-use properties included in the definition of ''residential improved real estate'' under the Regulation for which escrows are required (unless an exception applies)?

Yes. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied.[121] Single-family dwellings (including mobile homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are considered residential improved real estate.

However, with regard to mixed-use properties, the lender should look to the primary use of a building to determine whether it meets the definition of ''residential improved real estate.'' (*See* Q&As Amount 3 and 4 for guidance on residential and nonresidential buildings.) A loan secured by residential improved real estate is not subject to the escrow requirement if the loan is an extension of credit primarily for business, commercial or agricultural purposes.[122]

Escrow 6. If a borrower obtains a second mortgage loan for a property located in an SFHA, and it is determined that the first lienholder does not have sufficient flood insurance coverage for both liens and is not currently escrowing for flood insurance, does the junior lienholder have to escrow for the additional amount of flood insurance coverage?

Under the Regulation, for a closed-end second mortgage loan, junior lienholders are not required to escrow for flood insurance as long as the borrower has obtained flood insurance coverage that meets the mandatory purchase requirement. Thus, the junior lender or its servicer must ensure that adequate flood insurance is in place (*See* Q&A Other Security Interests 4 for junior lienholder requirements).[123] Q&A Other Security Interests 4 explains the requirements for junior lienholders. If adequate flood insurance has not been obtained by the first lienholder and insurance must be purchased in connection with the second mortgage loan to meet the mandatory purchase requirement, the junior lender or its servicer would need to escrow the insurance obtained in connection with the second mortgage loan.[124] However, the escrow requirements do not apply to a junior lien that is a home equity line of credit (HELOC) since HELOCs have a separate escrow exception under the Act and Regulation.[125]

Escrow 7. Does a lender or servicer have to escrow for loans when the security property is not located in an SFHA, but the borrower chooses to buy flood insurance?

Under the Regulation, lenders and servicers are only required to escrow for loans that are secured by residential improved real estate or a mobile home located or to be located in SFHAs where flood insurance is available under the NFIP and that experience a triggering event (made, increased, extended, or

12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).

[115] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

[116] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[117] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a)(1) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[118] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(NCUA).

[119] 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).

[120] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

[121] 12 CFR 23.2(j) (OCC); 12 CFR 208.25(b)(8) (Board); 12 CFR 339.2 (FDIC); 12 CFR 614.4925 (FCA); and 12 CFR 760.2 (NCUA).

[122] 12 CFR 22.5(a)(2)(i) (OCC); 12 CFR 208.25(e)(1)(ii)(A) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

[123] 12 CFR 22.5(a)(2)(ii) (OCC); 12 CFR 208.25(e)(1)(ii)(B) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

[124] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[125] 12 CFR 22.5(a)(2)(iv) (OCC); 12 CFR 208.25(e)(1)(ii)(D) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

renewed) on or after January 1, 2016, unless either the lender or the loan qualifies for an exception.[126] If the property securing the loan is not located in an SFHA, it is not a designated loan, and the lender or its servicer is not required to escrow, although the lender or servicer may offer escrow service to the borrower.

XIII. Requirement to Escrow Flood Insurance Premiums and Fees—Small Lender Exception

Small Lender Exception 1. Is the $1B small lender exception for the mandatory escrow of flood insurance premiums at the lending institution level or bank holding company level?

By its own terms, the small lender exception to the flood insurance escrow requirement applies to lenders rather than holding companies.[127] Therefore, the $1 billion requirement is calculated based on the assets held at the lending institution level, rather than at the holding company level.

Small Lender Exception 2. If a lender was required to escrow for taxes and hazard insurance solely under the (a) Higher-Priced Mortgage Loan (HPML) rules or (b) USDA or FHA programs on or before July 6, 2012, is such a lender, who otherwise qualifies for the small lender exception, required to escrow the premiums and fees for flood insurance?

The Act and Regulation provide that a small lender is eligible for the exception only if, on or before July 6, 2012, the lender: (1) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and (2) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.[128]

(a) With respect to an HPML, Federal law in effect on or before July 6, 2012, permitted a borrower to request cancellation of the escrow rather than have it apply for the entire term of the loan. Therefore, HPML escrow requirements would not result in the loss of the escrow exception for a small lender that made an HPML-covered loan prior to July 6, 2012, because the lender was not required under Federal law to escrow for the entire term of the loan. Note that the phrase ''entire term'' applies only with respect to the Federal or State law requirements criterion of the exception. In addition, if a lender required escrow for an HPML solely to comply with Federal law, a lender complying with that law would not be considered to have its own separate policy of consistently and uniformly requiring escrow.

(b) With respect to loans under the USDA or FHA programs, under Federal law, such loans require the deposit of taxes, insurance premiums, fees and other charges in an escrow account for the entire term of the loan. Therefore, the first criterion of the exception would not be met and would disqualify the lender from the small lender exception under the Act and the Regulation.

Small Lender Exception 3. Is a lender disqualified from the small lender escrow exception if it is required to collect escrowed funds on a mortgage loan on behalf of a third party?

To qualify for the small lender exception, one requirement is the lender must not have had a policy on or before July 6, 2012, of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.[129]

- With regard to mortgage loans for which the lender had a policy on or before July 6, 2012, of collecting escrow funds at closing and the lender maintained servicing of the loan, the lender would not qualify for the exception because the lender established an individual escrow account for the loan it would then service.
- With regard to mortgage loans for which the lender did not have a policy on or before July 6, 2012, of collecting the escrow funds on its own behalf at closing, but escrowed funds on behalf of a third party and then transferred those escrow funds to the third party servicing that loan, the lender would be able to qualify for the small lender exception provided the lender did not establish an individual escrow account and the lender transferred the funds to the third party as soon as reasonably practicable. The small lender must also satisfy the other requirements for the exception, but because no individual escrow account was established for the loan whose servicing rights were transferred pursuant to a third party's requirements, the lender would not have had a policy of consistently and uniformly requiring the deposit of funds in an escrow account.

Small Lender Exception 4. Is a lender eligible for the small lender exception if it offers escrow accounts only upon a borrower's request?

Yes. If a lender only offers escrow accounts upon the request of borrowers, this practice does not constitute a consistent or uniform policy of requiring escrow. The small lender exception does not apply if, on or before July 6, 2012, the lender had a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for a loan secured by residential improved real estate or a mobile home.[130]

Small Lender Exception 5. Is the option to escrow notice required for all outstanding loans secured by residential real estate that are not excepted from the escrow requirement? What about outstanding loans that are not secured by buildings located in SFHAs?

Under the Regulation, lenders or their servicers are required to offer and make available the option to escrow flood insurance premiums and fees for all outstanding designated loans secured by residential improved real estate or a mobile home located in an SFHA as of January 1, 2016, or July 1 of the first calendar year in which the lender no longer qualifies for the small lender exception to the escrow requirement.[131] With the expiration of the June 30, 2016, deadline to comply with the option to escrow notice requirement for outstanding loans as of January 1, 2016, that requirement currently applies only to lenders who have a change in status and no longer qualify for the small lender exception.[132] Such lenders will be required to provide the option to escrow notice by September 30 of the first calendar year in which the lender

[126] 12 CFR 22.5(a)(1) (OCC); 12 CFR 208.25(e)(1)(i) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[127] 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

[128] 12 CFR 22.5(c)(1) (OCC); 12 CFR 208.25(e)(3)(i) (Board); 12 CFR 339.5(c) (FDIC); 12 CFR 614.4935(c) (FCA); and 12 CFR 760.5(c) (NCUA).

[129] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(B)(*2*) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c)(1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).

[130] 12 CFR 22.5(c)(1)(ii)(B) (OCC); 12 CFR 208.25(e)(3)(i)(B)(*2*) (Board); 12 CFR 339.5(c)(1)(ii)(B) (FDIC); 12 CFR 614.4935(c)(1)(ii)(B) (FCA); and 12 CFR 760.5(c)(1)(ii)(B) (NCUA).

[131] 12 CFR 22.5(d) (OCC); 12 CFR 208.25(e)(4) (Board); 12 CFR 339.5(d) (FDIC); 12 CFR 614.4935(d) (FCA); and 12 CFR 760.5(d) (NCUA).

[132] 12 CFR 22.5(c)(2) (OCC); 12 CFR 208.25(e)(3)(ii) (Board); 12 CFR 339.5(c)(2) (FDIC); 12 CFR 614.4935(c)(2) (FCA); and 12 CFR 760.5(c)(2) (NCUA).

has had a change in status pursuant to the Regulation.[133] The requirement to provide the option to escrow notice does not apply to outstanding loans or to lenders that are excepted from the general escrow requirement under the Regulation. The option to escrow notice requirement also does not apply to loans that are not subject to the mandatory flood insurance purchase requirement.

Small Lender Exception 6. If the borrower has waived escrow of flood insurance premiums and fees, does the lender or its servicer still need to send a notice to offer the ability to escrow for the flood insurance?

Yes, if the small lender exception no longer applies. (*See* Q&A Small Lender Exception 5). The Regulation does not exclude loans for which borrowers have previously waived escrow from the requirement to offer and make available the option to escrow flood insurance premiums and fees. Consequently, lenders or their servicers must send a notice of the option to escrow flood insurance premiums and fees to borrowers who have previously waived escrow or for whom lenders previously offered an option to escrow.[134] Although a borrower may have previously decided to waive escrow or been offered an option to escrow, it is possible that the borrower's circumstances have changed, and if offered another chance to escrow, the borrower may desire to do so.

Small Lender Exception 7. Is it correct that lenders that qualify for the small lender exception are not required to provide borrowers the escrow notice or the option to escrow notice?

Yes. Lenders that qualify for the small lender exception are not required to provide borrowers either the escrow notice or the option to escrow notice unless the lender ceases to qualify for the small lender exception.[135]

XIV. Requirement to Escrow Flood Insurance Premiums and Fees—Loan Exceptions

Loan Exceptions 1. Are escrow accounts for flood insurance premiums and fees required for commercial loans that are secured by multi-family residential buildings?

No. Extensions of credit primarily for business, commercial or agricultural purposes are not subject to the escrow requirement for flood insurance premiums and fees, even if such loans are secured by residential improved real estate or a mobile home.[136]

Loan Exceptions 2. Do construction-permanent loans qualify for the 12-month exception if one phase of the loan is for 12 months or less?

Generally, no. Construction-permanent loans (or C-P loans) are loans that have a construction phase of approximately one year before the loan converts into permanent financing. During the construction phase, the loan is typically interest-only, so the borrower does not start paying principal until the permanent phase. After the construction phase, the borrower generally comes in to sign papers to start the permanent phase, but this is not a true closing. Given that C-P loans are generally 20- to 30-year term loans, a C-P loan would not qualify for the 12 month-exception from escrow, even if one phase of the loan is for 12 months or less.

Loan Exceptions 3. Although a lender is not required to monitor whether a subordinate lien moves into first lien position for the purpose of the mandatory escrow requirement, if the lender becomes aware that the subordinate lien exception no longer applies, when must the lender begin to escrow?

If at any time during the term of the loan a lender determines that a subordinate lien exception no longer applies, the lender must begin escrowing flood insurance premiums and fees as soon as reasonably practicable (unless another exception applies).[137] Lenders should ensure that the loan documents for the subordinate lien permit the lender to require an escrow if the loan takes a first lien position.

Loan Exceptions 4. Which requirements for an escrow account apply to a property covered by an RCBAP?

An RCBAP (Residential Condominium Building Association Policy) is a policy purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. Typically, a portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and RCBAP premiums are paid by the condominium association as a common expense, an escrow account is not required.[138] However, if the RCBAP coverage is inadequate and the unit is also covered by a flood insurance policy for supplemental coverage, premiums for the supplemental policy would need to be escrowed, provided the lender or the loan did not qualify for any other exception from the Regulation's escrow requirement.[139] Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

Loan Exceptions 5. Is there an exception to the escrow requirement for loans secured by multi-family buildings? Is there an exception for commercial loans?

Under the Regulation, the escrow requirements do not apply to a loan that is an extension of credit primarily for business, commercial, or agricultural purposes even if secured by residential real estate, such as a multi-family building.[140]

In addition, the escrow requirements in the Regulation would not apply to a loan secured by a particular unit in a multi-family residential building if a condominium association, cooperative, homeowners association, or other applicable group provides an adequate policy and pays for the insurance as a common expense.[141] Otherwise, the escrow requirements generally would

[133] 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

[134] 12 CFR 22.5(d)(2) (OCC); 12 CFR 208.25(e)(4)(ii) (Board); 12 CFR 339.5(d)(2) (FDIC); 12 CFR 614.4935(d)(2) (FCA); and 12 CFR 760.5(d)(2) (NCUA).

[135] 12 CFR 22.5(d)(1) (OCC); 12 CFR 208.25(e)(4)(i) (Board); 12 CFR 339.5(d)(1) (FDIC); 12 CFR 614.4935(d)(1) (FCA); and 12 CFR 760.5(d)(1) (NCUA).

[136] 12 CFR 22.5(a)(2) (OCC); 12 CFR 208.25(e)(1)(ii) (Board); 12 CFR 339.5(a)(2) (FDIC); 12 CFR 614.4935(a)(2) (FCA); and 12 CFR 760.5(a)(2) (NCUA).

[137] 12 CFR 22.5(a)(3) (OCC); 12 CFR 208.25(e)(1)(iii) (Board); 12 CFR 339.5(a)(3) (FDIC); 12 CFR 614.4935(a)(3) (FCA); and 12 CFR 760.5(a)(3) (NCUA).

[138] 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).

[139] 12 CFR 22.5(a) (OCC); 12 CFR 208.25(e)(1) (Board); 12 CFR 339.5(a)(1) (FDIC); 12 CFR 614.4935(a) (FCA); and 12 CFR 760.5(a)(1) (NCUA).

[140] 12 CFR 22.5(a)(2)(i) (OCC); 12 CFR 208.25(e)(1)(ii)(A) (Board); 12 CFR 339.5(a)(2)(i) (FDIC); 12 CFR 614.4935(a)(2)(i) (FCA); and 12 CFR 760.5(a)(2)(i) (NCUA).

[141] 12 CFR 22.5(a)(2)(iii) (OCC); 12 CFR 208.25(e)(1)(ii)(C) (Board); 12 CFR 339.5(a)(2)(iii) (FDIC); 12 CFR 614.4935(a)(2)(iii) (FCA); and 12 CFR 760.5(a)(2)(iii) (NCUA).

apply to loans for particular units in multi-family residential buildings.

XV. Force Placement of Flood Insurance

Force Placement 1. What is the requirement for the force placement of flood insurance under the Act and the Regulation?

When a lender makes a determination that the collateral securing the loan is uninsured or underinsured, it must begin the force-placement process. Specifically, the Act and the Regulation provide that if a lender, or a servicer acting on its behalf, determines at any time during the term of a designated loan that a building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation, the lender or its servicer must notify the borrower that the borrower must obtain flood insurance, at the borrower's expense, in an amount at least equal to the minimum amount required under the Regulation. If the borrower fails to obtain flood insurance within 45 days of the lender's notification to the borrower, the lender must purchase flood insurance on the borrower's behalf at that time. The lender must force place flood insurance for the full amount required under the Regulation, or if the borrower has purchased flood insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender would be required to force place only for the ''insufficient amount,'' that is, the difference between the amount the borrower insured and the required amount of flood insurance. The Act and the Regulation also provide that the lender or its servicer may purchase insurance on the borrower's behalf and may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. (*See also* Q&A Force Placement 8).[142]

A lender or its servicer may include in the force-placement notice the amount of flood insurance needed. By providing this information, the lender or its servicer can help ensure that a borrower obtains the appropriate amount of insurance. In addition, before the lender or servicer must force place flood insurance, if the lender or servicer is aware that a borrower has obtained insurance that otherwise satisfies the flood insurance requirements but in an insufficient amount, the lender or servicer should inform the borrower an additional amount of insurance is needed in order to comply with the Regulation.

Force Placement 2. When must a lender provide the force-placement notice to the borrower?

The Regulation requires the lender, or its servicer, to send notice to the borrower upon making a determination that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the Regulation. The Agencies expect that such notice will be provided to the borrower at the time of determination of no or insufficient coverage. If there is a brief delay in providing the notice, the Agencies will expect the lender or servicer to provide a reasonable explanation for the delay, for example, that the lender uses batch processing to send the force-placement notice to its borrowers.

Force Placement 3. May a servicer force place on behalf of a lender?

Yes. Assuming the statutory prerequisites for force placement are met, and subject to the servicing contract between the lender and its servicer, the Act authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.[143]

Force Placement 4. May a lender satisfy its notice requirement by sending the force-placement notice to the borrower prior to the expiration of the flood insurance policy?

No. The Act specifically provides that the lender or servicer for a loan must send a notice upon its determination that the collateral property securing the loan is either not covered by flood insurance or is covered by flood insurance in an amount less than the amount required.[144] Although a lender may send notice prior to the expiration date of the flood insurance policy as a courtesy, the lender or servicer is still required to send notice upon determining that the flood insurance policy actually has lapsed or is insufficient in meeting the statutory requirement. The lender may purchase insurance on the borrower's behalf beginning on the date of the lapse.[145]

Force Placement 5. When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within 45 days after notification?

The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification.[146] If the borrower fails to obtain flood insurance and the lender does not force place flood insurance by the end of the force-placement notification period, the Agencies will expect the lender to provide a reasonable explanation for the brief delay, for example, that a lender uses batch processing to purchase force-placed flood insurance policies.

Force Placement 6. Once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage and sends the borrower a force-placement notice, may a lender make a subsequent determination in connection with the initial notification period that the designated loan has no or insufficient coverage and send another force-placement notice, effectively providing more than 45 days for the borrower to obtain sufficient coverage?

No. The Act and Regulation state that once a lender makes a determination that a designated loan has no or insufficient flood insurance coverage, the lender must notify the borrower and, if the borrower fails to obtain sufficient flood insurance coverage within 45 days after that notice, the lender must purchase coverage on the borrower's behalf.[147] For example, if in response to a force-placement notice, the borrower obtains flood insurance that is insufficient in amount, there is no extension of the time period by which the lender must force place flood insurance.

[142] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[143] 42 U.S.C. 4012a(e); 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[144] 12 U.S.C. 4012a(e)(1). *See also* 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[145] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[146] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[147] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

Force Placement 7. May a lender commence a force-placed insurance policy on the day the previous policy expires, or must the new policy begin on the day after?

The Regulation provides that the lender or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage, beginning on the date on which flood insurance lapsed or did not provide a sufficient coverage amount.[148]

A lender, however, may not require the borrower to pay for double coverage. The Regulation requires the lender or its servicer to refund to the borrower all premiums paid by the borrower for any force-placed insurance purchased by the lender or its servicer during any period in which the borrower's flood insurance coverage and the force-placed insurance policy were each in effect.[149]

If the previous policy expires at the end of Day 1, the lender's new force-placed policy should not begin to provide coverage until the beginning of Day 2. If the lender did force place on Day 1 and the policy provided overlapping coverage on Day 1, the lender could not charge the borrower for the period of overlapping coverage on Day 1.

Force Placement 8. When force placement occurs, what is the amount of insurance required to be placed?

The Regulation states that the minimum amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' [150] Therefore, if the outstanding principal balance is the basis for the minimum amount of required flood insurance, the lender must ensure that the force-placed policy amount covers the existing loan balance plus any additional force-placed premium and fees added to the loan balance.[151]

To illustrate this point, assume that there is a loan with an outstanding principal balance of $200,000, secured by a residential property located in a special flood hazard area that has an insurable value of $350,000. The borrower has a $200,000 flood insurance policy for that property, reflecting the minimum amount required under the Agencies' regulations. If the $200,000 flood insurance policy lapses, the lender or its servicer must notify the borrower of the need to obtain adequate flood insurance. If the borrower fails to obtain adequate flood insurance within 45 days after notification, then the lender or its servicer must purchase insurance on the borrower's behalf.[152]

If the lender intends to add the premium for the force-placed policy to the loan balance, the lender must ensure that the policy is issued in an amount sufficient to cover the anticipated higher loan balance, including the force-placed policy premium, even if the addition of the force-placed premium is not considered a triggering event. (*See also* Q&A Force Placement 10). In this scenario, if the cost of the force-placed policy is $2,000, the coverage amount of the force-placed policy must be at least $202,000.

Force Placement 9. When may a lender or its servicer charge the borrower for the cost of force-placed insurance?

A lender, or a servicer acting on its behalf, may force place insurance and charge the borrower for the cost of premiums and fees incurred by the lender or servicer in purchasing the flood insurance on the borrower's behalf at any time starting from the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount. The lender or servicer would not have to wait 45 days after providing notification to force place insurance.[153]

Lenders that monitor loans secured by property located in an SFHA for continuous flood insurance coverage can minimize any gaps in coverage and any charge to the borrower for coverage for a timeframe prior to the lender's or its servicer's date of discovery and force placement. If a lender or its servicer, despite its monitoring efforts, discovers a loan with no or insufficient coverage, for example, due to a re-mapping, it may charge the borrower for premiums and fees incurred by the lender or servicer for a force-placed flood insurance policy purchased on the borrower's behalf, including premiums and fees for coverage, beginning on the date of no or insufficient coverage, provided that the policy was effective as of the date of the insufficient coverage. When a lender or its servicer purchases a policy on the borrower's behalf, the lender or its servicer may not charge for premiums and fees for coverage beginning on the date of lapse or insufficient coverage if that policy purchased on the borrower's behalf did not provide coverage for the borrower prior to purchase.

Force Placement 10. Does adding the flood insurance premium to the outstanding loan balance constitute a triggering event- an ''increase'' that would trigger the applicability of flood insurance regulatory requirements?

The Act and the Regulation require a lender to notify the borrower that the borrower should obtain adequate flood insurance when the lender determines that a building or a mobile home located or to be located in a Special Flood Hazard Area is not covered by any or adequate flood insurance.[154] If the borrower fails to obtain adequate flood insurance within 45 days, then the lender must purchase insurance on the borrower's behalf. The lender may charge the borrower for the premiums and fees incurred by the lender in purchasing the force-placed flood insurance.[155]

Among the various methods that a lender might use to charge a borrower for force-placed flood insurance are: (1) Adding the premium and fees to the existing mortgage loan balance; (2) adding the premium and fees to a separate, unsecured account; or (3) billing the borrower directly for the premiums and fees of the force-placed flood insurance. The treatment of force-placed flood insurance premiums and fees depends on the method the lender chooses for charging the borrower.

Premium and Fees Added to Mortgage Loan Balance

If the lender's loan contract with the borrower includes a provision permitting the lender or servicer to advance funds to pay for flood insurance premiums and fees as additional debt to be secured by the building or mobile home, such an advancement would be considered part of the loan. As such, the addition of the flood insurance premiums and fees to the loan balance is not considered an ''increase'' in the loan amount, and thus would not be considered a triggering event. If, however, there is no explicit provision permitting this type of

[148] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[149] 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).

[150] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[151] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[152] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[153] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[154] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[155] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

advancement of funds in the loan contract, the addition of flood insurance premiums and fees to the borrower's loan balance would be considered an ''increase'' in the loan amount, and, therefore is considered a triggering event because no advancement of funds was contemplated as part of the loan. (*See also* Q&A Force Placement 8).

Premium and Fees Added to an Unsecured Account

If the lender accounts for and tracks the amount owed on the force-placed flood insurance premium and fees in a separate, unsecured account, this approach does not result in an increase in the loan balance and, therefore, is not considered a triggering event.

Premium and Fees Billed Directly to Borrower

If the lender bills the borrower directly for the cost of the force-placed flood insurance, this approach does not increase the loan balance and is not considered a triggering event.

Force Placement 11. What documentation is sufficient to demonstrate evidence of flood insurance in connection with a lender's refund of premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance?

With respect to when a lender is required to refund premiums paid by a borrower for force-placed insurance during any period of overlap with borrower-purchased insurance, the Regulation specifically addresses the documentation requirements. The Regulation provides that, for purposes of confirming a borrower's existing flood insurance coverage, a lender must accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or its agent.[156] The Regulation does not require that the declarations page contain any additional information in order to be accepted as fulfilling the mandatory flood insurance purchase requirement.

In situations not involving a lender's refund of premiums for force-placed insurance, the Regulation does not specify what documentation would be sufficient. Generally, it is appropriate, although not required by the Regulation, for lenders to accept a copy of the flood insurance application and premium payment as evidence of proof of purchase for new policies.

Force Placement 12. If a lender cannot obtain a refund from the insurance company because the borrower did not provide proof of coverage in a timely manner or the insurance company fails to provide the lender the refund within 30 days, is the lender required to refund the premium to the borrower?

Yes. The Regulation specifically requires the refund of force-placed insurance premiums and any related fees charged to the borrower for any overlap period within 30 days of receipt of a confirmation of a borrower's existing flood insurance coverage without exception.[157]

Force Placement 13. Is a lender permitted to increase, renew, or extend a designated loan that is currently insured by force-placed insurance? More specifically, if the borrower is undergoing a refinance or a loan modification, can the lender rely on the existing force-placed insurance to meet the mandatory purchase requirement?

A lender can rely on the force-placed insurance to satisfy the mandatory flood insurance purchase requirement if the borrower does not purchase his or her own policy. The Regulation states that a lender ''shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan.'' [158] Assuming the force-placed policy is in effect and otherwise satisfies the regulatory coverage standards, then that policy may satisfy the mandatory purchase requirement.

When a lender refinances increases, renews, or extends an existing loan, the lender is required to provide the notice of special flood hazards, which details the borrower's obligation to obtain a flood insurance policy for any building in an SFHA securing the loan.[159] At that time, the lender could encourage the borrower to purchase his or her own policy, likely at a reduced cost to the borrower.

Force Placement 14. If a borrower's force-placed flood insurance expires, is the lender required to send a force-placement notification to the borrower prior to renewing the force-placed flood insurance coverage?

No. The Regulation does not require the lender to send a notice to the borrower prior to renewing a force-placed policy. However, the lender or its servicer, at its discretion, may notify the borrower that the lender is planning to renew or has renewed the force-placed policy. Such a notification may encourage the borrower to purchase his or her own policy, which may be available for a lower premium amount.

Force Placement 15. Are lenders required to have in place ''Life-of-Loan'' monitoring?

Although there is no explicit duty to monitor flood insurance coverage over the life of the loan in the Act or Regulation, for purposes of safety and soundness, many lenders monitor the continuous coverage of flood insurance for the building or mobile home and any personal property securing the loan. Such a practice helps to ensure that lenders complete the force placement of flood insurance in a timely manner upon lapse of a policy, that there is continuous coverage to protect both the borrower and the lender, and that lenders are promptly made aware of flood map changes.

Force Placement 16. If a lender or its servicer receives a notice of remapping that states that a property will be remapped into an SFHA as a future effective date, what do the Act and Regulation require the lender or its servicer to do?

The Act and Regulation provide that if a lender, or its servicer, determines at any time during the term of a designated loan, that a building or mobile home and any personal property securing a loan is uninsured or underinsured, the lender or its servicer must begin the notice and force-placement process, as detailed in Q&A Force Placement 1.[160] A loan that is secured by property that was not located in an SFHA does not become a designated loan until the effective date of the map change, remapping the property into an SFHA. Therefore, when a lender or its servicer receives advance notice that a property will be remapped into an SFHA, the effective date of the remapping becomes the date on which the lender or its servicer must determine whether the

[156] 12 CFR 22.7(b)(2) (OCC); 12 CFR 208.25(g)(2)(ii) (Board); 12 CFR 339.7(b)(2) (FDIC); 12 CFR 614.4945(b)(2) (FCA); and 12 CFR 760.7(b)(2) (NCUA).

[157] 12 CFR 22.7(b)(1) (OCC); 12 CFR 208.25(g)(2)(i) (Board); 12 CFR 339.7(b)(1) (FDIC); 12 CFR 614.4945(b)(1) (FCA); and 12 CFR 760.7(b)(1) (NCUA).

[158] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[159] 12 CFR 22.9(a) (OCC); 12 CFR 208.25(i) (Board); 12 CFR 339.9(a) (FDIC); 12 CFR 614.4955(a) (FCA); and 12 CFR 760.9(a) (NCUA).

[160] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

property is covered by sufficient flood insurance. If the borrower does not purchase a flood insurance policy that begins on the effective date of the map change, the lender or its servicer must send the force-placement notice to the borrower to purchase adequate flood insurance.[161] Similar to the guidance set forth in Q&A Force Placement 4, a lender also may send notice prior to the effective date of the map change as a courtesy.

In addition, as of the effective date of the remapping, the lender or servicer may force place flood insurance and charge the borrower for the force-placed insurance. However, if the borrower purchases an adequate flood insurance policy, the lender or servicer would need to reimburse the borrower for premiums and fees charged for the force-placed coverage during any period of overlapping coverage.[162]

XVI. Flood Insureance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

Servicing 1. How do the flood insurance requirements under the Regulation apply to lenders under the following scenarios involving loan servicing?

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee.[163] Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a nonregulated party, the regulated lender must notify FEMA or its designee of the identity of the new servicer.[164] The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer maintains compliance with the flood insurance requirements.

Scenario 2: A nonregulated lender originates a designated loan. The nonregulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The nonregulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers certain requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance.[165] Those requirements only are triggered when a regulated lender makes, increases, extends, or renews a designated loan.[166] A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required,[167] then the regulated lender must comply with the Regulation, including force placing insurance, if necessary.[168] Depending upon the circumstances, as a matter of safety and soundness, the lender may undertake due diligence upon the purchase of a loan, which would make the lender aware of the lack of adequate flood insurance and trigger flood insurance compliance requirements. Further, if the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.[169]

When a regulated lender purchases only the servicing rights to a loan originated by a nonregulated lender, the regulated lender is obligated to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.[170]

Servicing 2. When a lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Administrator of FEMA or the Administrator's designee, i.e. the insurance provider?

The Regulation states that the Administrator's designee is the insurance company issuing the flood insurance policy.[171] The borrower's purchase of an NFIP policy (or the

[161] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[162] 12 CFR 22.7(b)(1)(ii) (OCC); 12 CFR 208.25(g)(2)(i)(B) (Board); 12 CFR 339.7(b)(1)(ii) (FDIC); 12 CFR 614.4945(b)(1)(ii) (FCA); and 12 CFR 760.7(b)(1)(ii) (NCUA).

[163] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

[164] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

[165] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[166] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[167] 42 U.S.C. 4012a(e)(1).

[168] 12 CFR 22.7(a) (OCC); 12 CFR 208.25(g)(1) (Board); 12 CFR 339.7(a) (FDIC); 12 CFR 614.4945(a) (FCA); and 12 CFR 760.7(a) (NCUA).

[169] 12 CFR 22.3(a) (OCC); 12 CFR 208.25(c)(1) (Board); 12 CFR 339.3(a) (FDIC); 12 CFR 614.4930(a) (FCA); and 12 CFR 760.3(a) (NCUA).

[170] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

[171] 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).

lender's force placement of an NFIP policy) will constitute notice to FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.[172]

Servicing 3. Would a Real Estate Settlement Procedures Act (RESPA) Notice of Transfer sent to the Administrator of FEMA (or the Administrator's designee, i.e., the insurance provider) satisfy the regulatory provisions of the Act?

Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

- Borrower's full name;
- Flood insurance policy number;
- Property address (including city and State);
- Name of lender or servicer making notification;
- Name and address of new servicer; and
- Name and telephone number of contact person at new servicer.

Servicing 4. Can delivery of the notice be made electronically, including batch transmission?

Yes. The Regulation specifically permits transmission by electronic means.[173] A timely batch transmission of the notice would also be permissible, if it is acceptable to the Administrator's designee, *i.e.,* the insurance provider.

Servicing 5. If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Administrator or the Administrator's designee (i.e., the insurance provider)?

Yes.[174] Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

Servicing 6. Is a lender required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer?

No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer.[175] The obligation of the lender is to notify the Administrator or the Administrator's designee (*i.e.,* the insurance provider) of the identity of the servicer transfers to the new servicer. The duty to notify the insurance provider of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer.[176] For example, if a lender makes and services a loan and then sells the loan in the secondary market and also sells the servicing rights to a mortgage company, then the lender must notify the insurance provider of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the insurance provider. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the lender, is responsible for notifying the insurance provider of the identity of the new servicer.

Servicing 7. In the event of a merger or acquisition of one lender with another, what are the responsibilities of the parties for notifying the Administrator's designee (i.e., the insurance provider)?

If a lender is acquired by or merges with another lender, the duty to provide notice for the loans being serviced by the acquired lender will fall to the successor lender in the event that notification is not provided by the acquired lender prior to the effective date of the acquisition or merger.

XVII. Mandatory Civil Money Penalties

Penalty 1. Which violations of the Act can result in a mandatory civil money penalty?

A pattern or practice of violations of any of the following requirements of the Act and its implementing Regulation triggers a mandatory civil money penalty:

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- Failure to provide force-placement notice or purchase force-placed flood insurance coverage, as appropriate (42 U.S.C. 4012a(e));
- Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- Notice of servicer and any change of servicer (42 U.S.C. 4104a(b)).

The Act provides that any regulated lending institution found to have a pattern or practice of the violations ''shall be assessed a civil penalty'' by its Federal supervisory agency in an amount not to exceed $2,000 per violation (42 U.S.C. 4012a(f)(5)). There is no ceiling on the total penalty amount that a Federal supervisory agency can assess for a pattern or practice of violations. Each Agency adjusts the limit pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).[177] As required by the Act, the penalties must be paid into the National Flood Mitigation Fund.

Penalty 2. What constitutes a ''pattern or practice'' of violations for which civil money penalties must be imposed under the Act?

The Act does not define ''pattern or practice.'' The Agencies make a determination of whether a pattern or practice exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in considering the assessment of civil money penalties for flood insurance violations.

The Policy Statement on Discrimination in Lending (Policy Statement) provided the following guidance on what constitutes a pattern or practice: Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a lender has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

[172] 12 CFR 22.10(b) (OCC); 12 CFR 208.25(j)(2) (Board); 12 CFR 339.10(b) (FDIC); 12 CFR 614.4960(b) (FCA); and 12 CFR 760.10(b) (NCUA).

[173] 12 CFR 22.10(a) (OCC); 12 CFR 208.25(j)(1) (Board); 12 CFR 339.10(a) (FDIC); 12 CFR 614.4960(a) (FCA); and 12 CFR 760.10(a) (NCUA).

[174] 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).

[175] 12 CFR 22.10 (OCC); 12 CFR 208.25(j) (Board); 12 CFR 339.10 (FDIC); 12 CFR 614.4960 (FCA); and 12 CFR 760.10 (NCUA).

[176] 12 U.S.C. 4104a(b)(1).

[177] Please refer to 12 CFR 19.240(b) & 12 CFR 109.103(c)(2) (OCC); 12 CFR 263.65(b) (Board); 12 CFR 308.132(d)(18) (FDIC); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001 (NCUA) for the Agencies' current civil penalty limits.

- Whether the conduct resulted from a common cause or source within the lender's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established process;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a lender's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of a lender's total activity could constitute a pattern or practice);
- Whether a lender was cited for violations of the Act and Regulation at prior examinations and the steps taken by the lender to correct the identified deficiencies;
- Whether a lender's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the lender lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

Brian P. Brooks,

Acting Comptroller of the Currency.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 12, 2020.

Robert E. Feldman,

Executive Secretary.

Dated at McLean, VA, this 10th day of February 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

Gerard Poliquin,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 2020–14015 Filed 7–2–20; 8:45 am]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for the Coral Pocillopora meandrina; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 200626–0172; RTID 0648–XG232]

Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for the Coral Pocillopora meandrina

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

ACTION: Notice; 12-month finding and availability of status review documents.

SUMMARY: We, NMFS, have completed a comprehensive status review under the Endangered Species Act (ESA) for the Indo-Pacific, reef-building coral *Pocillopora meandrina.* After reviewing the best scientific and commercial data available, including the General Status Review of Indo-Pacific Reef-building Corals and the *P. meandrina* Status Review Report, we have determined that listing *P. meandrina* as threatened or endangered based on its status throughout all or a significant portion of its range under the ESA is not warranted at this time.

DATES: This finding was made on July 6, 2020.

ADDRESSES: The petition, General Status Assessment of Indo-Pacific Reef-building Corals, *P. meandrina* Status Review Report, **Federal Register** notice, and the list of references can be accessed electronically online at: *https://www.fisheries.noaa.gov/species/pocillopora-meandrina-coral#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, Protected Resources Division, (808) 725–5131; or Celeste Stout, NMFS, Office of Protected Resources, (301) 427–8436.

SUPPLEMENTARY INFORMATION:

Background

This 12-month finding is a response to a petition to list *P. meandrina* under the ESA. Background to the petition, 90-day finding, and policy on listing species under the ESA is provided below.

Petition and 90-Day Finding

On March 14, 2018, we received a petition from the Center for Biological Diversity to list the Indo-Pacific reef-building coral *Pocillopora meandrina* in Hawaii as an endangered or threatened species under the ESA. Under the ESA, a listing determination addresses the status of a species, its subspecies, and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). Under the ESA, a species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, or ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). The petition requested that the Hawaii portion of the species' range be considered a significant portion of its range, thus the petition focused primarily on the status of *P. meandrina* in Hawaii. However, the petition also requested that *P. meandrina* be listed throughout its range, and provided some information on its status and threats outside of Hawaii. In light of recent court decisions regarding our policy on the interpretation of the phrase ''significant portion of its range'' (SPR) under the ESA (79 FR 37577, July 1, 2014), we interpreted the petition as a request to first consider the status of *P. meandrina* throughout its range, followed by an SPR review consisting of: (1) Analysis of any SPRs, including the portion of the range within Hawaii; and (2) determination of the status of SPRs.

On September 20, 2018, we published a 90-day finding (83 FR 47592) announcing that the petition presented substantial scientific or commercial information indicating that *P. meandrina* may be warranted for listing under the ESA throughout all or a significant portion of its range. We also announced the initiation of a status review of the species, as required by section 4(b)(3)(a) of the ESA, and requested information to inform the agency's decision on whether this species warrants listing as endangered or threatened under the ESA.

Listing Species Under the Endangered Species Act

We are responsible for determining whether *P. meandrina* is threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). As noted previously, because *P. meandrina* is an invertebrate species, the ESA does not consider listing individual populations as DPSs.

Section 3 of the ESA defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently at risk of extinction. A ''threatened species'' is not currently at risk of extinction, but is likely to become so in the foreseeable future (that is, at a later time). The key statutory difference between a threatened and endangered species is the timing of when a species is or is likely to become in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species qualifies as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. What constitutes the foreseeable future for a particular species depends on species-specific factors such as the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. That is, the foreseeability of a species' future status is case specific and depends upon both the foreseeability of threats to the species and foreseeability of the species' response to those threats. Our consideration of the foreseeable future for this status review is described in the Global Climate Change and the Foreseeable Future section below.

The statute requires us to determine whether any species is endangered or threatened throughout all or a significant portion of its range as a result of any one or a combination of any of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. 16 U.S.C. 1533(a)(1). We are also required to make listing determinations based solely on the best scientific and commercial data

available, after conducting a review of the species' status and after taking into account efforts, if any, being made by any state or foreign nation (or subdivision thereof) to protect the species. 16 U.S.C. 1533(b)(1)(A).

General Status Assessment, Status Review Report, and Extinction Risk Assessment Team

The rangewide Status Review of *P. meandrina* consists of two documents: (1) The General Status Assessment (GSA) of Indo-Pacific Reef-building Corals (Smith 2019a); and (2) the *P. meandrina* Status Review Report (SRR; Smith 2019b). The GSA (Smith 2019a) provides contextual information on the status and trends of Indo-Pacific reef-building corals, and the SRR (Smith 2019b) reports the status and trends of *P. meandrina* based on the best available scientific information. Based on the information provided in the Status Review reports (Smith 2019a,b), an Extinction Risk Assessment (ERA) was carried out as specified in the ''Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act'' (NMFS 2017). As per the guidance, an ERA Team was established, consisting of seven reef-building coral subject matter experts, and the Team used the information in the Status Review reports to provide ratings of *P. meandrina's* extinction risk, described in the final section of the SRR (Smith 2019b).

The two reports that make up this Status Review (Smith 2019a,b) represent a compilation of the best available scientific and commercial information on the *P. meandrina's* biology, ecology, life history, threats, and status from information contained in the petition, our files, a comprehensive literature search, and consultation with Indo-Pacific reef coral experts. We also considered information submitted by the public in response to our 90-day finding (83 FR 47592; September 20, 2018). The draft Status Review reports (Smith 2019a,b) underwent independent peer review by reef coral experts as required by the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the Status Review reports, including the Extinction Risk Assessment methodology. Peer reviewer comments were addressed prior to dissemination and finalization of the Status Review reports and publication of this finding, as described in the Peer Review Report.

We subsequently reviewed the Status Review reports (Smith 2019a,b), their cited references, and peer review comments, and believe the Status Review reports, upon which this 12-month finding are based, provide the best available scientific and commercial information on *P. meandrina.* Much of the information discussed below on the species' biology, distribution, abundance, threats, and extinction risk is presented in the Status Review reports (Smith 2019a,b). However, in making the 12-month finding determinations (*i.e.,* our decisions that *P. meandrina* is not warranted for listing rangewide, nor as any SPRs), we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)-(E) and our regulations regarding listing determinations at 50 CFR part 424. The Status Review reports (Smith 2019a,b) and the Peer Review Report are available on our website at *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.*

Global Climate Change and the Foreseeable Future

Many of the threats to *P. meandrina,* including the most severe threats, stem from global climate change (Smith 2019b). As described in the preceding ''Listing Species Under the Endangered Species Act'' section, the purpose of this finding is to determine the extinction risk of the species now and in the foreseeable future. The extinction risk of *P. meandrina* now and in the immediate future depends on the impacts of threats resulting from the continuation of ongoing climate change. Its extinction risk in the future depends on how far into the future climate change threats are foreseeable, and what impacts those threats will have on the species over that timeframe. Thus, this section provides an overview of global climate change and existing guidance, a description of the climate change status quo, the rationale for our determination of the length of the foreseeable future for the most important threats to *P. meandrina* (ocean warming and ocean acidification), and descriptions of the impacts of those threats on the species over the foreseeable future.

Overview of Global Climate Change and Existing Guidance

Global climate change refers to increased concentrations of greenhouse gases (GHGs; primarily carbon dioxide, but also methane, nitrous oxide, and others) in the atmosphere from anthropogenic emissions, and subsequent warming of the earth, acidification of the oceans, rising sea-levels, and other impacts since the beginning of the industrial era in the mid-19th century. Since that time, the release of carbon dioxide (CO_2) from industrial and agricultural activities has resulted in atmospheric CO_2 concentrations that have increased from approximately 280 ppm in 1850 to 410 ppm in 2019 (Smith 2019a). The resulting warming of the earth has been unequivocal, and each of the last three decades has been successively warmer than any preceding decade since 1850. The climate change components of the *P. meandrina* Status Review were based on the International Panel on Climate Change's (IPCC) Fifth Assessment Report ''Climate Change 2013: The Physical Science Basis'' (AR5; IPCC 2013a), the IPCC's ''Global Warming of 1.5° C'' (1.5° Report; IPCC 2018), and other climate change literature cited in the GSA and SRR. The IPCC published the 1.5° Report to compare the impacts of global warming of 1.5° C vs. 2.0° C above pre-industrial levels, in response to the 2015 Paris Agreement's objective of limiting global warming to 1.5° C. The IPCC's AR5 and the 1.5° Report together represent the largest synthesis of global climate change physical science ever compiled. The IPCC is currently compiling its Sixth Assessment Report (AR6), due to be published in 2021 or 2022 (Smith 2019a).

Observed and projected global mean surface temperatures (GMST) from the pre-industrial baseline period of 1850–1900 to the year 2100 provide context for the climate change threats facing *P. meandrina* and other species. GMST refers to the mean of land and sea temperatures observed at the earth's surface. Since the pre-industrial period, GMST has increased by nearly 1° C due to GHG emissions, and estimated anthropogenic global warming is currently increasing at approximately 0.2° C per decade due to past and ongoing GHG emissions. Warming greater than the global annual average is being experienced in many land regions and seasons, including two to three times higher in the Arctic. Warming is generally higher over land than over the ocean, thus warming of the ocean lags behind warming of air at the earth's surface. Regardless of future emissions, warming from past anthropogenic GHG emissions since the pre-industrial period will persist for centuries to millennia, and will continue to cause further long-term changes in the climate system, such as sea-level rise, with associated impacts (Smith 2019a).

In order to ensure consistency in the application of climate change science to

ESA decisions, in 2016 NMFS issued ''Guidance for Treatment of Climate Change in NMFS Endangered Species Act Decisions'' (Climate Guidance, NMFS 2016). The Climate Guidance provides seven policy considerations, the first two of which are particularly relevant to the *P. meandrina* finding: (1) ''Consideration of future climate condition uncertainty—For ESA decisions involving species influenced by climate change, NMFS will use climate indicator values (*i.e.,* quantitative projections of ocean warming, ocean acidification, and other climate change impacts) projected under the International Panel on Climate Change (IPCC)'s Representative Concentration Pathway 8.5 when data are available. When data specific to that pathway are not available we will use the best available science that is as consistent as possible with RCP 8.5'', and (2) ''Selecting a climate change projection timeframe—(A) When predicting the future status of species in ESA Section 4, NMFS will project climate change effects for the longest time period over which we can foresee the effects of climate change on the species' status.'' (NMFS 2016). The application of these two policy considerations to the *P. meandrina* finding are described below.

RCP8.5 As the Status Quo

AR5 (IPCC 2013a) projected GMST from 2006 over the remainder of the 21st century using a set of four representative concentration pathways (RCPs) that provide a standard framework for consistently modeling future climate change under different assumptions. The four RCPs span a range of possible futures, from high GHG emissions peaking near 2100 (RCP8.5), to intermediate emissions (RCP6.0 and RCP4.5), to low emissions (RCP2.6). The 1.5° Report (IPCC 2018) developed additional pathways with lower emissions than RCP2.6. The IPCC's pathways are based on projected concentrations of CO_2 and other GHGs in the earth's atmosphere. As atmospheric GHG concentrations increase, less of the sun's heat can be radiated back into space, causing the earth to absorb more heat. The increased heat forces changes on the earth's climate system, and thus is referred to as ''radiative forcing.'' AR5's four RCPs are named according to radiative forcing of 2.6, 4.5, 6.0, and 8.5 Watts per square meter of the earth's surface. These result from atmospheric CO_2 concentrations of 421 (RCP2.6), 538 (RCP4.5), 670 (RCP6.0), and 936 (RCP8.5) ppm in 2100. The 1.5° Report includes pathways with lower CO_2 levels than RCP2.6 (IPCC 2013a, 2018).

The various pathways were developed with the intent of providing different potential climate change projections to guide policy discussions. The IPCC does not attach likelihoods to the pathways. Taken together, the four pathways in AR5 project wide ranges of increases in GMSTs, ocean warming, ocean acidification, sea level rise, and other changes globally throughout the 21st century (Smith 2019a). Summaries of the most recent information on observed and projected ocean warming, ocean acidification, and sea-level rise are provided in the GSA (Smith 2019a), and support RCP8.5 as representative of the status quo. For example, according to the most recent Global Carbon Budget report (Friedlingstein *et al* 2019), global CO_2 emissions from fossil fuels and industry grew continuously from 2010 to 2019; and global atmospheric CO_2 concentration grew from approximately 385 in 2010 to 410 ppm in 2019, with each year setting new historic highs, according to NOAA's Earth System Research Laboratory (ESRL) station on Mauna Kea, Hawaii (*https://www.esrl.noaa.gov/gmd/ccgg/trends/,* accessed December 2019). This rapid growth in global CO_2 emissions and atmospheric CO_2 is more consistent with RCP8.5 than any of the other pathways in AR5 (IPCC 2013a) or the 1.5° C Report (IPCC 2018).

The Foreseeable Future for P. meandrina

The Climate Guidance (NMFS 2016) directs us to determine the longest period over which we can reasonably foresee the effects of climate change on the species. The IPCC pathways (IPCC 2013a, IPCC 2018) use the year 2100 as the main end-point for their climate change projections. The IPCC's AR5 and the 1.5° Reports (IPCC 2013a, IPCC 2018), together with the large and growing scientific literature on projected impacts of the IPCC pathways on coral reef ecosystems, provide considerable information on how climate change threats are likely to affect corals and coral reefs from now to 2100. Although there is wide variability in the IPCC pathways (*e.g.,* RCP8.5 vs. the 1.5° Report's pathways would result in highly contrasting impacts to most of the world's ecosystems over the 21st century), 2100 is foreseeable because some pathways are more likely than others over that timeframe, as explained in the following paragraph.

Since the status quo is best represented by RCP8.5, we consider climate indicator values projected under RCP8.5 to be likely over at least the near future. Beyond that, current GHG emissions policies resulting from the 2015 Paris Agreement may eventually lead to climate indicator values projected under the intermediate emissions pathways RCPs 6.0 and 4.5 (CAT 2019, Hausfather and Peters 2020, UNEP 2019). However, such projections have high inherent uncertainty (IPCC 2018, Jeffery *et al.* 2018), thus climate indicator values projected under RCP8.5 may continue to prevail beyond the near future. Therefore, based on the status quo, current policies, and uncertainty, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5.

The two most severe threats to *P. meandrina* are ocean warming and ocean acidification, both of which are caused by climate change (Smith 2019a,b). Projections of climate indicator values for ocean warming (sea surface temperature) and ocean acidification (sea surface pH and aragonite saturation state) under RCPs 8.5, 6.0, and 4.5 within the range of *P. meandrina* are described in the following sections. These projections lead to our conclusions about the length of the foreseeable future for ocean warming and ocean acidification that will be applied to the *P. meandrina* 12-month finding.

The Foreseeable Future for Ocean Warming and P. meandrina. Global warming projections under RCPs 8.5, 6.0, and 4.5 over the 21st century, and subsequent ocean warming impacts on *P. meandrina,* are described in NMFS (2020a) and summarized here. AR5's Supplementary Materials (IPCC 2013b,c,d) provide detailed projections of future warming of air over land and sea grid points of the earth's surface under each RCP for the time periods 2016–2035, 2046–2065, and 2081–2100, including regional projections within the range of *P. meandrina.* Warming of seawater at the sea's surface lags behind warming of air at the sea's surface. Although AR5's detailed projections in the Supplementary Materials are for air at the sea's surface, they indicate likely proportional warming of seawater (NMFS 2020a, Fig. 1).

For each RCP (8.5, 6.0, 4.5) and time period (2016–2035, 2046–2065, 2081–2100), AR5 provides global maps of projected annual warming across the earth's surface, as explained in more detail in NMFS (2020a). Projected additional warming above what has already occurred is highest under RCP8.5, intermediate under RCP6.0, and lowest under RCP4.5 (NMFS 2020a, Fig. 2). The ranges of projected warming

under the three RCPs overlap with one another, illustrating the high variability in the projections (NMFS 2020a, Fig. 3). Within the range of *P. meandrina,* AR5 provides regional maps of projected annual warming for the eastern Pacific Ocean, the western Indian Ocean, the northern Indian Ocean, the Coral Triangle, northern Australia, and the tropical Pacific. As with the global projections, projected additional warming within the range of *P. meandrina* above what has already occurred is highest under RCP8.5 (2–4 °C), intermediate under RCP6.0 (1–3 °C), and lowest under RCP4.5 (1–2 °C), but with high variability (NMFS 2020a, Figs. 4–9).

Ocean warming can result in the bleaching of the tissues of reef-building coral colonies, including *P. meandrina* colonies, whereby the unicellular photosynthetic algae living within their tissues (zooxanthellae) are expelled in response to stress. For many reef-building coral species, including *P. meandrina,* an increase of only 1 °C–2 °C above the normal local seasonal maximum ocean temperature can induce bleaching. Corals can withstand mild to moderate bleaching; however, severe, repeated, or prolonged bleaching can lead to colony death (Smith 2019a).

The projected responses of reef-building corals to ocean warming in the 21st century under RCPs 8.5, 6.0 and 4.5 have been modeled in several recent papers. An analysis of likely disease outbreaks in reef-building corals resulting from ocean warming projected by RCP8.5 and RCP4.5 concluded that both pathways are likely to cause sharply increased coral disease before 2100 (Maynard *et al.* 2015). An analysis of the timing and extent of Annual Severe Bleaching (ASB) of the world's coral reefs under RCPs 8.5 and 4.5 found that the average timing of ASB would be only 11 years earlier under RCP8.5 (2043) than RCP4.5 (2054; van Hooidonk *et al.* 2016). Similarly, an analysis of the timing and extent of warming-induced bleaching of the world's coral reefs under RCPs 8.5, 6.0, and 4.5 found little difference between the pathways, with 60–100 percent of Indo-Pacific coral reefs experiencing severe bleaching by 2100 under all three pathways (Hoegh-Guldberg *et al.* 2017). A study of the adaptive capacity of a population of the Indo-Pacific reef-building coral *Acorpora hyacinthus* to ocean warming projected that it would go extinct by 2055 and 2080 under RCPs 8.5 and 6.0, respectively, and decline by 60 percent by 2100 under RCP4.5 as a result of warming-induced bleaching (Bay *et al.* 2017). These papers illustrate that the overall projected trends are sharply downward under all three RCPs in terms of ocean warming impacts on Indo-Pacific reef-building corals.

As far as we know, there are no reports that model projected responses of *P. meandrina* to ocean warming in the 21st century under any of the RCPs. As described in the SRR (Smith 2019b), we consider *P. meandrina's* vulnerability to ocean warming in the 21st century to be high, based on observed susceptibility to the ocean warming that has occurred over the past several decades, together with increasing exposure as the oceans continue to warm throughout the remainder of the century. We expect vulnerability of *P. meandrina* to ocean warming to increase in the 21st century as climate change worsens, resulting in higher frequency, severity, and magnitude of warming-induced bleaching events (Smith 2019b).

Based on the available information, we cannot distinguish the likely responses of *P. meandrina* to projected ocean warming under the three RCPs from one another because: (1) All three RCPs project large increases in warming relative to historical rates of change (NMFS 2020a, Fig. 1), especially in the late 21st century (NMFS 2020a, Fig. 2); (2) the ranges of warming projected by each RCP are broad and overlapping with one another (NMFS 2020a, Fig. 3), reflecting high uncertainty; (3) the projections are for warming of air at the sea's surface, but warming of the ocean itself lags behind, reducing distinctions between RCPs; and (4) as has already been documented, there is high spatial variability in how *P. meandrina's* responds to a given warming event, and high temporal variability in how a given *P. meandrina* population responds to multiple warming events over time (Smith 2019b), reflecting high uncertainty in projecting the responses of this species to warming.

The Foreseeable Future for Ocean Acidification and P. meandrina. Ocean acidification projections under RCPs 8.5, 6.0, and 4.5 over the 21st century are described in AR5 (IPCC 2013a), and summarized in NMFS (2020a) for *P. meandrina's* range. Unlike for global warming, AR5 does not include detailed regional comparisons of projected ocean acidification under the different RCPs. Ocean acidification, however, reduces the aragonite saturation state (Ω_{arg}) in seawater by lowering the supersaturation of carbonite minerals including aragonite, the form of calcite that makes up the skeletons of reef-building corals (Smith 2019a).

Under RCP8.5, mean global pH of open surface waters is projected to decline from the 1986–2005 average of approximately 8.12 to approximately 7.77 by 2100, with the greatest reductions in the higher latitude areas of the *P. meandrina's* range, such as the southern Great Barrier Reef (GBR) and the northern Philippines, resulting in Ω_{arg} levels dropping to 1.75–2.5 in open surface waters within most of the species' range by 2090. Under RCP6.0, mean pH is projected to decline to approximately 7.88 by 2100, resulting in Ω_{arg} levels dropping to 2.25–3 within most of the species' range by 2090. Under RCP4.5, mean pH is projected to decline to approximately 7.97 by 2100, resulting in Ω_{arg} levels dropping to 2.75–3.25 within most of the species' range by 2090 (NMFS 2020a, Figs. 10–12).

These general projections are for open surface waters, and are not necessarily representative of nearshore waters, because of multiple physical factors that cause high natural variability in pH of seawater and Ω_{arg} on coral reefs. The projected ocean acidification of open surface waters is expected to eventually result in proportional reductions in seawater pH and Ω_{arg} on coral reefs, but these changes will lag behind open surface waters and be much more variable both spatially and temporally (Smith 2019a). For example, while the Ω_{arg} levels of open surface waters are projected to decline to 1.75–2.5 within most of the range of *P. meandrina* by 2090 (NMFS 2020a, Fig. 12), an analysis of 19 coral reefs in the Indo-Pacific projected Ω_{arg} levels to range from approximately 1.4 to 3.0 at the sites in 2100 (Eyre *et al.* 2018).

As described in more detail in the GSA (Smith 2019a), ocean acidification impacts reef-building corals and coral reef communities in several ways. The reduced Ω_{arg} levels from ocean acidification result in decreased calcification of coral colonies, leading to lower skeletal growth rates and lower skeletal density. Generally, Ω_{arg} should be >3 to enable adequate calcification of reef-building corals, and Ω_{arg} levels of <3 result in reduced calcification. Reduced pH from ocean acidification can also inhibit coral reproduction, leading to lower fertilization, settlement, and recruitment. Reduced Ω_{arg} levels also cause increased dissolution of the calcium carbonate structure of coral reefs, leading to reef erosion rates outpacing accretion rates (Smith 2019a).

The projected responses of reef-building corals and coral reefs to ocean acidification in the 21st century under conditions projected for RCPs 8.5, 6.0 and 4.5 have been reviewed or modeled in several recent papers. A review of laboratory studies on the effects of

ocean acidification and ocean warming spanning the entire range of conditions projected under the three RCPs found that RCP8.5 would result in the greatest reduction in calcification (≤20 percent), but that the impacts of different levels of ocean acidification were complicated by species, habitat type, and interactions with warming (Kornder *et al.* 2018). A model of the effects of ocean acidification alone (*i.e.,* without considering the additive effect of ocean warming) projected under RCP8.5 found that the skeletal density of reef-building *Porites* corals is likely to decrease by 20 percent by 2100 (Mollica *et al.* 2018). An analysis of the timing and extent of ocean acidification and ocean warming on the world's coral reefs under the three RCPs found that there would be progressively greater and earlier declines in calcification under RCPs 8.5, 6.0, and 4.5, respectively, over the 21st century. Spatial variability in the projected calcification reductions was very high, especially in the Indo-Pacific (van Hooidonk *et al.* 2014).

As far as we know, there are no reports that model projected responses of *P. meandrina* to ocean acidification in the 21st century under any of the RCPs. As described in the SRR (Smith 2019b), we consider *P. meandrina's* vulnerability to ocean acidification in the 21st century to be high, based on high susceptibility and moderate to high exposure throughout the remainder of the century. We expect vulnerability of *P. meandrina* to ocean acidification to increase in the 21st century as climate change worsens, resulting in reductions in calcification and skeletal growth (Smith 2019b).

Based on the available information, we cannot distinguish the likely responses of *P. meandrina* to projected ocean acidification under the three RCPs from one another because: (1) All three RCPs project worsening ocean acidification and reduced Ω_{arg} levels over the 21st century (NMFS 2020a, Fig. 10–12); (2) the ranges of reduced Ω_{arg} levels projected by each RCP are broad and overlapping with one another (NMFS 2020a, Fig. 12), reflecting high uncertainty; (3) the projections of reduced Ω_{arg} levels vary depending on whether feedbacks are considered (NMFS 2020a, Fig. 12), reflecting additional uncertainty; and (4) the above projections are for open surface waters, but many abiotic and biotic factors cause greater fluctuations and different mean values in pH and Ω_{arg} on coral reefs than in open surface waters, resulting in high spatial and temporal variability in the impacts of ocean acidification on reef-building corals such as *P. meandrina* (Smith 2019b), thereby further blurring the distinctions between projections of the three RCPs.

Foreseeable Future Conclusion. Ocean warming and ocean acidification represent the two greatest threats to *P. meandrina* in the foreseeable future, both of which are caused by climate change. While different levels of ocean warming are projected under RCPs 8.5, 6.0, and 4.5 from now to 2100, the projected impacts of warming-induced bleaching on *P. meandrina* are not clearly distinctive between the RCPs, and all three RCPs result in substantially worsening impacts. Thus, impacts of warming-induced bleaching on *P. meandrina* are reasonably foreseeable to 2100.

Likewise, while different levels of ocean acidification are projected under RCPs 8.5, 6.0, and 4.5 from now to 2100, the projected impacts of reduced Ω_{arg} levels on *P. meandrina* are not clearly distinctive between the RCPs, and all three RCPs result in substantially worsening impacts. Thus, impacts from ocean acidification and reduced Ω_{arg} levels on *P. meandrina* are also reasonably foreseeable to 2100.

Indo-Pacific Reef-Building Corals

Indo-Pacific reef-building corals share many biological characteristics, occupy many similar habitat types, are subject to similar key trends, and are threatened primarily by the same suite of global climate change and local threats. In addition, typically more information is available on the status and trends of reef coral communities (*e.g.,* live coral cover) than species-specific information. Thus, to provide context for determining the status of *P. meandrina,* general information on Indo-Pacific reef-building coral biology, habitats, key trends, and threats is provided in the GSA (Smith 2019a) and summarized below.

Biology and Habitats

Reef-building corals are defined by symbioses with unicellular photosynthetic algae living within their tissues (zooxanthellae), giving them the capacity to grow large skeletons and thrive in nutrient-poor tropical and subtropical seas. Since reef-building corals are defined by their symbiosis with zooxanthellae, they are sometimes referred to as ''zooxanthellate'' or ''hermatypic'' corals. Reef-building corals collectively produce shallow coral reefs over time, but also occur in non-reef and mesophotic areas, both of which are defined in the habitat section below. That is, these species are reef-building, but they are not reef-dependent, thus reef-building corals are not limited to shallow coral reefs (NMFS 2014).

Reef-building corals are marine invertebrates in the phylum Cnidaria that occur as polyps, usually forming colonies of many clonal polyps on a calcium carbonate skeleton. The Cnidaria include true stony corals (class Anthozoa, order Scleractinia, including both reef-building, zooxanthellate and non-reef-building, azooxanthellate species), the blue coral (class Anthozoa, order Helioporacea), and fire corals (class Hydrozoa, order Milleporina). Most reef-building corals form complex colonies made up of a tissue layer of polyps (a column with mouth and tentacles on the upper side) growing on top of a calcium carbonate skeleton, which the polyps produce through the process of calcification (Brainard *et al.* 2011). As of 2019, Veron estimates that 758 species of reef-building corals occur in the Indo-Pacific, over 90 percent of the world's total (Corals of the World, *http://www.coralsoftheworld.org,* November 2019).

Most Indo-Pacific reef-building corals have many biological features that complicate the determination of the status of any given species, including but not necessarily limited to the following: They are modular, colonial, and sessile; the definition of the individual is ambiguous; the taxonomy of many species is uncertain; field identification of species is difficult; each colony is a collection of coral-algae-microbe symbiotic relationships; they have high skeletal plasticity; they utilize a combination of sexual and asexual reproduction; hybridization may be common in many species; and they typically occur as many populations across very large ranges. These and other biological features of Indo-Pacific reef-building corals are described in more detail in the GSA (Smith 2019a).

Indo-Pacific reef-building corals occur on shallow coral reefs (<30 m depth), as well as in non-reef and mesophotic areas (≤30 m depth), in the tropical and sub-tropical waters of the Indian and Pacific Oceans, including the eastern Pacific. This vast region includes over 50,000 islands and over 40,000 km of continental coastline, spanning approximately 180 degrees longitude and 60 degrees latitude, and including more than 90 percent of the total coral reefs of the world. In addition to this region's extensive shallow coral reefs, the Indo-Pacific includes: (1) Abundant non-reef habitat, defined as areas where environmental conditions prevent reef formation by reef-building corals, but some reef-building coral species are present; and (2) vast but scarcely known

mesophotic habitat, defined as areas deeper than 30 meters of depth where reef-building corals are present. Shallow coral reefs, non-reef habitat, and mesophotic habitat are not necessarily sharply delineated from one another, thus one may gradually blend into another. The total area of non-reef and mesophotic habitats is likely far greater than the total area of shallow coral reef habitats in the Indo-Pacific (NMFS 2014).

In addition to the biological features described above, there are several habitat features of Indo-Pacific reef-building coral species that should be considered in the determination of the status of any given species including, but not necessarily limited to: (1) Specific substrate and water quality requirements of each life history stage; (2) ranges of many of these species encompass shallow coral reef, non-reef, and mesophotic habitats that vary tremendously across latitude, longitude, depth, distance from land, and in other ways; and (3) physical variability in habitat characteristics within the ranges of these species produces spatial and temporal refuges from threats. That is, habitat heterogeneity and refugia produce a patchy mosaic of conditions across the ranges of Indo-Pacific reef-building corals, which complicates the determination of the status of any given species. These and other habitat features of Indo-Pacific reef-building corals are described in more detail in the GSA (Smith 2019a).

Key Trends

The health of reef-building coral communities is largely determined by the extent of disturbance, together with recovery from it. The most common measure of the condition of Indo-Pacific reef-building corals is live coral cover. Resilience is the capacity of a community to recover from disturbance. Observations and projections of anthropogenic disturbance, recovery time, coral cover, and overall resilience of Indo-Pacific reef-building coral communities provide insight on the status and trends of these communities.

The main threats to Indo-Pacific reef-building corals are acute and chronic anthropogenic disturbances, most of which have been increasing over the last half-century or more. In particular, warming-induced coral bleaching events are acute disturbances that have been increasing in frequency, severity, and magnitude over the last several decades, especially since 2014. Other disturbances of Indo-Pacific coral reef communities are chronic, such as ocean acidification because of its continual effects on both coral calcification and reef accretion, and localized land-based sources of pollution and coral disease outbreaks. Both acute and chronic anthropogenic disturbances are broadening and worsening on coral reefs near human populations throughout the Indo-Pacific, and all anthropogenic disturbances of Indo-Pacific coral reefs are projected to worsen throughout the foreseeable future (Smith 2019a,b).

Studies of the recovery of Indo-Pacific reef-building corals (excluding the eastern Pacific) show that the majority of sites showed significant recovery from, or resistance to, anthropogenic disturbance over the latter part of the 20th century and early part of the 21st century (Tables 1a and 1b, Smith 2019a). The available information does not indicate that the capacity for recovery of Indo-Pacific reef-building corals has substantially declined. However, due to increased frequency of disturbance, the amount of time available for corals to recover has declined. Furthermore, since the frequency of disturbance is projected to increase as climate change worsens, recovery time is projected to continue to decrease throughout the foreseeable future (Smith 2019a,b).

The available information clearly indicates that mean coral cover has declined across much of the Indo-Pacific since the 1970s (Tables 2 and 3, Smith 2019a), and likely many decades before then in some locations. High spatial and temporal variability influenced by a large number of natural and anthropogenic factors can mask the overall trend in coral cover, but long-term monitoring programs and meta-analyses demonstrate downward temporal trends in most of the Indo-Pacific. Because disturbance is projected to increase in frequency throughout the foreseeable future (Smith 2019a,b), and this is expected to result in reduced recovery times, mean coral cover in the Indo-Pacific is also projected to decrease, especially as climate change worsens (Smith 2019a).

Despite increasing disturbance, decreasing recovery times, and decreasing coral cover, the available information suggests that overall resilience of Indo-Pacific reef-building corals remains quite high because: (1) Observed impacts of disturbances on corals have been spatially highly variable due to habitat heterogeneity; (2) factors that confer resilience (high habitat heterogeneity, large ecosystem size, high coral and reef fish species diversity) have not declined; (3) observed responses of corals to disturbances indicate that most either recovered or were resistant; and (4) observed responses of corals to disturbances indicate that phase shifts have so far been either rare or reversed. However, the trends in disturbance, recovery time, and coral cover are projected to worsen with climate change, thus overall resilience is also projected to decrease throughout the foreseeable future (Smith 2019a,b).

Threats

We consider global climate change-related threats of ocean warming, ocean acidification, and sea-level rise, and the local threats of fishing, land-based sources of pollution, coral disease, predation, and collection and trade, to be the most important to the extinction risk of Indo-Pacific reef-building corals currently and throughout the foreseeable future. The most important of these is ocean warming. In addition, five lesser global and local threats are also described (changes in ocean circulation, changes in tropical storms, human-induced physical damage, invasive species, and changes in salinity). The interactions of threats with one another could be significantly worse than any individual threat, especially as each threat grows. Each threat, and the interactions of threats, are described both in terms of observed effects since relevant scientific information became available (usually mid-20th century), and projected effects throughout the foreseeable future (Smith 2019a,b).

The effects of most threats to Indo-Pacific reef-building corals have already been observed to be worsening, based on the monitoring results and the scientific literature. Ocean warming in conjunction with the other threats have recently resulted in the worst impacts to Indo-Pacific reef-building corals ever observed. These impacts are further described in terms of increasing disturbance, less time available for recovery, decreasing coral cover, and decreasing resilience in the trends section above. All threats are projected to worsen throughout the foreseeable future (Smith 2019a,b), based on the scientific literature, climate change models, and other information such as human population trends in the Indo-Pacific.

Summary for Indo-Pacific Reef-Building Corals

Indo-Pacific reef-building corals are a diverse group (≈760 species) with many biological features that complicate the determination of the status of any given species. These species occur in vast and diverse habitats including shallow coral reefs, non-reef areas, and mesophotic areas throughout the Pacific and Indian Oceans. Key observed trends include

increasing anthropogenic disturbances, decreasing recovery time, and decreasing live coral cover, while overall resilience remains high. However, all trends are projected to worsen throughout the foreseeable future (Smith 2019a,b). Community trends do not necessarily represent individual species trends, but they provide valuable context that inform investigations of the status of species within the community such as *P. meandrina.*

Pocillopora meandrina Status Review

This status review of *P. meandrina* is based on the methodology provided in the ''Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act'' (NMFS 2017): An overall extinction risk assessment of the species is based on dual assessments of its demographic risk factors (distribution, abundance, productivity, diversity) and a threats evaluation. Thus, the *P. meandrina* SRR (Smith 2019b) covers introductory information (biology, habitat), demographic risk factors, threats evaluation, and extinction risk assessment, which are summarized below.

Biology and Habitats

Pocillopora meandrina was described by James Dana from specimens collected in Hawai'i (Dana 1846a, b), thus the formal scientific name is ''*Pocillopora meandrina,* Dana 1846''. Morphologically, *P. meandrina* colonies are small upright bushes, with branches radiating from the initial point of growth. Adult colonies are commonly 20–40 cm (8–16 in) in diameter, with branches radiating from the initial point of growth. Coloration is typically light brown or cream, but may also be green or pink (Fenner 2005, Corals of the World website,*http://www.coralsoftheworld.org,* accessed November 2019).

Taxonomic uncertainty refers to how a species should be scientifically classified. Taxonomic uncertainty appears to be lower for *P. meandrina* than some other *Pocillopora* species, and available information supports the conclusion that *P. meandrina* is a valid species. Whereas taxonomic uncertainty refers to how a species should be scientifically classified, species identification uncertainty refers to how a species should be identified in the field. We do not believe that species identification uncertainty for *P. meandrina* affects the quality of the information used in this status review. The taxonomic and species identification uncertainty for *P. meandrina* are described in detail in the SRR (Smith 2019b).

As with most other reef-building corals, *P. meandrina* is modular (the primary polyp produces genetically-identical secondary polyps or ''modules'') and colonial (the polyps aggregate to form a colony). The primary and secondary polyps are connected seamlessly through both tissue and skeleton into a colony. A colony can continue to exist even if numerous polyps die, the colony is broken apart, or otherwise damaged (Smith 2019a,b). Under the ESA, the ''physiological colony'' (Hughes 1984), defined as any colony of the species whether sexually or asexually produced, is considered an individual for reef-building colonial coral species such as *P. meandrina* (NMFS 2014).

Reef-building corals like *P. meandrina* build reefs because they are sessile (the colony is attached to the substrate), secreting their own custom-made substrates which grow into skeletons, providing the primary building blocks for coral reef structure. One of the most important aspects of sessile life history for consideration of extinction risk is that colonies cannot flee from unfavorable environmental conditions, thus must have substantial capacity for acclimatization to the natural variability in environmental conditions at their location. Likewise, since *P. meandrina* populations are distributed throughout a large range with environmental conditions that vary by latitude, longitude, proximity to land, etc., the populations must have substantial capacity for adaptation to the natural variability in environmental conditions across their ranges (Smith 2019a,b).

Reef-building corals like *P. meandrina* act as plants during the day by utilizing photosynthesis (autotrophic feeding), and they act as animals during the night by utilizing predation (heterotrophic feeding). Autotrophic feeding is accomplished via symbiosis with unicellular photosynthetic algae living within the host coral's tissues (zooxanthellae). The host coral benefits by receiving fixed organic carbon and other nutrients from the zooxanthellae, and the zooxanthellae benefit by receiving inorganic waste metabolites from the coral host as well as protection from grazing. This exchange of nutrients allows both partners to flourish and helps the host coral secrete calcium carbonate that forms the skeletal structure of the coral colony. Heterotrophic feeding is accomplished by extending their nematocyst-containing tentacles to sting and capture zooplankton (Smith 2019a,b).

Pocillopora meandrina reproduces both sexually and asexually. Sexual reproduction is by broadcast spawning, and asexual reproduction is by fragmentation. The larvae of *P. meandrina* disperse by swimming, drifting, or rafting, providing the potential for high dispersal. The larvae readily recruit to both natural and artificial hard surfaces. Like many branching coral species, *P. meandrina* has high skeletal growth rates relative to most other Indo-Pacific reef-building coral species (Smith 2019b). *Pocillopora meandrina* has been classified as a competitive species, based on its broadcast spawning, rapid skeletal growth, and branching colony morphology, which allow it to recruit quickly to available substrate and successfully compete for space (Darling *et al.* 2012). More information about *P. meandrina*'s reproduction, dispersal, recruitment, and growth is provided in the Productivity portion of the Demographic Factors section, and in the SRR (Smith 2019b).

The preferred habitat of *P. meandrina* is high energy reef crests and upper reef slopes. In Hawai'i where there are relatively few other coral species to compete with, *P. meandrina* dominates such high energy habitat to the extent that it has been termed the ''*P. meandrina* zone'' (Dollar 1982). The species is abundant in other types of high energy habitats, including non-reef habitats like lava bedrock, and unconsolidated rocks and boulders. The species also occurs in lower abundances in most other habitats where reef-building corals are found, such as middle and lower reef slopes, back-reef areas such as reef flats and patch reefs, and atoll lagoons. In addition, *P. meandrina* can be one of the most common corals found on artificial substrates, such as concrete structures and metal buoys. Although much more common in shallow water, *P. meandrina* occurs at depths of >30 m (98 ft; Smith 2019b).

In summary, several characteristics of *P. meandrina*'s biology and habitat moderate its extinction risk. As with most other reef-building corals, *P. meandrina* occurs as colonies of polyps that can continue to exist even if numerous polyps die, the colony is broken apart, or otherwise damaged. Since colonies are sessile, they cannot flee from unfavorable environmental conditions, thus must have substantial capacity for acclimatization and adaptation to the natural variability in environmental conditions at their location. In addition, *P. meandrina* has a high capacity to successfully compete for space with other reef-building corals,

especially following disturbances when it is often one of the first coral species to colonize denuded substrates. With regard to habitat, it is most abundant in high energy habitats with strong currents and constant wave action such as reef crests and upper reef slopes throughout its range, but is also found on deeper reef slopes, back-reef areas, lava, boulders, and artificial substrates (Smith 2019b).

Demographic Factors

In order to determine the extinction risk of species being considered for ESA listing, NMFS uses a demographic risk analysis framework that considers the four demographic factors of distribution, abundance, productivity, and diversity (NMFS 2017). Each demographic risk factor is described for *P. meandrina* below.

Distribution. Pocillopora meandrina is found on most coral reefs of the Indo-Pacific and eastern Pacific, with its range encompassing >230° longitude from the western Indian Ocean to the eastern Pacific Ocean, and ≈60° latitude from the northern Ryukyu Islands to central western Australia in the western Pacific, and the Gulf of California to Easter Island in the eastern Pacific. Distribution of *P. meandrina* is summarized here in terms of geographic distribution across the Indo-Pacific area, as well as depth distribution, based on the detailed descriptions in the SRR (Smith 2019b).

The Corals of the World website (*http://www.coralsoftheworld.org*) provides comprehensive range information for all 758 currently known Indo-Pacific reef-building corals, based on presence/absence in 133 Indo-Pacific ecoregions. As of February 2019, the website showed *P. meandrina* as present in 91 of the 133 ecoregions, from Madagascar in the western Indian Ocean to the Pacific coast of Colombia, and from southern Japan to the southern Great Barrier Reef (GBR) in Australia (Fig. 2, Smith 2019b). In addition, we found information confirming *P. meandrina* in four ecoregions in the southeastern and eastern Pacific, including the Austral Islands, the Tuamotu Archipelago, the Marquesas Islands, and Clipperton Atoll. Therefore, these 95 ecoregions are considered to be the current, known range of *P. meandrina.* There is no evidence of any reduction in its range due to human impacts, thus we consider its historic and current ranges to be the same (Smith 2019b).

Although *P. meandrina* is usually more common at depths of <5 m (16 ft) than in deeper areas, its habitat breadth encompasses most habitats found on coral reefs and non-reef habitat between the surface and >30 m (98 ft) of depth. For example, in a transect from 8 m (26 ft) to 36 m (118 ft) depth on Fanning Island in Kiribati surveyed in the early 1970s, colonies of *P. meandrina* were recorded at 31 m (102 ft) and 34 m (112 ft). Maximum cover of *P. meandrina* on the transect was at 10 m (33 ft), where it made up 25 percent of live coral cover. The cover of *P. meandrina* may have been even greater at depths <8 m, but those shallower areas were not surveyed (Maragos 1974). Observations of *P. meandrina* elsewhere also indicate that the species sometimes occurs at 30 m (98 ft) or deeper (Smith 2019b). Based on this information, we consider the depth range of *P. meandrina* from the surface to at least 34 m (112 ft).

We conclude that *P. meandrina's* distribution is very large and stable. The geographic distribution of *P. meandrina* encompasses >230° longitude and ≈60° latitude, and includes 95 of the 133 Indo-Pacific ecoregions, giving it a larger range than about two-thirds Indo-Pacific reef-building coral species. Although *P. meandrina* is usually more common at depths of <5 m (16 ft) than in deeper areas, its depth range is from the surface to at least 34 m (112 ft). There is no evidence of any reduction in its range due to human impacts, and we consider its historic and current ranges to be the same (Smith 2019b).

Abundance. Three types of abundance information are summarized below for *P. meandrina* from ecoregions for which information is available: (1) Relative abundances from 65 ecoregions; (2) absolute abundances from eight ecoregions; and (3) abundance trends from 10 ecoregions. With regard to relative abundances, in the 65 ecoregions for which information is available, it is dominant in seven, common in 18, uncommon in 36, and rare in four ecoregions (Fig. 3, Smith 2019b). The majority of *P. meandrina's* ecoregions are in the western Pacific and the Indian Oceans, where it has an intermediate level of abundance (common or uncommon; DeVantier and Turak 2017). It is a very common species in many of the *Pocillopora*-dominated reef coral communities of the central Pacific. While coral reef communities of the eastern Pacific are also *Pocillopora*-dominated, *P. meandrina* is one of the less common *Pocillopora* species in much of that area. It is only rare around the fringes of its range (Smith 2019b).

With regard to absolute abundance, we estimate *P. meandrina's* total population is at least several tens of billions of colonies. The estimated total population for the eight ecoregions (four entire ecoregions and portions of four others) within U.S. waters in 2012–2018 was 1.48 billion colonies (Table 3, Smith 2019b). U.S. waters make up approximately 1 percent of the species' range, but relative abundances are higher in some of the ecoregions within U.S. waters (especially the main Hawaiian Islands) than most of the rest of the species' range. We base our estimate of *P. meandrina's* total population on estimated population abundance of *P. meandrina* in U.S. waters (1.48 billion colonies), the proportion of the species' range within U.S. waters (≈1 percent), and the assumption that the population density of *P. meandrina* is lower in foreign waters than U.S. waters (Smith 2019b).

With regard to abundance trends, in the 10 ecoregions for which time-series abundance data or information are available, abundance of *P. meandrina* appears to be decreasing in five ecoregions and stable in five ecoregions. The abundance of *P. meandrina* has decreased by over 90 percent since 1975 in the Chagos Archipelago Ecoregion, by approximately 70 percent since 1999 in the Main Hawaiian Islands Ecoregion, and appears to have also decreased by an undeterminable amount in the Marianas Islands, Northwestern Hawaiian Islands, and Galapagos Islands Ecoregions. In contrast, based on the abundance data and information, *P. meandrina* abundance appears to be relatively stable in the GBR Far North, GBR North-central, Samoa-Tuvalu-Tonga, Society Islands, and Mexico West Ecoregions (Smith 2019b).

We conclude that *P. meandrina's* overall abundance is very high, but its overall abundance trend is unknown. Abundance is very high because (1) the relative abundance results indicate that *P. meandrina* is dominant or common in about one-third of its very large range; and (2) the absolute abundance results show that the U.S. population alone (which makes up only ≈1 percent of the species' range) is approximately 1.48 billion colonies. Because we only have abundance trend data or information from 10 of the 95 ecoregions, the trend in *P. meandrina's* overall abundance is unknown. Of the 10 ecoregions for which abundance trend data or information are available, *P. meandrina's* abundance appears to be decreasing in five ecoregions, and relatively stable in five ecoregions (Smith 2019b).

Productivity. Productivity refers to the overall population growth rate of *P. meandrina* in all 95 ecoregions combined. The most important factors influencing *P. meandrina's* productivity (reproduction, dispersal, recruitment,

growth, and adaptability) provide a qualitative indication of its productivity. The species has high reproductive capacity, which helps it outcompete other coral species, especially in response to disturbances. It also has the potential for broad pelagic dispersal of larvae, either by swimming, drifting, or rafting; the latter refers to settlement of larvae on natural or artificial flotsam which then carries the coral to permanent settlement habitat (Smith 2019b). Recruitment of *P. meandrina* has been studied in Hawai'i, where it has been shown to be the most successful coral species at colonizing new substrates, such as fresh lava flows on the Big Island (Grigg and Maragos 1974). The species also recruits unusually well to a variety of artificial substrates, including metal, concrete, and PVC pipe (Smith 2019b). Like many branching coral species, *P. meandrina* has high skeletal growth rates relative to most other Indo-Pacific reef-building coral species (Jokiel and Tyler 1992). Unlike most other reef corals, typical colonies of *P. meandrina* stop growing at around 40 cm (16 in) in diameter, and the species has a relatively short life span compared to other corals (Coles and Brown 2007). The high recruitment, rapid growth, and short life span of *P. meandrina* result in rapid turnover of the population at a given location (Smith 2019b).

Rapid turnover of *P. meandrina* populations provide capacity to adjust to changing conditions (adaptability) because the most resistant genotypes survive disturbances like bleaching events, then reproduce relatively quickly to claim open substrate. The high reproductive capacity, broad dispersal, high recruitment, rapid skeletal growth, and adaptability of *P. meandrina* allow it to pioneer available substrate and successfully compete for space (Coles and Brown 2007, Darling *et al.* 2012). These life history characteristics of *P. meandrina* provide buffering against threats such as warming-induced bleaching by providing the potential for rapid recovery from die-offs. High reproductive capacity, broad dispersal, high recruitment, rapid skeletal growth, and adaptability are all characteristics of high productivity, *i.e.,* they all positively affect population growth rate. Thus, we consider *P. meandrina's* productivity to be high. Also, *P. meandrina* has made strong recoveries in recent years from various types of disturbances at multiple locations throughout its range, displacing less competitive coral species and becoming more abundant than before the disturbances (*e.g.,* GBR, Society Islands). These recoveries demonstrate continued high productivity, thus we consider *P. meandrina's* productivity to be stable (Smith 2019b).

We conclude that *P. meandrina's* productivity is both high and stable. The high reproductive capacity, broad dispersal, high recruitment, rapid skeletal growth, and adaptability of *P. meandrina* are all characteristics of high productivity, *i.e.,* they all positively affect population growth rate. In addition, *P. meandrina's* abundance has remained stable in recent years in half the ecoregions (5/10) where information is available, whether there have been disturbances or not (Smith 2019b).

Diversity. Diversity includes both the diversity of genotypes (*i.e.,* the genetic constitution of an individual) and phenotypes (*i.e.,* the observable characteristics of an individual) within a population. Genotypic diversity is defined as the numbers of genotypes present in a population. Phenotypic diversity is defined as the numbers of phenotypes present in a population, and is affected by both genotype and environmental factors (Smith 2019b). Robust populations have higher levels of genotypic and phenotypic diversity. Although there is little information available on the diversity of *P. meandrina,* the few species-specific studies that are available show high genotypic (Magalon *et al.* 2005; Dr. Rob Toonen, personal communication) and phenotypic (Hughes *et al.* 2018, Muir *et al.* 2017) diversity within portions of individual ecoregions.

The spatial and temporal habitat heterogeneity of *P. meandrina's* range is very high, contributing to the maintenance of high phenotypic diversity for the species. Phenotypic diversity can be maintained by spatial and temporal variation in habitat characteristics, because variable environmental factors result in the expression of different phenotypes. As described above, *P. meandrina* occurs in 95 ecoregions, and has a depth range of at least 0–34 m (112 ft). The spatial variation in *P. meandrina's* habitats is very high due to the habitat heterogeneity of its range. In addition, these habitats are exposed to a great deal of temporal variation in conditions on diurnal, lunar, seasonal, and decadal timescales. The broad geographic and depth distribution of *P. meandrina* includes nearly the entire range of habitats for Indo-Pacific reef-building corals (Smith 2019).

We conclude that *P. meandrina's* diversity is both high and stable. Although there is little information available on the genotypic and phenotypic diversity of *P. meandrina,* the evidence summarized above suggests that both types of diversity are high for this species, mainly because of its large distribution and habitat heterogeneity. Furthermore, the species' distribution has not been reduced, and abundance has not declined in half of the ecoregions for which information is available.

Demographic Factors Conclusion. The distribution, abundance, productivity, and diversity of *P. meandrina* substantially moderate its extinction risk. The geographic distribution of *P. meandrina* includes 95 of the 133 Indo-Pacific coral reef ecoregions, giving it a very large range. While *P. meandrina* is most commonly found in shallow, high-energy habitats such as reef crests and shallow forereefs, its depth distribution extends from the surface to at least 34 m (112 ft). Because of its broad geographic and depth distributions, *P. meandrina* occurs in many different types of habitats, from shallow to deep, high to low latitudes, offshore to inshore, and so on. These different habitat types provide different environmental conditions in response to any given disturbance, ensuring that some populations will be less affected than others, thereby moderating extinction risk (Smith 2019b).

The relative abundance of *P. meandrina* varies substantially across its range, from one of the most dominant reef-building coral species in the low-diversity coral reef communities of the central Pacific, to an uncommon species in the high-diversity coral reef communities of the Coral Triangle and surrounding areas. It is a dominant or common species in 25 of its 95 ecoregions. The absolute abundance of *P. meandrina* is estimated as at least several tens of billions of colonies. In the 10 ecoregions for which abundance trend information is available, *P. meandrina* appears to be decreasing in five ecoregions, and stable in five ecoregions. Because we only have abundance trend information from 10 of the 95 ecoregions, the trend in *P. meandrina's* overall abundance is unknown. Despite declining abundance in some ecoregions, the species' abundance moderates extinction risk by providing tens of billions of colonies distributed across many ecoregions that can replenish reefs depleted by disturbance (Smith 2019b).

The high reproductive capacity, broad dispersal, high recruitment, rapid skeletal growth, and adaptability of *P. meandrina* are all characteristics of high productivity, *i.e.,* they all positively affect population growth rate. Such high productivity moderates extinction risk

by providing the potential for rapid recovery from die-offs, as documented in some of its 95 ecoregions (Smith 2019b).

Genetic studies show high genotypic diversity in *P. meandrina* on small geographic scales (*e.g.,* one island), and genotypic diversity is likely even higher within individual ecoregions, l*et al*one across the 95 ecoregions that make up the range of the species. Studies of the responses of *P. meandrina* to elevated seawater temperatures show high phenotypic diversity in multiple locations. Such high diversity moderates extinction risk by providing the capacity to adapt to changing local conditions (Smith 2019b).

Threats Evaluation

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) state that the agency must determine whether a species is endangered or threatened because of any one or a combination of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Based on the 2011 SRR (Brainard *et al.* 2011), the 2014 final coral listing rule (NMFS 2014), and the GSA (Smith 2019a), there are 10 main types of threats to Indo-Pacific reef-building corals, including *P. meandrina,* currently and in the foreseeable future: Ocean warming, ocean acidification, sea-level rise, fishing, land-based sources of pollution, coral disease, predation, collection and trade, a group of secondary threats (weakening ocean currents, increasing tropical storms, physical damage, invasive species, and changes in salinity), and the interactions of threats. The inadequacy of existing regulatory mechanisms is an important influence on the threats, and thus is also described in this section.

The observed and projected trends of each threat, as well as the vulnerability of *P. meandrina* to each threat, are described. Vulnerability of a species to a threat is a function of susceptibility and exposure, considered at the appropriate spatial and temporal scales. The spatial scale is the 95 ecoregions that make up the current range of *P. meandrina* (Fig. 2, Smith 2019b), and the temporal scale is the foreseeable future (now to 2100). Susceptibility refers to the response of *P. meandrina* colonies to the adverse conditions produced by the threat. Exposure refers to the degree to which *P. meandrina* colonies are likely to be subjected to the threats throughout its range, thus the overall vulnerability of a coral species to threats depends on the proportion of colonies that are exposed to the threats. A species may not necessarily be highly vulnerable to a threat even when it is highly susceptible to the threat, if exposure is low. Consideration of the appropriate spatial and temporal scales is particularly important, because of potential high variability in threats both spatially over *P. meandrina*'s large range, and temporally over the 21st century (NMFS 2014).

Ocean Warming (Factor E). As described in the GSA (Smith 2019a) and NMFS (2020a), the available information regarding ocean warming and Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Substantial ocean warming, including in the tropical/subtropical Indo-Pacific, has already occurred and continues to occur; (2) ocean warming, including in the tropical/subtropical Indo-Pacific, is projected to continue at an accelerated rate under RCPs 8.5, 6.0, and 4.5 throughout the foreseeable future; (3) substantial warming-induced mass bleaching of Indo-Pacific reef coral communities has already occurred and continues to occur; (4) warming-induced mass bleaching of Indo-Pacific reef coral communities is projected to rapidly increase in frequency, intensity, and magnitude under RCPs 8.5, 6.0, and 4.5 throughout the foreseeable future; and (5) coral reefs will be severely affected by such warming (Smith 2019a, NMFS 2020a).

The vulnerability of *P. meandrina* to ocean warming is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). Genus-level surveys of warming-induced bleaching susceptibility have found that *Pocillopora* species can be among the more susceptible of reef-building corals. Species-level studies and observations of *P. meandrina* at many locations recorded high susceptibilities to the 1998, 2014–17, and other bleaching events (Sheppard *et al.* 2017, Smith 2019b). However, studies and observations of *P. meandrina* have also recorded resistance to warming-induced bleaching at many locations throughout the species' range, or that bleached colonies recovered readily (Muir *et al.* 2017, Hughes *et al.* 2018, Smith 2019b). Thus, we consider the overall susceptibility of *P. meandrina* to ocean warming to be moderate to high (Smith 2019b). Exposure of colonies of *P. meandrina* to ocean warming varies spatially with latitude, depth, habitat type, and other spatial factors (*e.g.,* windward vs. leeward sides of islands), and temporally with tidal, diurnal, seasonal, and decadal cycles (Smith 2019b). However, as described in the GSA and summarized above, several factors suggest that *P. meandrina*'s exposure to ocean warming is already quite high, and rapidly increasing. Thus we consider exposure of *P. meandrina* to ocean warming to be high. We consider the current vulnerability of *P. meandrina* to ocean warming to be high, based on moderate to high susceptibility combined with high exposure. We expect vulnerability of *P. meandrina* to ocean warming to increase throughout the foreseeable future as climate change worsens, resulting in higher frequency, severity, and magnitude of warming-induced bleaching events (Smith 2019a,b, NMFS 2020a).

Ocean Acidification (Factor E). As described in the GSA (Smith 2019a) and NMFS (2020a), the available information regarding ocean acidification and Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Ocean acidification has already occurred in the tropical/subtropical Indo-Pacific and continues to occur; (2) ocean acidification, including in the tropical/subtropical Indo-Pacific, is projected to continue at an accelerated rate under RCPs 8.5, 6.0, and 4.5 throughout the foreseeable future; (3) ocean acidification has already affected Indo-Pacific reef-building coral communities by reducing calcification rates and subsequent effects on skeletal growth (reduced growth rates and skeletal densities) of corals, and by increasing erosion of coral reefs; and (4) the effects of ocean acidification on Indo-Pacific reef-building coral communities are projected to steadily increase under RCPs 8.5, 6.0, and 4.5 throughout the foreseeable future by reducing coral calcification, increasing reef erosion, impacting coral reproduction, reducing reef coral diversity, and simplifying coral reef communities (Smith 2019a, NMFS 2020a).

The vulnerability of *P. meandrina* to ocean acidification is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). Some studies have found that ocean acidification reduces calcification and skeletal growth rates of *P. meandrina* and other *Pocillopora* species (Muehllehner and Edmunds 2008, Fabricius *et al.* 2011), while others have found that *Pocillopora* species have some capacity to resist the effects of

ocean acidification (Comeau *et al.* 2014, Putnam *et al.* 2013). The currently available information does not indicate that *P. meandrina* or other *Pocillopora* species have the capacity to acclimatize to, adapt to, or resist the effects the levels of ocean acidification expected in the foreseeable future (Smith 2019b). Exposure of *P. meandrina* colonies to ocean acidification will likely continue to be highly variable, but also likely to increase throughout the foreseeable future because of the projected increase in ocean acidification, as described in the GSA (Smith 2019b). We consider the current vulnerability of *P. meandrina* to ocean acidification to be high, based on high susceptibility combined with highly variable exposure. We expect vulnerability of *P. meandrina* to ocean acidification to increase throughout the foreseeable future as climate change worsens, resulting in higher severity and magnitude of ocean acidification (Smith 2019a,b).

Sea Level Rise (Factor E). As described in the GSA (Smith 2019a), the available information regarding sea-level rise and Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Sea-level rise has already occurred and continues to occur globally; (2) sea-level rise in parts of the tropical/subtropical Indo-Pacific has been approximately three times the global rate; (3) sea-level rise projected under RCP8.5 for the 21st century will exceed recent rates both globally and in the Indo-Pacific; (4) the effects of sea-level rise to date on Indo-Pacific reef-building corals are complex, with no clear trend yet apparent; and (5) the effects of sea-level rise on Indo-Pacific reef coral communities are projected to steadily increase and broaden under RCP8.5 throughout the foreseeable future (Smith 2019a).

The vulnerability of *P. meandrina* to sea level rise is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). We consider the susceptibility of *P. meandrina* to sea level rise to be low. As far as we know, there is no species-specific information available on the susceptibility of *P. meandrina* to sea level rise. Reef-building corals that are unable to keep up with rising sea levels, unable to settle on newly available substrates, and occur in nearshore habitats such as reef flats, would be the most susceptible to sea level rise (Smith 2019a). As described in the SRR (Smith 2019b), *P. meandrina* is a colonizing species that readily settles on newly available substrates, has relatively rapid skeletal growth, and occurs primarily on reef crests and shallow forereefs (not reef flats). Exposure of *P. meandrina* colonies to sea-level rise will likely continue to be highly variable, but also likely to increase throughout the foreseeable future (Smith 2019a,b). We consider the current vulnerability of *P. meandrina* to sea-level rise to be low, based on low susceptibility combined with highly variable exposure. We expect vulnerability of *P. meandrina* to sea-level rise to increase throughout the foreseeable future as climate change worsens, resulting in higher severity and magnitude of sea-level rise (Smith 2019a,b).

Fishing (Factor A). As described in the GSA (Smith 2019a), the available information regarding fishing and Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Direct effects of fishing, namely damage from fishing gears and methods used in food fish and marine aquarium fisheries, have been observed in much of the Indo-Pacific; (2) indirect effects, or the trophic effects of fishing, have not been observed in the Indo-Pacific as they have in the Caribbean; and (3) both direct and indirect effects of fishing are projected to increase in the Indo-Pacific throughout the foreseeable future (Smith 2019a).

The vulnerability of *P. meandrina* to fishing is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). We consider the susceptibility of *P. meandrina* to the direct and indirect effects of fishing to be moderate. Direct effects include entanglement, abrasion, and breakage by fishing line and other gear where fishing pressure is high, such as in the main Hawaiian Islands (Asoh *et al.* 2004). However, *P. meandrina* populations remain high in areas that have been heavily fished for many decades (Smith 2019b). While exposure of *P. meandrina* to fishing is high in certain areas, it is low to none in a large proportion of the species' range, resulting in low exposure overall. Much of *P. meandrina*'s range occurs in remote areas that are difficult to reach by fishers, or in marine protected areas where fishing is restricted or banned. In addition, *P. meandrina* is found primarily on reef crests and upper reef slopes, where constant wave action discourages human access and fishing (Smith 2019b). We consider the current vulnerability of *P. meandrina* to fishing to be low to moderate, based on moderate susceptibility combined with low exposure. We expect vulnerability of *P. meandrina* to fishing to increase throughout the foreseeable future as the human population and fishing pressure increase (Smith 2019a,b).

Land-Based Sources of Pollution (Factor A). Land-based sources of pollution (LBSP) refers to turbidity, sediment, nutrients, contaminants, and other types of pollution affecting reef-building corals that originate from coastal development, urbanization, agriculture, and other human activities on land. The many different forms of LBSP collectively affect all life history stages of reef-building corals in numerous ways. As described in the GSA (Smith 2019a), based on the available information regarding the effects of LBSP on Indo-Pacific reef-building corals, we conclude that: (1) Effects of LBSP have been observed in much of the Indo-Pacific, namely impacts on coral growth, reproduction, and survival in areas with the highest levels of pollution; and (2) such effects are projected to increase in much of the Indo-Pacific throughout the foreseeable future (Smith 2019a).

The vulnerabilities of *P. meandrina* to turbidity, sediment, nutrients, and contaminants are summarized here in terms of its susceptibility and exposure to this threat. Based on the information described in the SRR (Smith 2019b), we consider the susceptibilities of *P. meandrina* to be low for turbidity, moderate for sediment and nutrients, and high for contaminants. We consider *P. meandrina*'s overall susceptibility to all LBSP combined to be moderate (Smith 2019b). Exposure of colonies of *P. meandrina* to LBSP is likely high in areas subject to intense coastal development, urbanization, agriculture, and other human activities on land. However, some of *P. meandrina*'s range is far from human activities on land (*e.g.,* uninhabited atolls, islands, barrier reefs, etc.), also limiting exposure. Thus, exposure of *P. meandrina* to LBSP is high in some areas, but low to none in a large proportion of the species' range, resulting in low exposure overall (Smith 2019b). We consider the current vulnerability of *P. meandrina* to LBSP to be low to moderate, based on moderate overall susceptibility combined with low overall exposure. We expect vulnerability of *P. meandrina* to LBSP to increase throughout the foreseeable future as the human population and coastal development increase (Smith 2019a,b).

Coral Disease (Factor C). As described in the GSA (Smith 2019a), the available information regarding diseases of Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Coral diseases and subsequent mortalities of Indo-Pacific reef-building corals are

being increasingly observed, and while quantifiable temporal trends are lacking, the environmental stressors that lead to coral diseases (especially ocean warming) have clearly increased; and (2) environmental stressors that lead to coral diseases are projected to increase sharply in the Indo-Pacific under RCP8.5 throughout the foreseeable future, thus coral diseases and subsequent coral mortalities are also likely to increase (Smith 2019a).

The vulnerability of *P. meandrina* to coral disease is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). Studies of coral disease in the Hawaiian Islands have consistently found *P. meandrina* to have low susceptibility to disease (Aeby 2006, Aeby *et al.* 2009). Furthermore, genus and family level information from Hawaii and elsewhere in the Indo-Pacific indicate low susceptibilities of *Pocillopora* and Pocilloporidae to coral disease relative to other reef-building corals (Brainard *et al.* 2012, Ruiz-Moreno *et al.* 2012). Exposure of colonies of *P. meandrina* to coral disease depends on exposure to other threats, especially ocean warming and LBSP. As noted above, exposure of *P. meandrina* to ocean warming and LBSP is highly variable across the species' range, but for different reasons. Exposure to both threats is expected to increase throughout the foreseeable future. Thus, *P. meandrina's* exposure to coral disease is likely highly variable across its range (Smith 2019b). We consider the current vulnerability of *P. meandrina* to coral disease to be low, based on low susceptibility combined with highly variable exposure. We expect vulnerability of *P. meandrina* to coral disease to increase throughout the foreseeable future as ocean warming, LBSP, and other threats increase, because these threats generally produce conditions that favor coral disease (Smith 2019a,b).

Predation (Factor C). As described in the GSA (Smith 2019a), the available information regarding predation of Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Both chronic and acute predation, especially acute crown of thorns starfish (COTS) outbreaks, have been observed in many parts of the Indo-Pacific and, while quantifiable temporal trends are lacking, environmental stressors that lead to predator outbreaks (*e.g.,* land-based sources of pollution) have also increased; and (2) both chronic and acute predation and its impacts are projected to increase in much of the Indo-Pacific throughout the foreseeable future (Smith 2019a).

The vulnerability of *P. meandrina* to predation is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). The crown of thorns starfish (COTS) is considered the most important predator because of its large size, potential for extremely large outbreaks, high coral tissue consumption rate, and capacity to remove tissue from entire coral colonies (Glynn 1976). *Acropora* and *Pocillopora* species are among the most favored coral prey of COTS, and sharp reductions in populations of both genera in response to COTS outbreaks have been recorded across the Indo-Pacific (Pratchett *et al.* 2017, Keesing *et al.* 2019). Aside from COTS, other predators such as *Drupella* snails can result in colony damage and mortality of *Pocillopora* species including *P. meandrina,* especially after bleachings or other events that weaken the colonies. However, generally these other predators do not cause severe damage because they typically remove a small portion of tissue or skeleton, and do not often occur in large numbers. Thus, the susceptibility of *P. meandrina* to predation is moderate (Smith 2019b). Exposure of colonies of *P. meandrina* to predation depends on predator abundances. Generally, predator abundances and exposure are low most of the time on coral reefs, interspersed with brief periods of high abundances and subsequent high exposure. Thus, *P. meandrina's* exposure to predation is likely highly variable across its range (Smith 2019b). We consider the current vulnerability of *P. meandrina* to predation to be moderate, based on moderate susceptibility combined with highly variable exposure. We expect vulnerability of *P. meandrina* to predation to increase throughout the foreseeable future as LBSP, fishing, and other threats increase, because these threats generally produce conditions that favor predators (Smith 2019a,b).

Collection and Trade (Factor B). Collection and trade refers to the physical process of taking reef-building corals from their natural habitat (collection) for the purpose of sale in the marine aquarium and ornamental industries (trade). As described in the GSA (Smith 2019a), the available information regarding collection and trade of Indo-Pacific reef-building corals including *P. meandrina* leads to the following conclusions about this threat: (1) Collection and trade of Indo-Pacific reef-building corals has grown significantly in recent decades, along with the resulting detrimental effects to corals and their habitats; and (2) collection and trade, and their effects are projected to increase in much of the Indo-Pacific throughout the foreseeable future, although these effects may be partially offset by increases in mariculture (Smith 2019a).

The vulnerability of *P. meandrina* to collection and trade is summarized here in terms of its susceptibility and exposure to this threat, based on information in the SRR (Smith 2019b). As of May 2019, none of the largest marine aquarium coral wholesalers in the United States, an industry that sells a vast diversity of both captive bred and wild caught corals, had *P. meandrina* listed for sale, nor does it appear to have been sold over the last 15 years (Smith 2019b). In contrast to its lack of popularity in the marine aquarium industry, *P. meandrina* was among the top four genera in the ornamental industry (Thornhill 2012). Skeletons are cleaned and sold as curios or decorations, and colonies of *Acropora* and *Pocillopora* species are especially popular in many countries. Data collected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) suggests that collection of *Pocillopora* species including *P. meandrina* for the domestic curio trade may be substantial in many countries (Smith 2019b). Exposure of colonies of *P. meandrina* to collection and trade depends on the proportion of the total population that is harvested annually. The total annual harvest of *P. meandrina* for the ornamental industry is not likely to be more than a few hundreds of thousands to a few million colonies. Even if a few million colonies are collected annually, that is still relatively small compared to the tens of billions of colonies in *P. meandrina's* total population, thus exposure to collection and trade is considered to be low (Smith 2019b). We consider the current vulnerability of *P. meandrina* to collection and trade to be low to moderate, based on moderate susceptibility combined with low exposure. We expect vulnerability of *P. meandrina* to collection and trade to increase throughout the foreseeable future, because future domestic and international demand for ornamental corals is expected to grow as the human population and affluence grow (Smith 2019a,b).

Other Threats (Factors A, E). In addition to the above primary threats, other threats to Indo-Pacific reef-building corals include two global threats (changes in ocean circulation and tropical storms, Factor E), and three local threats (human-induced physical

damage, Factor A; invasive species, and changes in salinity, both Factor E; Brainard *et al.* 2011). These are not considered primary threats because they are either uncertain (the global threats) or highly localized on small spatial scales (the local threats). Nevertheless, they may affect the extinction risk of some Indo-Pacific reef-building coral species, including *P. meandrina,* throughout the foreseeable future (Smith 2019a).

The vulnerabilities of *P. meandrina* to these other threats are summarized here in terms of its susceptibility and exposure to these five threats, based on information in the SRR (Smith 2019b). We consider the current vulnerabilities of *P. meandrina* to changes in ocean circulation and tropical storms to be low, based on low susceptibilities combined with highly variable exposures. We expect vulnerabilities of *P. meandrina* to changes in ocean circulation and tropical storms to increase in the foreseeable future as climate change worsens. We consider the current vulnerabilities of *P. meandrina* to human-induced physical damage, invasive species, and changes in salinity to be very low to low, based on low susceptibilities combined with very low exposures. We expect vulnerabilities of *P. meandrina* to human-induced physical damage, invasive species, and changes in salinity to increase throughout the foreseeable future as human activities increase and climate change worsens (Smith 2019a,b).

Interactions of Threats (Factor E). The threats described above often affect Indo-Pacific reef-building corals simultaneously or sequentially, thus threats may interact with one another to affect corals in different ways than they would individually. As described in the GSA (Smith 2019a), there are many types of potential interactions, almost all of which are negative, such as the worsening of warming-induced coral bleaching by ocean acidification (Anthony *et al.* 2011, 2016) and LBSP (Fabricius 2011, Wooldridge 2016). Most studies oversimplify the interactions of threats by only considering interactions of two threats. The reality is that most or all threats interact with one another at various spatial and temporal scales, thus the effects of these interactions could be significantly worse than any individual threat alone, especially as each threat grows throughout the foreseeable future (Smith 2019a).

We consider the current vulnerabilities of *P. meandrina* to the interactions of the threats with one another to be unknown. As explained in the SRR (Smith 2019b), there is very little information available on the interactions of the threats with one another for *P. meandrina* or other *Pocillopora* species, thus the available information is inadequate to determine *P. meandrina's* susceptibilities to the interactions of threats. Likewise, the available information is inadequate to determine exposure, thus we consider *P. meandrina's* susceptibilities and exposures to the interactions of threats to be unknown (Smith 2019b). However, based on the available information on the effects of the interactions of these threats on other Indo-Pacific reef-building corals, as described in the GSA (Smith 2019a), we consider it likely that the overall effect of the interactions of these threats with one another on *P. meandrina* is negative, and that these impacts will worsen throughout the foreseeable future as threats worsen (Smith 2019a,b).

Inadequacy of Existing Regulatory Mechanisms (Factor D). While not a threat, existing regulatory mechanisms are a very important influence on the threats, and thus constitute one of the five listing factors. Existing regulatory mechanisms refers to treaties, agreements, laws, and regulations at all levels of government that may affect the continued existence of Indo-Pacific reef-building corals. Relevant regulatory mechanisms include all those related to GHG management globally, and the management of local threats in the 68 countries with Indo-Pacific reef-building corals (NMFS 2012, 2014), the great majority of which have *P. meandrina* in their waters (Smith 2019b).

As described in more detail in the GSA (Smith 2019a), GHGs are regulated through international agreements (*e.g.,* the Paris Agreement, signed in 2016), and through statutes and regulations at the national, state, and local levels. Twenty countries, the ''G20'' nations, are responsible for approximately 78 percent of global emissions, and are led by the top three emitters, China, the United States, and India, which are together responsible for about half of global emissions (UNEP 2019). All 20 signed the Paris Agreement; however, in 2017, the US announced its withdrawal, to take effect in November 2020. Previous international agreements on reducing GHGs, such as the Kyoto Protocol of 1997, have not been effective at controlling global GHG emissions, as shown by the increase in global GHG emissions over the past decades. Even if implementation of the Paris Agreement successfully limits global temperature increases to 1.5 °C during the 21st century as intended (*i.e.,* 0.5 °C warmer than now), impacts to reef-building corals, including *P. meandrina,* would still occur because these communities are already on a downward trajectory, and the additional warming would make things worse (IPCC 2018, Smith 2019a,b).

As described in more detail in the GSA (Smith 2019a), existing regulatory mechanisms that address the major local threats (*i.e.,* fishing, land-based sources of pollution, coral diseases, coral predators, collection and trade) consist primarily of national and local fisheries, coastal, and watershed management laws and regulations in the 68 countries where Indo-Pacific reef-building corals occur, but also include some international conventions. Regulatory mechanisms align well with some threats (*e.g.,* fishing, collection and trade) but not others (*e.g.,* coral diseases and predators). The relevant regulatory mechanisms generally consist of five categories: general coral protection, coral collection control, fishing controls, pollution controls, and managed areas, each of which are summarized below for the 68 countries. These regulatory mechanisms do not address climate change threats, but they typically were not intended to do so (NMFS 2012, NMFS 2014, Smith 2019a).

General coral protection regulatory mechanisms include overarching environmental laws that may protect corals from damage, harm, and destruction, and specific coral reef management laws. Of the 68 countries, 18 (27 percent) have general coral protection laws. Coral collection and trade regulatory mechanisms include specific laws that prohibit the collection, harvest, and mining of corals. Of the 68 countries, 32 (50 percent) have laws prohibiting the collection of live corals from coral reefs. Fishing regulations that pertain to reefs, include regulations that prohibit explosives, poisons and chemicals, electrocution, spearfishing, specific mesh sizes of nets, or other fishing gear. Of the 68 countries, 53 (78 percent) have laws that regulate coral reef fisheries. Pollution control regulations include oil pollution laws, marine pollution laws, ship-based pollution laws, and coastal land use and development laws. Of the 68 countries, 23 (34 percent) have laws that regulate pollution of coral reef waters. Managed area regulatory mechanisms include the capacity to create national parks and reserves, sanctuaries, and marine protected areas. Of the 68 countries, nearly all have managed areas that include coral reefs. Details about these five categories of regulatory mechanisms for the

management of local threats are provided in the GSA (Smith 2019a).

The 2014 final coral listing rule concluded that global regulatory mechanisms for GHG emissions management were ineffective at reducing global climate change-related impacts to Indo-Pacific reef-building coral species at that time (NMFS 2014). Since then, the Paris Agreement was developed in 2015 and signed in 2016 (UN 2016), representing a major potential advance in GHG emissions management because its successful implementation would limit GMST to 1.5 °C above pre-industrial, as explained in the GSA (Smith 2019a). However, there are several reasons why there is uncertainty with regard to successful implementation of the Paris Agreement: (1) Despite past international agreements for GHG emissions management (*e.g.,* 1997 Kyoto Protocol, 2009 Copenhagen Accord), global GHG emissions and atmospheric CO_2 levels have both risen to historically high levels and continue to do so; (2) the world's second largest GHG emitter, the United States withdrew from the Paris Agreement in 2017; and (3) the most recent Emissions Gap Report from November 2019 concludes that globally, current policies are on track to result in global warming of 3.5° C by 2100 (UNEP 2019). Finally, even successful implementation of the Paris Agreement (*i.e.,* limiting warming to 1.5 °C) would still result in additional warming, and thus worsening of the current conditions. Therefore, we conclude that current global regulatory mechanisms for management of GHG emissions are expected to be unsuccessful at reducing global climate change-related impacts to Indo-Pacific reef-building corals, including *P. meandrina* (Smith 2019a,b).

The 2014 final coral listing rule concluded that national, state, local, and other regulatory mechanisms in the 68 countries with Indo-Pacific reef-building corals were generally ineffective at preventing or sufficiently controlling local threats to these species (NMFS 2014). Since that time, new coral reef MPAs have been established in the Indo-Pacific, slightly increasing the total proportion of coral reef ecosystems protected by MPAs in the region. However, human populations have also grown in many Indo-Pacific countries during that time, most likely leading to an increase in local threats since we completed our analysis in 2014. Thus, we conclude that current regulatory mechanisms are ineffective at reducing the impacts of local threats to Indo-Pacific reef-building corals including *P. meandrina* (Smith 2019a,b).

Threats Conclusion. We consider global climate change-related threats of ocean warming, ocean acidification, and sea-level rise, and the local threats of fishing, land-based sources of pollution, coral disease, predation, and collection and trade, to be the most significant to the extinction risk of Indo-Pacific reef-building corals, including *P. meandrina,* currently and throughout the foreseeable future. The most important of these threats is ocean warming. In addition, the interactions of threats with one another could be significantly worse than any individual threat, especially as each threat grows. Most threats have already been observed to be worsening, based on the monitoring results and the scientific literature. Ocean warming in conjunction with the other threats have recently resulted in the worst impacts to Indo-Pacific reef-building corals ever observed. All threats are expected to worsen throughout the foreseeable future, and to be exacerbated by the inadequacy of existing regulatory mechanisms (Smith 2019a).

The current susceptibilities, exposures, and subsequent vulnerabilities of *P. meandrina* to the threats are described in the SRR (Smith 2019b) and summarized here. For each threat, vulnerability is a function of susceptibility and exposure. Based on these vulnerability ratings, the six worst threats to *P. meandrina* currently are ocean warming (high), ocean acidification (high), predation (moderate), fishing (low to moderate), land-based sources of pollution (low to moderate), and collection and trade (low to moderate). There is not enough information to determine *P. meandrina*'s vulnerability to the interactions of threats. Vulnerabilities of *P. meandrina* to all threats are expected to increase throughout the foreseeable future, and to be exacerbated by the inadequacy of existing regulatory mechanisms (Smith 2019a,b).

Rangewide Extinction Risk Assessment

An extinction risk assessment (ERA) was carried out by a seven member ERA Team for *P. meandrina* across its entire range, in accordance with the ''Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act'' (NMFS 2017). The Team used the information provided in both the GSA and SRR (Smith 2019a,b) to provide the rangewide quantitative ratings of *P. meandrina*'s demographic risk, threats, and overall extinction risk under RCP8.5 over the foreseeable future. Draft ratings were conducted in August and September, 2019, then a Team meeting was held on September 30, 2019, to discuss the draft ratings and to ensure that all Team members had a common understanding of the guidance. The final ratings were completed in October 2019.

Demographic Risk Factors. The demographic risk assessment utilized the information provided in the SRR (Smith 2019b) on *P. meandrina*'s four demographic risk factors of distribution, abundance, productivity, and diversity. ERA Team members were instructed to assign a risk rating to each of the four demographic risk factors, based on information in the SRR, on a scale of 1 (low risk) to 3 (high risk), for the foreseeable future, assuming conditions projected under RCP8.5. Draft and final ratings were conducted based on the same written information, resulting in mean ratings of 1.0 to 1.6 for the four demographic factors (Table 1).

TABLE 1—ERA TEAM'S DRAFT AND FINAL RATINGS OF *P. meandrina*'S DEMOGRAPHIC RISK FACTORS, WHERE 1 = LOW RISK, 2 = MODERATE RISK, AND 3 = HIGH RISK, UNDER RCP8.5 OVER THE FORESEEABLE FUTURE

[Now to 2100; Smith 2019b]

ERA Team's ratings of demographic risk factors	Mean Ratings (± Standard Deviation)	
	Draft	Final
Distribution	1.1 (±0.38)	1.1 (±0.38)
Abundance	1.6 (±0.53)	1.6 (±0.53)
Productivity	1.0 (±0.00)	1.0 (±0.00)
Diversity	1.1 (±0.38)	1.0 (±0.00)

The Team rated *P. meandrina*'s distribution as a low risk in both the draft and final ratings (Table 1). The distribution of *P. meandrina* is larger than about two-thirds of Indo-Pacific reef-building coral species, and includes most coral reefs in the Indo-Pacific. The species also has a broad depth range, occurring from the surface to at least 34 m (112 ft). There is no evidence of any reduction in its range due to human impacts, thus its historic and current ranges are considered to be the same. Although all threats are projected to increase under RCP8.5 over the foreseeable future *P. meandrina*'s distribution is not likely to contribute significantly to extinction risk.

The Team rated *P. meandrina*'s abundance as a moderate risk in both the draft and final ratings (Table 1). In the 10 ecoregions for which time-series abundance data or information are available, abundance appears to be decreasing in five ecoregions and stable in five ecoregions. Because of these declines in abundance that have already

been observed, and projections of increasing threats under RCP8.5 over the foreseeable future, *P. meandrina's* abundance is likely to contribute significantly to extinction risk.

The Team rated *P. meandrina's* productivity as the lowest possible risk in both the draft and final ratings (Table 1). Productivity of *P. meandrina* is high due to its high reproductive capacity, broad dispersal, high recruitment, rapid skeletal growth, and adaptability, *i.e.,* these characteristics of the species all positively affect population growth rate. Although all threats are projected to increase under RCP8.5 over the foreseeable future, *P. meandrina's* productivity is not likely to contribute significantly to extinction risk.

The Team rated *P. meandrina's* diversity as a low risk in both the draft and final ratings (Table 1). Diversity of *P. meandrina* is due to high genotypic and phenotypic diversity, and a large range with very high habitat heterogeneity. There is no evidence that either productivity or diversity have been reduced. Although all threats are projected to increase under RCP8.5 over the foreseeable future, *P. meandrina's* diversity is not likely to contribute significantly to extinction risk.

In conclusion, *P. meandrina's* demographic factors are indicative of a robust and resilient species that is better suited for responding to ongoing and projected threats than most other reef-building coral species. While abundance has declined in some ecoregions in recent years, the species' high productivity provides capacity for recovery. All threats are projected to worsen under RCP8.5 over the foreseeable future, but *P. meandrina's* demographic factors moderate its extinction risk (Smith 2019b).

Threats Evaluation. The threats assessment utilized the information provided in the GSA and SRR (Smith 2019a,b) on *P. meandrina's* 10 threats of ocean warming, ocean acidification, sea-level rise, fishing, land-based sources of pollution, coral disease, predation, collection and trade, other threats, and interactions of threats, ERA Team members were instructed to assign a risk rating to each of the 10 threats, based on information in the GSA and SRR (Smith 2019a,b), on a scale of 1 (low risk) to 3 (high risk), for the foreseeable future, assuming conditions projected under RCP8.5. Draft and final ratings were conducted based on the same written information, resulting in mean ratings of 0.7 to 2.1 for the 10 threats (Table 2).

TABLE 2—MEAN RESULTS OF THE 7-MEMBER ERA TEAM'S DRAFT AND FINAL RATINGS OF *P. meandrina*'S THREATS, WHERE 1 = LOW RISK, 2 = MODERATE RISK, AND 3 = HIGH RISK, UNDER RCP8.5 OVER THE FORESEEABLE FUTURE

[Now to 2100; Smith 2019b]

ERA Team's ratings of threats	Mean Ratings (± Standard Deviation)	
	Draft	Final
Ocean warming	2.1 (±0.69)	1.9 (±0.38)
Ocean acidification	1.9 (±0.90)	1.7 (±0.76)
Sea-level rise	1.0 (±0.00)	1.0 (±0.00)
Fishing	1.4 (±0.53)	1.2 (±0.39)
Land-based sources pollution	1.3 (±0.49)	1.3 (±0.49)
Coral disease	1.3 (±0.49)	1.3 (±0.49)
Predation	1.3 (±0.49)	1.3 (±0.49)
Collection and trade	1.2 (±0.39)	1.2 (±0.39)
Other threats	0.7 (±0.52)	0.7 (±0.52)
Interactions of threats	1.9 (±0.69)	1.9 (±0.38)

In both the draft and final ratings, the Team rated ocean warming, ocean acidification, and interactions of threats as posing moderate risk to the species (1.7–2.1), while the other seven threats were rated as posing low risk (0.7–1.4; Table 2). The worst threats to *P. meandrina* include those caused by global climate change (ocean warming and ocean acidification), and the Team unanimously agreed that these threats stem from the inadequacy of regulatory mechanisms for greenhouse gas emissions management. Ocean warming and ocean acidification were rated as posing increased risk (Table 2), because of observed impacts that are already occurring, but mostly because the frequency, severity, and magnitude of these threats are likely to worsen under RCP8.5 over the foreseeable future.

The interactions of threats were also rated as posing increased risk to *P. meandrina* in both the draft and final ratings (Table 2). While there is little information available on the effects of the interactions of threats on *P. meandrina,* general information on the negative effects of interactions of threats on reef-building corals indicates a large number of negative interactions (Smith 2019a). In addition, there are likely to be many negative interactions that are still unknown, and these interactions are likely to become worse under RCP8.5 over the foreseeable future.

While the other seven threats were all rated as relatively less severe in both the draft and final ratings (Table 2), at least some of them can be severe on small spatial scales, and most or all have the potential to negatively interact with other threats. For example, fishing, land-based sources of pollution, and predation heavily impact *P. meandrina* in portions of its range, and may negatively interact with one another and other threats.

In conclusion, *P. meandrina* faces a multitude of growing, interacting threats that are projected to worsen in the foreseeable future under RCP8.5. The species' strong demographic factors moderate all threats, but the gradual worsening of threats is expected to result in a steady increase in extinction risk under RCP8.5 over the foreseeable future (Smith 2019b).

Overall Extinction Risk. Guided by the results from their demographic risk and threats assessments, each ERA Team member independently applied their professional judgment to rate the overall extinction risk of *P. meandrina* across its range as Low, Moderate, or High, using the definitions provided in the SRR (Smith 2019b). The extinction risk ratings were made assuming conditions projected under RCP8.5 over the foreseeable future. In contrast to the demographic risk and threats ratings, extinction risk was rated using the ''likelihood point'' method, whereby each Team member had 10 'likelihood points' that could be distributed among the three extinction risk categories. The likelihood point method allows expression of uncertainty by Team members (NMFS 2017). The draft, final, and mean extinction risk ratings are shown in Table 3 below.

TABLE 3—DRAFT, FINAL, AND MEAN RESULTS OF THE 7-MEMBER ERA TEAM'S RATINGS OF *P. meandrina*'S OVERALL EXTINCTION RISK UNDER RCP8.5 OVER THE FORESEEABLE FUTURE

[Now to 2100; Smith 2019b]

ERA Team's ratings of extinction risk	Number of Likelihood Points (%)		
	Draft	Final	Mean
Low	33.5 (47.9%)	24.5 (35.0%)	29 (41.4%)
Moderate	26.5 (37.9%)	39.5 (56.4%)	33 (47.1%)
High	10 (14.3%)	6 (8.6%)	8 (11.4%)
Total	70	70	

The Low extinction risk category received 33.5 points (47.9 percent) in the draft rating, and 24.5 points (35.0 percent) in the final rating, for a mean of 29 points (41.4 percent; Table 3). Several Team members moved likelihood points from Low to Moderate for the final rating following the September 30, 2019, Team meeting at which the climate change assumptions in the SRR were emphasized (*i.e.,* assumption of conditions projected under RCP8.5 from now to 2100). Species at Low extinction risk have stable or increasing trends in abundance and productivity with connected, diverse populations, and are not facing threats that result in declining trends in distribution, abundance, productivity, or diversity. Currently, *P. meandrina* has high and stable productivity and diversity, a very large distribution, very high abundance, and stable (five ecoregions) or decreasing (five ecoregions) abundance in the 10 ecoregions for which abundance trend data or information are available. The species has life history characteristics that provide resilience to disturbances and a high capacity for recovery. However, *P. meandrina* faces multiple threats, the worst of which are expected to increase under RCP8.5 over the foreseeable future. Thus, on the one hand, most demographic factors suggest Low extinction risk of *P. meandrina,* but on the other hand, recent declining abundance trends in five of the 10 known ecoregions, as well as increasing threats under RCP8.5 over the foreseeable future, suggest higher extinction risk in the foreseeable future.

The Moderate extinction risk category received 26.5 points (37.9 percent) in the draft rating, and 39.5 points (56.4 percent) in the final rating, for a mean of 33 points (47.1 percent; Table 3). Several Team members moved likelihood points from Low to Moderate, and one Team member moved likelihood points from High to Moderate, for the final rating following the September 30, 2019, Team meeting. Species at Moderate extinction risk are on a trajectory that puts them at a high level of extinction risk in the foreseeable future, due to projected threats or declining trends in distribution, abundance, productivity, or diversity. While *P. meandrina*'s distribution, productivity, and diversity are currently strong and stable, recent abundance trends are declining in half of the ecoregions for which data or information are available (five of 10 ecoregions). In addition, all threats are expected to worsen in the foreseeable future, especially the most important threats to the species. Ocean warming and ocean acidification are projected to worsen under RCP8.5 over the foreseeable future, resulting in increased frequency, magnitude, and severity of warming-induced coral bleaching, reduced coral calcification, and increased reef erosion. These climate change threats are likely to be exacerbated by local threats such as fishing and land-based sources of pollution throughout much of *P. meandrina*'s range.

The High extinction risk category received 10 points (14.3 percent) in the draft rating, and 6 points (8.6 percent) in the final rating, for a mean of 8 points (11.4 percent; Table 3). One Team member moved likelihood points from High to Moderate, for the final rating following the September 30, 2019, Team meeting in response to clarification regarding the temporal distinction between High and Moderate extinction risk (Smith 2019b). Species at High extinction risk are those whose continued persistence is in question due to weak demographic factors, or that face clear and present threats such as imminent destruction. However, *P. meandrina* has strong demographic factors, with the possible exception of abundance. Thus, while threats to *P. meandrina* are expected to occur over the foreseeable future (now to 2100), impacts so severe as to place the species at high extinction risk are not expected in the immediate future (now to 2030), therefore the species is not considered to be at high risk of extinction.

In conclusion, the information in the GSA (Smith 2019a), the SRR (Smith 2019b), and the ERA Team's results (Tables 1–3) provide support for *P. meandrina* currently being at low risk of extinction throughout its range, and at low to moderate risk of extinction throughout its range in the foreseeable future. The ERA was conducted assuming that conditions projected under RCP8.5 will occur within the range of *P. meandrina* over the foreseeable future. The ERA Team's ratings were only for *P. meandrina* rangewide, thus the Team did not consider whether any smaller areas within its range constitute Significant Portions of its Range (Smith 2019b).

Rangewide Determination

Section 4(b)(1)(A) of the ESA requires that NMFS make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information including the petition, public comments submitted on the 90-day finding (83 FR 47592; September 20, 2018), the GSA (Smith 2019a), the SRR (Smith 2019b), and literature cited therein and in this finding. In addition, we have consulted with a large number of species experts and individuals familiar with *P. meandrina* (Smith 2019b). This rangewide determination is based on our interpretation of the status of *P. meandrina* throughout its range currently and over foreseeable future (now to 2100).

Pocillopora meandrina can be characterized as a species with strong

demographic factors facing broad and worsening threats: It has a very large and stable distribution, very high overall abundance but unknown overall abundance trend, high and stable productivity, and high and stable diversity. But it faces multiple global and local threats, all of which are worsening, and existing regulatory mechanisms are inadequate to ameliorate the major threats. Based on the same written information, the ERA Team rated *P. meandrina'*s extinction risk twice, resulting in 47.9, 37.9, and 14.3 percent, and 35.0, 56.4, and 8.6 percent, in the Low, Moderate, High risk categories, respectively, in the draft and final ratings (Table 3). Before the final rating, an ERA Team meeting was held to emphasize that the Team was to assume the worst-case climate change pathway (RCP8.5, and only RCP8.5) over the foreseeable future for the extinction risk ratings. As explained in the Foreseeable Future for *P. meandrina* section above, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5, and not necessarily limited to the range of conditions projected by the worst-case pathway RCP8.5. However, all three pathways lead to worsening conditions in the foreseeable future, and their impacts on *P. meandrina* cannot be clearly distinguished from one another based on the existing data and uncertainties. Thus, we interpret their final extinction risk rating as representing the worst-case scenario for *P. meandrina.*

Although all threats are projected to worsen within *P. meandrina'*s range over the foreseeable future (Smith 2019a,b; NMFS 2020a), the following characteristics of the species moderate its extinction risk, as documented in the SRR (Smith 2019b): (1) The species' unusually large geographic distribution (95 ecoregions; SRR, Section 3.2.1), broad depth distribution (0–34 m; SRR, Section 3.2.2), and wide habitat breadth (SRR, section 2.4), provide *P. meandrina* uncommonly high habitat heterogeneity (SRR, section 3.4), which creates patchiness of conditions across its range at any given time, thus many portions of its range are unaffected or lightly affected by any given threat; (2) its very high abundance (at least several tens of billions of colonies; SRR, Section 3.2.2), together with high habitat heterogeneity, likely result in many billions of colonies surviving even the worst disturbances; (3) even when high mortality occurs, its high productivity provides the capacity for the affected populations to recover quickly, as has been documented at sites within several ecoregions (*e.g.,* on the GBR, at Fagatele Bay in American Samoa, at the Kahe Power Plant in the main Hawaiian Islands, and at Moorea in the Society Islands; SRR, Section 3.2.3); (4) likewise, its high productivity provides the capacity for populations to recover relatively quickly from disturbances compared to more sensitive reef coral species, allowing *P. meandrina* to take over denuded substrates and to sometimes become more abundant after disturbances than before them, as has been documented in several ecoregions (SRR, Section 3.3); (5) it recruits to artificial substrates more readily than most other Indo-Pacific reef corals, often dominating the coral communities on the metal, concrete, and PVC surfaces of seawalls, Fish Aggregation Devices, pipes, and other manmade structures (SRR, Section 3.3); (6) in some populations that suffered high mortality from warming-induced bleaching, subsequent warming resulted in much less mortality (*e.g.,* west Mexico, SRR, Section 4.1), suggesting acclimatization (*i.e.,* surviving colonies became acclimated to the changing conditions) or adaptation (*i.e.,* relatively heat-resistant progeny of surviving colonies were naturally selected by the changing conditions) of the surviving populations; and (7) adaptation may be enhanced by its high genotypic diversity (*i.e.,* some of its many distinct populations likely have genotypes that will be naturally selected by the changing conditions) and high dispersal (*i.e.,* the progeny of naturally selected genotypes may widely disperse, establishing new populations with improved fitness; SRR, Sections 3.3 and 3.4).

Taken together, these demographic characteristics of *P. meandrina* are expected to substantially moderate the impacts of the worsening threats over the foreseeable future. While broadly deteriorating conditions will likely result in a downward trajectory of *P. meandrina'*s overall abundance in the foreseeable future, the demographic characteristics summarized above are expected to allow the species to at least partially recover from many disturbances, thereby slowing the downward trajectory. Thus, our interpretation of the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding is that *P. meandrina* is currently at low risk of extinction throughout its range. As explained in the Listing Species Under the Endangered Species Act section of this finding, an ''endangered species'' is presently at risk of extinction throughout all or a significant portion of its range. Because *P. meandrina* is currently at low risk of extinction throughout its range, it does not meet the definition of an endangered species, and is thus not warranted for listing as endangered at this time.

As also explained in the Listing Species Under the Endangered Species Act section of this finding, a ''threatened species'' is not currently at risk of extinction, but is likely to become so in the foreseeable future. Based on the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding, *P. meandrina* is expected to face low to moderate extinction risk in the foreseeable future throughout its range. That is, we expect its extinction risk to increase slightly from its current low level, to low to moderate in the foreseeable future, in response to worsening threats. We do not expect extinction risk to grow rapidly in the foreseeable future, because as described earlier in this section, *P. meandrina* has several demographic characteristics that moderate its extinction risk. As described in the Rangewide Extinction Risk Assessment section, we interpret the ERA Team's final extinction risk rating (approximately 35, 56, and 9 percent in the Low, Moderate, High risk categories, respectively, Table 3) as representing the worst-case scenario for *P. meandrina,* because the Team assumed the high emissions climate change pathway (RCP8.5, and only RCP8.5) in the foreseeable future for the extinction risk ratings. As explained in the Foreseeable Future for *P. meandrina* section, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected by RCP8.5 and the intermediate emissions pathways RCPs 6.0, and 4.5, rather than limited to those projected by RCP8.5 alone. Because we expect *P. meandrina* to face a low to moderate risk of extinction in the foreseeable future throughout its range, it does not meet the definition of a threatened species, and is thus not warranted for listing as threatened at this time.

The definitions of both ''threatened'' and ''endangered'' in the ESA contain the phrase ''significant portion of its range'' (SPR), referring to an area smaller than the entire range of the species which must be considered when evaluating a species' risk of extinction. Under the final SPR Policy announced in July 2014, should we find that the species is of low extinction risk throughout its range and not warranted for listing, as we have for *P. meandrina,* then we must go on to consider whether the species may have a higher risk of

extinction in a significant portion of its range (79 FR 37577; July 1, 2014). If the species within the SPR meets the definition of threatened or endangered, then the species should be listed throughout its range based on the status within that SPR. The following sections provide the SPR analysis and determinations for *P. meandrina.*

SPR Analysis

The SPR analysis for *P. meandrina* consists of two steps: (1) Identification of any portions of its range that are significant, and thus qualify as SPRs; and (2) assessment of the extinction risk of each SPR. This SPR analysis is based on the SPR policy in light of recent court decisions, as explained below. In two recent District Court cases challenging listing decisions made by the U.S. Fish and Wildlife Service, the definition of ''significant'' in the SPR Policy was invalidated. The courts held that the threshold component of the definition was ''impermissible,'' because it set too high a standard. Specifically, the courts held that under the threshold in the policy, a species would never be listed based on the status of the portion, because in order for a portion to meet the threshold, the species would be threatened or endangered rangewide. Center for Biological Diversity, *et al.* v. Jewell, 248 F. Supp. 3d 946, 958 (D. Ariz. 2017); Desert Survivors v. DOI 321 F. Supp. 3d. 1011 (N.D. Cal., 2018). Accordingly, we do not rely on our definition in the policy, but instead our analysis independently construes and applies a biological significance standard, drawing from the demographic factors for *P. meandrina* described in the SRR (*i.e.,* distribution, abundance, productivity, and diversity) as they apply to each SPR. That is, each *P. meandrina* SPR is identified based on its significance to the viability of the species, in terms of that SPR's distribution, abundance, productivity, and diversity.

Identification of the Four SPRs

The first step of the SPR analysis is to identify any SPRs. We determined that several portions of *P. meandrina'*s range are significant to the viability of the species, in terms of each SPR's demographic factors (distribution, abundance, productivity, and diversity). The range of this species encompasses 95 ecoregions spread across the Indo-Pacific from the western Indian Ocean to the eastern Pacific Ocean, including the western Indian Ocean (Ecoregions #1–10), the western Pacific Ocean (Ecoregions #11–68), the central Pacific Ocean (Ecoregions #69–87), and the eastern Pacific Ocean (Ecoregions #88–95; NMFS 2020b, Map 1). Based on the information in the SRR (Smith 2019b) and NMFS (2020b), which is the best currently available information on the distribution of *P. meandrina,* we identified four SPRs: (1) SPR A, the 68 ecoregions within the western Indian and western Pacific areas (NMFS 2020b, Map 2); (2) SPR B, the 27 ecoregions within the central Pacific and eastern Pacific areas (NMFS 2020, Map 3); (3) SPR C, the 58 ecoregions within the western Pacific area (NMFS 2020b, Map 4); and (4) SPR D, the 19 ecoregions within the central Pacific area (NMFS 2020b, Map 5). As shown on the maps (NMFS 2020b), SPR A encompasses SPR C, and SPR B encompasses SPR D. Rationales for why each of these four areas qualify as an SPR are provided below. Other portions of *P. meandrina'*s range were considered, but found not to qualify as SPRs.

SPR A qualifies as an SPR because it is significant to the viability of *P. meandrina,* based on the population's distribution and diversity. SPR A's distribution consists of 68 ecoregions (#1–68), or over 70 percent of *P. meandrina'*s ecoregions (68/95 ecoregions), and approximately 85 percent of *P. meandrina'*s coral reef area (Table 4). The population's ecoregions extend from the western edge of the species' range in the western Indian Ocean to the central western portion of its range in the Pacific Ocean (NMFS 2020b). Because SPR A's distribution covers over 70 percent of the species' ecoregions and approximately 85 percent of its coral reef area (NMFS 2020b), SPR A includes approximately 70 to 85 percent of *P. meandrina'*s total abundance. Distribution and abundance strongly influence a population's productivity and diversity (see SRR, Sections 3.3 and 3.4), thus SPR A likely contains approximately 70 to 85 percent of *P. meandrina'*s total productivity and diversity. Since SPR A includes most of *P. meandrina'*s distribution, abundance, productivity, and diversity, the species would not be viable in the absence of this population. Therefore, SPR A is significant to the viability of *P. meandrina* and qualifies as an SPR.

SPR B qualifies as an SPR because it is significant to the viability of *P. meandrina,* based on the population's distribution, abundance, and productivity. SPR B's distribution consists of 27 ecoregions (#69–95), or approximately 30 percent of *P. meandrina'*s ecoregions (27/95 ecoregions) and approximately 15 percent of its coral reef area (Table 4). The population's ecoregions extend from the central eastern portion of its range to the eastern fringe of its range in the Pacific Ocean (NMFS 2020b). SPR B's distribution covers less than one-third of the species' ecoregions, and an even lower proportion of its coral reef area. However, the western portion of the population (*i.e.,* Ecoregions #69–87) connects the eastern Pacific ecoregions (#88–95) with the rest of the species (*i.e.,* Ecoregions #1–68). In addition, the abundance of this population is important because all ecoregions where *P. meandrina* is dominant occur within this population (NMFS 2020b). Distribution and abundance strongly influence a population's productivity and diversity (see SRR, Sections 3.3 and 3.4), thus SPR B likely contains approximately 15 to 30 percent of *P. meandrina'*s total productivity and diversity. Even though SPR B represents less than one-third of *P. meandrina'*s ecoregions, the following characteristics of the population are especially valuable for maintaining the species' viability as threats worsen throughout the 21st century: (1) It contains all ecoregions where *P. meandrina* is dominant; (2) it provides a link to between the species' isolated ecoregions in the eastern Pacific to the bulk of its ecoregions in the western Pacific; and (3) it contains a high proportion of islands and atolls with small or no human populations (NMFS 2020b) where local threats are likely to be relatively low in the foreseeable future, and thus may provide refuges for maintaining the species' resilience as conditions deteriorate. Therefore, SPR B is significant to the viability of *P. meandrina* and qualifies as an SPR.

SPR C qualifies as an SPR because it is significant to the viability of *P. meandrina,* based on the population's distribution and diversity. SPR C's distribution consists of 58 ecoregions (#11–68), or approximately 60 percent of *P. meandrina'*s ecoregions (58/95 ecoregions) and approximately 76 percent of its coral reef area (Table 4). The population's ecoregions all occur within the central western portion of its range in the Pacific Ocean. SPR C includes a high proportion of *P. meandrina'*s coral reef area (76 percent) because it encompasses the entire Coral Reef Triangle, which has the highest density of coral reefs in the world (NMFS 2020b). In addition, SPR C connects the western Indian Ocean ecoregions (#1–10) with the rest of the species' ecoregions to the east (*i.e.,* Ecoregions #69–95). Distribution and abundance strongly influence a population's productivity and diversity (see SRR, Sections 3.3 and 3.4), thus SPR C likely contains approximately 60

to 76 percent of *P. meandrina's* total productivity and diversity. Since SPR C includes the large majority of *P. meandrina's* distribution, abundance, productivity, and diversity, the species would not be viable in the absence of this population. Therefore, SPR C is significant to the viability of *P. meandrina* and qualifies as an SPR.

SPR D qualifies as an SPR because it is significant to the viability of *P. meandrina,* based on the population's distribution, abundance, and productivity. SPR D's distribution consists of 19 ecoregions (#69–87), representing only 20 percent of *P. meandrina's* ecoregions (19/95 ecoregions) and approximately 14 percent of its coral reef area (Table 4). The population's ecoregions are located in the central eastern portion of its range in the Pacific Ocean (NMFS 2020b). While SPR D's distribution covers only one-fifth of the species' ecoregions, this population connects the eastern Pacific ecoregions (#88–95) with the rest of the species (*i.e.,* Ecoregions #1–68). In addition, the abundance of this population is important because all ecoregions where *P. meandrina* is dominant occur within this population (NMFS 2020b). Distribution and abundance strongly influence a population's productivity and diversity (see SRR, Sections 3.3 and 3.4), thus SPR D likely contains approximately 14 to 20 percent of *P. meandrina's* total productivity and diversity. Even though SPR D represents less than one-quarter of *P. meandrina's* ecoregions, the following characteristics of the population are especially valuable for maintaining the species' viability as threats worsen throughout the 21st century: (1) It contains all ecoregions where *P. meandrina* is dominant; (2) it provides a link to between the species' isolated ecoregions in the eastern Pacific to the bulk of its ecoregions in the western Pacific; and (3) it contains a high proportion of islands and atolls with small or no human populations (NMFS 2020b) where local threats are likely to be relatively low in the foreseeable future, and thus may provide refuges for maintaining the species' resilience as conditions deteriorate. Therefore, SPR D is significant to the viability of *P. meandrina* and qualifies as an SPR.

Aside from SPRs A–D, no other portions of the range of *P. meandrina* considered were found to qualify as SPRs, based on the currently available best information, as presented in the SRR (Smith 2019b) and NMFS (2020b). The ecoregions on the fringes of the species' range in the western Indian Ocean (#1–10) and in the eastern Pacific Ocean (#88–95), are not significant to the viability of *P. meandrina* because: (1) Their distributions represent small proportions of the species' range, and do not connect large portions of the species' range with one another; (2) their abundances are much smaller than SPRs A–D; (3) productivity depends on abundance, thus their productivities are likely relatively low; and (4) diversity depends on distribution, thus their diversities are likely relatively low. Likewise, other groupings of ecoregions are not significant to the viability of *P. meandrina* for the same reasons, even groups with more ecoregions than SPRs B (27 ecoregions) and D (19 ecoregions) such as those of the Coral Triangle (#15–42, 28 ecoregions), because they do not possess the unique characteristics described above for SPRs B and D.

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Table 4. Summary of demographic factors for SPRs A-D (an extended version of this table is available in NMFS 2020b).

SPR	Distribution				Abundance				Productivity	Diversity
	Ecoregions	Depth	Reef Area (% of total)	Overall	Relative (ccorcgions)	Absolute	Trend (ccorcgions)	Overall		
A	68 (#1-68)	0-≥30 m	≈197,000 km^2 (≈85%)	Very large and stable.	Dominant: 0 Common: 8 Uncommon: 29 Rare: 1 Unknown: 30	A few tens of billions of colonies.	Declining: 2 Stable: 2 Unknown: 64	Very high, but trend unknown.	High and stable. Recent recoveries from disturbance in one ecoregion.	High and stable.
B	27 (#69-95)	0-34 m	≈35,000 km^2 (≈15%)	Large and stable.	Dominant: 7 Common: 10 Uncommon: 7 Rare: 3 Unknown: 0	At least several billion colonies.	Declining: 3 Stable: 3 Unknown: 21	High, but trend unknown.	High and stable. Signs of recovery in some ecoregions with declining abundance.	High and stable.
C	58 (#11-68)	0-≥30 m	≈178,000 km^2 (≈76%)	Very large and stable.	Dominant: 0 Common: 7 Uncommon: 27 Rare: 0 Unknown: 24	A few tens of billions of colonies.	Declining: 1 Stable: 2 Unknown: 55	Very high, but trend unknown.	High and stable. Recent recoveries from disturbance in one ecoregion.	High and stable.
D	19 (#69-87)	0-≥30 m	≈32,000 km^2 (≈14%)	Large and stable.	Dominant: 7 Common: 7 Uncommon: 5 Rare: 0 Unknown: 0	At least several billion colonies.	Declining: 2 Stable: 2 Unknown: 15	High, but trend unknown.	High and stable. Signs of recovery in some ecoregions with declining abundance.	High and stable.

Extinction Risk Assessments of the Four SPRs

The second step in our SPR analysis was to determine the status of each SPR with an Extinction Risk Assessment (ERA) similar to the process described in the Rangewide Extinction Risk Assessment section, except that the ERA Team was not involved. Instead, based on the information in the GSA (Smith 2019a), SRR (2019b), and NMFS (2020b), staff of the NMFS Pacific Islands Regional Office analyzed the demographic factors and threats for each of the four SPRs to inform its extinction risk.

SPR A. SPR A's distribution consists of *P. meandrina's* Ecoregions #1–68, an area ≈15,500 km (9,630 mi) wide from the western Indian Ocean to the western Pacific Ocean, encompassing approximately 197,000 km^2 of coral reefs. Its range includes some remote areas with small or no human populations, including most of the Maldives and Seychelles in the Indian Ocean, and parts of eastern Indonesia, the northern GBR, and the Kimberley Coast of Australia in the Pacific Ocean, and many others (Smith 2019b, Fig. 2; NMFS 2020b). As is typical of *P. meandrina,* SPR A is more common at depths of <5 m (16 ft) than in deeper areas. The deepest *P. meandrina* colonies recorded within SPR A are from 30 m (98 ft) at Farallon de Medinilla in the Mariana Islands, and deepest colonies recorded for the species as a whole are from a depth of 34 m (112 ft; Smith 2019b, Section 3.1.2). Thus, SPR A's depth range is from the surface to at least 30 m. There is no evidence of any reduction in its range due to human impacts, thus we consider SPR A's historic and current ranges to be the same. Therefore, based on the best available information provided in the SRR (Smith 2019b), we consider SPR A's distribution to be very large and stable (Table 4).

Of SPR A's 68 ecoregions, relative abundance information is available for 38 ecoregions, in which it is not dominant in any, common in eight, uncommon in 29, and rare in one (Smith 2019b, Fig. 2; NMFS 2020b). We estimate *P. meandrina's* total population to be at least several tens of billions of colonies (Smith 2019b, Section 3.2.2), and SPR A includes approximately 85 percent of the species' coral reef area (Table 4, NMFS 2020b). However, the relative abundances of *P. meandrina* in SPR A's ecoregions are mostly uncommon, unlike the central Pacific where it is common or dominant. Thus, we estimate the population of SPR A to be a few tens of billions of colonies. In the four ecoregions for which time-series abundance data or information are available for SPR A, abundance appears to be decreasing in two ecoregions (Chagos Archipelago, Marianas Islands) and stable in two ecoregions (GBR Far North, GBR North-central; Smith 2019b, Table 4; NMFS 2020b). Therefore, based on the best available information provided above, we consider SPR A's overall abundance to be very high, but its overall abundance trend is unknown (Table 4).

Based on the information in the SRR, we consider SPR A's productivity to be high, despite declining abundance trends in some ecoregions. Evidence for high productivity is provided by observations from the GBR indicating strong recoveries in recent years from disturbances by displacing less competitive coral species and becoming more abundant than before the disturbances. In addition, studies and observations from ecoregions in other populations have documented multiple recoveries (Smith 2019b, Section 3.2.3). These recoveries demonstrate continued high productivity, thus we consider SPR A's productivity to be high and stable (Table 4).

Although there is little information available on the genotypic and phenotypic diversity of SPR A, its large distribution and high habitat heterogeneity suggest that both types of diversity are high for this population. In addition, the population's distribution has not been reduced (Smith 2019b, Section 3.1). Therefore, we consider SPR A's diversity to be high and stable (Table 4).

The vulnerabilities of *P. meandrina* to each of the 10 threats were rated in the SRR, based on the species' susceptibility and exposure to each threat, over the foreseeable future assuming that RCP8.5 is the most likely future climate scenario (Smith 2019b, Table 6). Since SPR A includes approximately 85 percent of the range of *P. meandrina* in terms of coral reef area (Table 4), the threats to SPR A are similar as to the entire species, thus the threat vulnerability ratings are applicable to SPR A. Threat vulnerabilities were rated as: High for ocean warming and ocean acidification; Moderate for predation; Low to Moderate for fishing, land-based sources of pollution, and collection and trade; Low for sea-level rise, disease, and other threats (global); Very Low to Low for other threats (local), and Unknown for interactions of threats. Vulnerabilities to all threats are expected to increase throughout the foreseeable future under RCP8.5 (Smith 2019b, Table 6). SPR A's strong demographic factors moderate all threats, but the gradual worsening of threats is expected to result in a steady increase in extinction risk throughout the foreseeable future (Smith 2019b).

The extinction risk of SPR A depends on its demographic factors and threats. Populations at Low extinction risk have stable or increasing trends in abundance and productivity with connected, diverse populations, and are not facing threats that result in declining trends in distribution, abundance, productivity, or diversity (NMFS 2017). Currently, SPR A has a very large distribution, very high abundance, stable (two ecoregions) or decreasing (two ecoregions) abundance in the four ecoregions for which abundance trend data or information are available, and high and stable productivity and diversity. The population has life history characteristics that provide resilience to disturbances and a high capacity for recovery. However, SPR A faces multiple threats, the worst of which are expected to increase in the foreseeable future (NMFS 2020a, Smith 2019a). Thus, on the one hand, most demographic factors suggest Low extinction risk for SPR A, but on the other hand, recent declining abundance trends in two of the four known ecoregions, as well as increasing threats throughout the foreseeable future, suggest increased extinction risk.

Species at Moderate extinction risk are on a trajectory that puts them at a high level of extinction risk in the foreseeable future, due to projected threats or declining trends in distribution, abundance, productivity, or diversity. While SPR A's distribution, productivity, and diversity are currently strong and stable, recent abundance trends are declining in half of the ecoregions for which data or information are available (two of four ecoregions). In addition, all threats are expected to worsen throughout the foreseeable future, including the two greatest threats, ocean warming and ocean acidification, resulting in increased frequency, magnitude, and severity of warming-induced coral bleaching, reduced coral calcification, and increased reef erosion. These climate change threats are likely to be exacerbated by local threats such as fishing and land-based sources of pollution throughout much of SPR A's range. In conclusion, the information in the GSA (Smith 2019a), the SRR (Smith 2019b), and NMFS (2020b) provide support for SPR A currently being at low to moderate extinction risk throughout the foreseeable future.

SPR B. SPR B's distribution consists of *P. meandrina's* Ecoregions #69–95, an

area ≈13,300 km (8,300 mi) wide in the central and eastern Pacific Ocean, encompassing approximately 35,000 km² of coral reefs as well as extensive non-reef and mesophotic habitats (NMFS 2020b). Its range includes many remote areas with small or no human populations, including the Northwestern Hawaiian Islands, Line Islands, Tuamotu Archipelago, most of the Galapagos Islands, Revillagigedo Islands, Clipperton Atoll, and others (Smith 2019b, Fig. 2; NMFS 2020b). As is typical of *P. meandrina,* SPR B is more common at depths of <5 m (16 ft) than in deeper areas. The deepest *P. meandrina* colonies on record are from SPR B at a depth of 34 m (112 ft; Smith 2019b, Section 3.1.2). Thus, SPR B's depth range is from the surface to 34 m. There is no evidence of any reduction in its range due to human impacts, thus we consider SPR B's historic and current ranges to be the same. Therefore, based on the best available information provided in the SRR (Smith 2019b), we consider SPR B's distribution to be large and stable (Table 4).

Relative abundance information is available for all of SPR B's 27 ecoregions, in which it is dominant in seven, common in 10, uncommon in seven, and rare in three. It is a very common species in many of the *Pocillopora*-dominated reef coral communities of the central Pacific, and is common to rare in the eastern Pacific (Smith 2019b, Fig. 2; NMFS 2020b). We estimate *P. meandrina's* total population to be at least several tens of billions of colonies (Smith 2019b, Section 3.2.2), but SPR B includes only about 15 percent of the species' coral reef area (Table 4, NMFS 2020b). However, this population includes all seven ecoregions where *P. meandrina* is dominant, and the species is dominant or common in 17 of the population's 27 ecoregions. Thus, we estimate SPR B's total population to be at least several billion colonies. In the six ecoregions for which time-series abundance data or information are available for SPR B, abundance appears to be decreasing in three ecoregions (Northwestern Hawaiian Islands, Main Hawaiian Islands, Galapagos Islands) and stable in three ecoregions (Samoa-Tuvalu-Tonga, Society Islands, Mexico West; Smith 2019b, Table 4; NMFS 2020b). Therefore, based on the best available information provided above, we consider SPR B's overall abundance to be high, but its overall abundance trend is unknown (Table 4).

Based on the information in the SRR, we consider SPR B's productivity to be high, despite declining abundance trends in some ecoregions. Evidence for high productivity is provided by SPR B's recovery from disturbance in several ecoregions, including: (1) Demographic data suggests that recovery from back-to-back bleaching events is occurring in the MHI Ecoregion (*i.e.,* fewer adults colonies in 2016 than in 2013 show adult colony mortality from the 2014 and 2015 bleaching events, but more juvenile colonies in 2016 than in 2013 suggests the initial stages of recovery from the bleaching events); and (2) studies and observations in other ecoregions (*e.g.,* GBR, Society Islands) indicate strong recoveries in recent years from various types of disturbances at multiple locations throughout its range, by displacing less competitive coral species and becoming more abundant than before the disturbances (Smith 2019b, Section 3.2.3). These recoveries demonstrate continued high productivity, thus we consider SPR B's productivity to be high and stable (Table 4).

Although there is little information available on the genotypic and phenotypic diversity of SPR B, its large distribution and high habitat heterogeneity suggest that both types of diversity are very high for this population. In addition, information from portions of individual ecoregions within SPR B shows high genotype and phenotypic diversity (Smith 2019b, Section 3.4). Furthermore, the population's distribution has not been reduced (Smith 2019b, Section 3.1). Therefore, we consider SPR B's diversity to be high and stable (Table 4).

The vulnerabilities of *P. meandrina* to each of the 10 threats were rated in the SRR, based on the species' susceptibility and exposure to each threat, for the foreseeable future assuming that RCP8.5 is the most likely future climate scenario (Smith 2019b, Table 6). Threat vulnerabilities were rated as: High for ocean warming and ocean acidification; Moderate for predation; Low to Moderate for fishing, land-based sources of pollution, and collection and trade; Low for sea-level rise, disease, and other threats (global); Very Low to Low for other threats (local), and Unknown for interactions of threats. Vulnerabilities to all threats are expected to increase in the foreseeable future under RCP8.5 (Smith 2019b, Table 6). Since SPR B has lower human population density and a higher proportion of remote areas than *P. meandrina's* entire range (Smith 2019b), local threats (fishing, land-based sources of pollution, collection and trade, and other local threats) are likely less severe in SPR B's range than across the range of the species. However, the vulnerability of SPR B to climate change threats (ocean warming, ocean acidification, sea-level rise) are likely similar as for *P. meandrina* rangewide. SPR B's strong demographic factors moderate all threats, but the gradual worsening of threats is expected to result in a steady increase in extinction risk throughout the 21st century (Smith 2019b).

The extinction risk of SPR B depends on its demographic factors and threats. Populations at Low extinction risk have stable or increasing trends in abundance and productivity with connected, diverse populations, and are not facing threats that result in declining trends in distribution, abundance, productivity, or diversity (NMFS 2017). Although SPR B only includes approximately 15 percent of the range of *P. meandrina,* it nevertheless covers approximately 35,000 km² of reef area, and extensive non-reef and mesophotic habitats (NMFS 2020b). Currently, SPR B has a large distribution, high abundance, stable (three ecoregions) or decreasing (three ecoregions) abundance in the six ecoregions for which abundance trend data or information are available, and high and stable productivity and diversity. The population has life history characteristics that provide resilience to disturbances and a high capacity for recovery. However, SPR B faces multiple threats, the worst of which are expected to increase in the foreseeable future (NMFS 2020a, Smith 2019a). Thus, on the one hand, most demographic factors suggest Low extinction risk for SPR B, but on the other hand, recent declining abundance trends in two of the four known ecoregions, as well as increasing threats throughout the foreseeable future, suggest increased extinction risk.

Species at Moderate extinction risk are on a trajectory that puts them at a high level of extinction risk in the foreseeable future, due to projected threats or declining trends in distribution, abundance, productivity, or diversity. While SPR B's distribution, productivity, and diversity are currently strong and stable, recent abundance trends are declining in half of the ecoregions for which data or information are available (three of six ecoregions). In addition, all threats are expected to worsen in the foreseeable future, including the two greatest threats, ocean warming and ocean acidification, resulting in increased frequency, magnitude, and severity of warming-induced coral bleaching, reduced coral calcification, and increased reef erosion. These climate change threats are likely to be exacerbated by local threats such as fishing and land-based sources of pollution in some of SPR B's range. In

conclusion, the information in the GSA (Smith 2019a), the SRR (Smith 2019b), and NMFS (2020b) provide support for SPR B currently being at low to moderate extinction risk throughout the foreseeable future.

SPR C. SPR C's distribution consists of *P. meandrina's* Ecoregions #11–68 from the western Indian Ocean to the western Pacific Ocean. Its range encompasses the densest aggregations of coral reefs in the world, amounting to approximately 178,000 km^2 of coral reef area (Table 4). The population includes some remote areas with small or no human populations, including parts of eastern Indonesia, the northern GBR, the Kimberley Coast of northwest Australia, and parts of New Guinea and the Solomon Islands, in addition to others (Smith 2019b, Fig. 2; NMFS 2020b). As is typical of *P. meandrina,* SPR C is more common at depths of <5 m (16 ft) than in deeper areas. The deepest *P. meandrina* colonies recorded within SPR C are from 30 m (98 ft) at Farallon de Medinilla in the Mariana Islands, and deepest colonies recorded for the species as a whole are from a depth of 34 m (112 ft; Smith 2019b, Section 3.1.2). Thus, SPR C's depth range is from the surface to at least 30 m. There is no evidence of any reduction in its range due to human impacts, thus we consider SPR C's historic and current ranges to be the same. Therefore, based on the best available information provided in the SRR (Smith 2019b), we consider SPR C's distribution to be very large and stable (Table 4).

Of SPR C's 58 ecoregions, relative abundance information is available for 34 ecoregions, in which it is common in seven, and uncommon in 27 (Smith 2019b, Fig. 2; NMFS 2020b). SPR C contains the entire Coral Triangle (Indonesia, Malaysia, Papua New Guinea, Philippines, Solomon Islands), which has over half of the coral reef area in the Indo-Pacific (Smith 2019a). While many of the Coral Triangle's ecoregions are relatively small, they collectively include over 25,000 islands, providing extensive habitat for SPR C. The total abundance estimate for *P. meandrina* is at least several tens of billions of colonies (Smith 2019b, Section 3.2.2), and SPR C includes approximately 76 percent of the species' coral reef habitat area (NMFS 2020b), although *P. meandrina* is uncommon in most of the population's ecoregions. Thus, we estimate SPR C's abundance to be a few tens of billions of colonies. In the three ecoregions for which time-series abundance data or information are available for SPR C, abundance appears to be decreasing in one ecoregion (Marianas Islands) and stable in two ecoregions (GBR Far North, GBR North-central; Smith 2019b, Table 4; NMFS 2020b). Therefore, based on the best available information provided above, we consider SPR C's overall abundance to be very high, but its overall abundance trend is unknown (Table 4).

Based on the information in the SRR, we consider SPR C's productivity to be high, despite declining abundance trends in one ecoregion. Evidence for high productivity is provided by observations from the GBR indicating strong recoveries in recent years from disturbances by displacing less competitive coral species and becoming more abundant than before the disturbances. In addition, studies and observations from ecoregions outside of SPR C have documented multiple recoveries (Smith 2019b, Section 3.2.3). These recoveries demonstrate continued high productivity, thus we consider SPR C's productivity to be high and stable (Table 4).

Although there is little information available on the genotypic and phenotypic diversity of SPR C, its large distribution and high habitat heterogeneity suggest that both types of diversity are high for this population. In addition, the population's distribution has not been reduced (Smith 2019b, Section 3.1). Therefore, we consider SPR C's diversity to be high and stable (Table 4).

The vulnerabilities of *P. meandrina* to each of the 10 threats were rated in the SRR, based on the species' susceptibility and exposure to each threat, for the foreseeable future assuming that RCP8.5 is the most likely future climate scenario (Smith 2019b, Table 6). Since SPR C includes approximately 76 percent of the range of *P. meandrina,* the threats to SPR C are similar as to the entire species, thus the threat vulnerability ratings are applicable to SPR C. Threat vulnerabilities were rated as: high for ocean warming and ocean acidification; Moderate for predation; Low to Moderate for fishing, land-based sources of pollution, and collection and trade; Low for sea-level rise, disease, and other threats (global); Very Low to Low for other threats (local), and Unknown for interactions of threats. Vulnerabilities to all threats are expected to increase in the foreseeable future under RCP8.5 (Smith 2019b, Table 6). While the global threats to SPR C are likely very similar as to the species as a whole, the local threats such as fishing, land-based sources of pollution, collection and trade, etc. are likely somewhat worse for SPR C because of the large human population and rapid industrialization within much of the Coral Triangle. However, SPR C also includes many remote areas with small or no human populations where local threats are virtually absent, such as parts of eastern Indonesia, northern Australia, Papua New Guinea, the Solomon Islands, and others (Smith 2019a; NMFS 2020b). SPR C's strong demographic factors moderate all threats, but the gradual worsening of threats is expected to result in a steady increase in extinction risk throughout the foreseeable future (Smith 2019b).

The extinction risk of SPR C depends on its demographic factors and threats. Populations at Low extinction risk have stable or increasing trends in abundance and productivity with connected, diverse populations, and are not facing threats that result in declining trends in distribution, abundance, productivity, or diversity (NMFS 2017). Currently, SPR C has a very large distribution, very high abundance, stable (two ecoregions) or decreasing (one ecoregion) abundance in the three ecoregions for which abundance trend data or information are available, and high and stable productivity and diversity. The population has life history characteristics that provide resilience to disturbances and a high capacity for recovery. However, SPR C faces multiple threats, the worst of which are expected to increase in the foreseeable future (Smith 2019a). Thus, on the one hand, most demographic factors suggest Low extinction risk for SPR C, but on the other hand, recent declining abundance trends in one of the three known ecoregions, as well as increasing threats in the foreseeable future, suggest increased extinction risk.

Species at Moderate extinction risk are on a trajectory that puts them at a high level of extinction risk in the foreseeable future, due to projected threats or declining trends in distribution, abundance, productivity, or diversity. While SPR C's distribution, productivity, and diversity are currently strong and stable, recent abundance trends are declining in one of the three ecoregions for which data or information are available. In addition, all threats are expected to worsen in the foreseeable future, including the two greatest threats, ocean warming and ocean acidification, resulting in increased frequency, magnitude, and severity of warming-induced coral bleaching, reduced coral calcification, and increased reef erosion. These climate change threats are likely to be exacerbated by local threats such as fishing and land-based sources of pollution throughout much of SPR C's range. In conclusion, the information in the GSA (Smith 2019a), the SRR (Smith 2019b), and NMFS (2020b) provide

support for SPR C currently being at low to moderate extinction risk throughout the foreseeable future.

SPR D. SPR D's distribution consists of *P. meandrina's* Ecoregions #69–87. Although the smallest SPR, and the one with the fewest ecoregions, the population encompasses an area ≈6,500 km (4,000 mi) wide in the central Pacific Ocean that includes approximately 32,000 km² of coral reefs as well as extensive non-reef and mesophotic habitats (NMFS 2020b). Its range includes many remote areas with small or no human populations, including the Northwestern Hawaiian Islands, the Line Islands, and the Tuamotu Archipelago, and others (Smith 2019b, Fig. 2; NMFS 2020b). As is typical of *P. meandrina,* SPR D is more common at depths of <5 m (16 ft) than in deeper areas. The deepest *P. meandrina* colonies on record are from SPR D at a depth of 34 m (112 ft; Smith 2019b, Section 3.1.2). Thus, SPR D's depth range is from the surface to 34 m. There is no evidence of any reduction in its range due to human impacts, thus we consider SPR D's historic and current ranges to be the same. Therefore, based on the best available information provided in the SRR (Smith 2019b), we consider SPR D's distribution to be large and stable (Table 4).

Relative abundance information is available for all of SPR D's 19 ecoregions, in which it is dominant in seven, common in 7, and uncommon in five. Many of the coral reef communities within this population are *Pocillopora*-dominated, and *P. meandrina* is one of the most common species in many of SPR D's ecoregions (Smith 2019b, Fig. 2; NMFS 2020b). We estimate *P. meandrina's* total population to be at least several tens of billions of colonies (Smith 2019b, Section 3.2.2), but SPR D includes only about 14 percent of the species' coral reef area (NMFS 2020b). However, this population includes all seven ecoregions where *P. meandrina* is dominant, and the species is dominant or common in 14 of the population's 19 ecoregions. Thus, we estimate SPR D's total population to be at least several billion colonies. In the four ecoregions for which time-series abundance data or information are available for SPR D, abundance appears to be decreasing in two ecoregions (Northwestern Hawaiian Islands, Main Hawaiian Islands) and stable in two ecoregions (Samoa-Tuvalu-Tonga, Society Islands; Smith 2019b, Table 4; NMFS 2020b). Therefore, based on the best available information provided above, we consider SPR D's overall abundance to be high, but its overall abundance trend is unknown (Table 4).

Based on the information in the SRR, we consider SPR D's productivity to be high, despite declining abundance trends in some ecoregions. Evidence for high productivity is provided by SPR D's recovery from disturbance in several ecoregions, including: (1) Demographic data suggests that recovery from back-to-back bleaching events is occurring in the MHI Ecoregion (*i.e.,* fewer adults colonies in 2016 than in 2013 show adult colony mortality from the 2014 and 2015 bleaching events, but more juvenile colonies in 2016 than in 2013 suggests the initial stages of recovery from the bleaching events); and (2) studies and observations in other ecoregions (*e.g.,* Society Islands) indicate strong recoveries in recent years from various types of disturbances at multiple locations throughout its range, by displacing less competitive coral species and becoming more abundant than before the disturbances (Smith 2019b, Section 3.2.3). These recoveries demonstrate continued high productivity, thus we consider SPR D's productivity to be high and stable (Table 4).

Although there is little information available on the genotypic and phenotypic diversity of SPR D, its large distribution and high habitat heterogeneity suggest that both types of diversity are very high for this population. In addition, information from portions of individual ecoregions within SPR D shows high genotype and phenotypic diversity (Smith 2019b, Section 3.4). Furthermore, the population's distribution has not been reduced (Smith 2019b, Section 3.1). Therefore, we consider SPR D's diversity to be high and stable (Table 4).

The vulnerabilities of *P. meandrina* to each of the 10 threats were rated in the SRR, based on the species' susceptibility and exposure to each threat, for the foreseeable future assuming that RCP8.5 is the most likely future climate scenario (Smith 2019b, Table 6). Threat vulnerabilities were rated as: high for ocean warming and ocean acidification; Moderate for predation; Low to Moderate for fishing, land-based sources of pollution, and collection and trade; Low for sea-level rise, disease, and other threats (global); Very Low to Low for other threats (local), and Unknown for interactions of threats. Vulnerabilities to all threats are expected to increase in the foreseeable future under RCP8.5 (Smith 2019b, Table 6). Since SPR D has lower human population density and a higher proportion of remote areas than *P. meandrina's* entire range (Smith 2019b), local threats (fishing, land-based sources of pollution, collection and trade, and other local threats) are likely less severe in SPR D's range than across the range of the species. However, the vulnerability of SPR D to climate change threats (ocean warming, ocean acidification, sea-level rise) are likely similar as for *P. meandrina* rangewide. SPR D's strong demographic factors moderate all threats, but the gradual worsening of threats is expected to result in a steady increase in extinction risk throughout the 21st century (Smith 2019b).

The extinction risk of SPR D depends on its demographic factors and threats. Populations at Low extinction risk have stable or increasing trends in abundance and productivity with connected, diverse populations, and are not facing threats that result in declining trends in distribution, abundance, productivity, or diversity (NMFS 2017). Currently, SPR D has a large distribution, high abundance, stable (two ecoregions) or decreasing (two ecoregions) abundance in the four ecoregions for which abundance trend data or information are available, and high and stable productivity and diversity. The population has life history characteristics that provide resilience to disturbances and a high capacity for recovery. However, SPR D faces multiple threats, the worst of which are expected to increase in the foreseeable future (Smith 2019a). Thus, on the one hand, most demographic factors suggest Low extinction risk for SPR D, but on the other hand, recent declining abundance trends in two of the four known ecoregions, as well as increasing threats in the foreseeable future, suggest increased extinction risk.

Species at Moderate extinction risk are on a trajectory that puts them at a high level of extinction risk in the foreseeable future, due to projected threats or declining trends in distribution, abundance, productivity, or diversity. While SPR D's distribution, productivity, and diversity are currently strong and stable, recent abundance trends are declining in half of the ecoregions for which data or information are available (two of four ecoregions). In addition, all threats are expected to worsen in the foreseeable future, including the two greatest threats, ocean warming and ocean acidification, resulting in increased frequency, magnitude, and severity of warming-induced coral bleaching, reduced coral calcification, and increased reef erosion. These climate change threats are likely to be exacerbated by local threats such as fishing and land-based sources of pollution in some of SPR D's range. In conclusion, the information in the GSA (Smith 2019a), the SRR (Smith 2019b),

and NMFS (2020b) provide support for SPR D currently being at low to moderate extinction risk throughout the foreseeable future.

SPR Determinations

Determinations based on status of the species within SPRs follow the process described in the introduction to the Rangewide Determination above. If the species within the SPR meets the definition of threatened or endangered, then the species should be listed throughout its range based on the status within that SPR. The determinations for *P. meandrina's* four SPRs are based on our interpretation of the information described above on the status of each SPR throughout its range currently and over foreseeable future.

SPR A

SPR A can be characterized as a population with strong demographic factors facing broad and worsening threats: It has a very large and stable distribution, very high overall abundance but unknown overall abundance trend, high and stable productivity, and high and stable diversity (Table 4). But it faces multiple global and local threats, all of which are worsening, and existing regulatory mechanisms are inadequate to ameliorate the threats. As explained in the Foreseeable Future for *P. meandrina* section above, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5.

Although all threats are projected to worsen within SPR A's range over the foreseeable future (Smith 2019a,b; NMFS 2020a), the following characteristics of the population moderate its extinction risk, summarized from information in the SRR (Smith 2019b), NMFS (2020b), and the SPR A component of the Extinction Risk Assessments of the SPRs section above: (1) Its very large geographic distribution (68 ecoregions, ≈197,000 km² of reef area; NMFS 2020b), broad depth distribution (0-≥30 m; NMFS 2020b), and wide habitat breadth (SRR, Section 2.4), provide SPR A high habitat heterogeneity (SRR, section 3.4), which creates patchiness of conditions across its range at any given time, thus many portions of its range are unaffected or lightly affected by any given threat; (2) its very high abundance (a few tens of billions of colonies; NMFS 2020b), together with high habitat heterogeneity, likely result in many billions of colonies surviving even the worst disturbances; (3) even when high mortality occurs, its high productivity provides the capacity for the affected populations to recover quickly, as has been documented at sites in the GBR (SRR, Section 3.2.3); (4) likewise, its high productivity provides the capacity for populations to recover relatively quickly from disturbances compared to more sensitive reef coral species, allowing SPR A to take over denuded substrates and to sometimes become more abundant after disturbances than before them, as has been documented at sites in the GBR (SRR, Section 3.3); (5) it recruits to artificial substrates more readily than most other Indo-Pacific reef corals, often dominating the coral communities on the metal, concrete, and PVC surfaces of seawalls, Fish Aggregation Devices, pipes, and other manmade structures (SRR, Section 3.3); (6) in other *P. meandrina* populations that suffered high mortality from warming-induced bleaching, subsequent warming resulted in less mortality (SRR, Section 4.1), suggesting the potential for acclimatization and adaptation in this population; and (7) adaptation may be enhanced by its high genotypic diversity (SRR, Section 3.3) and high dispersal (SRR, Section 3.4).

Taken together, these demographic characteristics of SPR A are expected to substantially moderate the impacts of the worsening threats over the foreseeable future. While broadly deteriorating conditions will likely result in a downward trajectory of SPR A's overall abundance in the foreseeable future, the demographic characteristics summarized above are expected to allow the population to at least partially recover from many disturbances, thereby slowing the downward trajectory. Thus, our interpretation of the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding is that SPR A is currently at low risk of extinction, and that it will be at low to moderate risk of extinction in the foreseeable future. Therefore, *P. meandrina* is not warranted for listing as endangered or threatened under the ESA at this time based on its status within SPR A.

SPR B

SPR B can be characterized as a population with strong demographic factors facing broad and worsening threats: it has a large and stable distribution, high overall abundance but unknown overall abundance trend, high and stable productivity, and high and stable diversity (Table 4). But it faces multiple global and local threats, all of which are worsening, and existing regulatory mechanisms are inadequate to ameliorate the threats. As explained in the Foreseeable Future for *P. meandrina* section above, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5.

Although all threats are projected to worsen within SPR B's range over the foreseeable future (Smith 2019a,b; NMFS 2020a), the following characteristics of the population moderate its extinction risk, summarized from information in the SRR (Smith 2019b), NMFS (2020b), and the SPR B component of the Extinction Risk Assessments of the SPRs section above: (1) Its large geographic distribution (27 ecoregions, ≈35,000 km² of reef area, extensive non-reef and mesophotic habitats; NMFS 2020b), broad depth distribution (0–34 m; NMFS 2020b), and wide habitat breadth (SRR, Section 2.4), provide SPR B high habitat heterogeneity (SRR, section 3.4), which creates patchiness of conditions across its range at any given time, thus many portions of its range are unaffected or lightly affected by any given threat; (2) its high abundance (at least several billion colonies; NMFS 2020b), together with high habitat heterogeneity, likely result in billions of colonies surviving even the worst disturbances; (3) even when high mortality occurs, its high productivity provides the capacity for the affected populations to recover quickly, as has been documented at sites within several ecoregions (*e.g.,* at Fagatele Bay in American Samoa, at the Kahe Power Plant in the main Hawaiian Islands, and at Moorea in the Society Islands; SRR, Section 3.2.3); (4) likewise, its high productivity provides the capacity for populations to recover relatively quickly from disturbances compared to more sensitive reef coral species, allowing SPR B to take over denuded substrates and to sometimes become more abundant after disturbances than before them, as has been documented in some of SPR B's ecoregions (SRR, Section 3.3); (5) it recruits to artificial substrates more readily than most other Indo-Pacific reef corals, often dominating the coral communities on the metal, concrete, and PVC surfaces of seawalls, Fish Aggregation Devices, pipes, and other manmade structures (SRR, Section 3.3); (6) in some sub-populations that suffered high mortality from warming-induced bleaching, subsequent warming resulted in less mortality (*e.g.,* Oahu, main Hawaiian Islands, SRR, Section 4.1), suggesting acclimatization or adaptation of the surviving populations; and (7) adaptation may be enhanced by its high genotypic diversity (SRR,

Section 3.3) and high dispersal (SRR, Section 3.4).

Taken together, these demographic characteristics of SPR B are expected to substantially moderate the impacts of the worsening threats over the foreseeable future. Although SPR B only consists of approximately 15 percent of the range of *P. meandrina,* it nevertheless covers approximately 35,000 km² of reef area (Table 4), as well as extensive non-reef and mesophotic habitats, spread across the central and eastern Pacific, thus constituting a large distribution. In addition, SPR B's distribution includes over 1,000 atolls and islands with small or no human populations (NMFS 2020b) where local threats are relatively low. While broadly deteriorating conditions will likely result in a downward trajectory of SPR B's overall abundance in the foreseeable future, the demographic characteristics summarized above are expected to allow the population to at least partially recover from many disturbances, thereby slowing the downward trajectory. Thus, our interpretation of the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding is that SPR B is currently at low risk of extinction, and that it will be at low to moderate risk of extinction in the foreseeable future. Therefore, *P. meandrina* is not warranted for listing as endangered or threatened under the ESA at this time based on its status within SPR B.

SPR C

SPR C can be characterized as a population with strong demographic factors facing broad and worsening threats: it has a very large and stable distribution, very high overall abundance but unknown overall abundance trend, high and stable productivity, and high and stable diversity (Table 4). But it faces multiple global and local threats, all of which are worsening, and existing regulatory mechanisms are inadequate to ameliorate the threats. As explained in the Foreseeable Future for *P. meandrina* section above, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5.

Although all threats are projected to worsen within SPR C's range over the foreseeable future (Smith 2019a,b; NMFS 2020a), the following characteristics of the population moderate its extinction risk, summarized from information in the SRR (Smith 2019b), NMFS (2020b), and the SPR C component of the Extinction Risk Assessments of the SPRs section above: (1) Its very large geographic distribution (58 ecoregions, ≈178,000 km² of reef area; NMFS 2020b), broad depth distribution (0-≥30 m; NMFS 2020b), and wide habitat breadth (SRR, Section 2.4), provide SPR C high habitat heterogeneity (SRR, section 3.4), which creates patchiness of conditions across its range at any given time, thus many portions of its range are unaffected or lightly affected by any given threat; (2) its very high abundance (a few tens of billions of colonies; NMFS 2020b), together with high habitat heterogeneity, likely result in many billions of colonies surviving even the worst disturbances; (3) even when high mortality occurs, its high productivity provides the capacity for the affected populations to recover quickly, as has been documented on the GBR (Section 3.2.3); (4) likewise, its high productivity provides the capacity for populations to recover relatively quickly from disturbances compared to more sensitive reef coral species, allowing SPR C to take over denuded substrates and to sometimes become more abundant after disturbances than before them, as has been documented on the GBR (SRR, Section 3.3); (5) it recruits to artificial substrates more readily than most other Indo-Pacific reef corals, often dominating the coral communities on the metal, concrete, and PVC surfaces of seawalls, Fish Aggregation Devices, pipes, and other manmade structures (SRR, Section 3.3); (6) in other *P. meandrina* populations that suffered high mortality from warming-induced bleaching, subsequent warming resulted in less mortality (SRR, Section 4.1), suggesting the potential for acclimatization and adaptation in this population; and (7) adaptation may be enhanced by its high genotypic diversity (SRR, Section 3.3) and high dispersal (SRR, Section 3.4).

Taken together, these demographic characteristics of SPR C are expected to substantially moderate the impacts of the worsening threats over the foreseeable future. While broadly deteriorating conditions will likely result in a downward trajectory of SPR C's overall abundance in the foreseeable future, the demographic characteristics summarized above are expected to allow the population to at least partially recover from many disturbances, thereby slowing the downward trajectory. Thus, our interpretation of the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding is that SPR C is currently at low risk of extinction, and that it will be at low to moderate risk of extinction in the foreseeable future. Therefore, *P. meandrina* is not warranted for listing as endangered or threatened under the ESA at this time based on its status within SPR C.

SPR D

SPR D can be characterized as a population with strong demographic factors facing broad and worsening threats: it has a large and stable distribution, high overall abundance but unknown overall abundance trend, high and stable productivity, and high and stable diversity (Table 4). But it faces multiple global and local threats, all of which are worsening, and existing regulatory mechanisms are inadequate to ameliorate the threats. As explained in the Foreseeable Future for *P. meandrina* section above, we consider it likely that climate indicator values between now and 2100 will be within the collective ranges of those projected under RCPs 8.5, 6.0, and 4.5.

Although all threats are projected to worsen within SPR D's range over the foreseeable future (Smith 2019a,b; NMFS 2020a), the following characteristics of the population moderate its extinction risk, summarized from information in the SRR (Smith 2019b), NMFS (2020b), and the SPR D component of the Extinction Risk Assessments of the SPRs section above: (1) Its large geographic distribution (19 ecoregions, ≈32,000 km² of reef area, extensive non-reef and mesophotic habitats; NMFS 2020b), broad depth distribution (0–34 m; NMFS 2020b), and wide habitat breadth (SRR, Section 2.4), provide SPR D high habitat heterogeneity (SRR, section 3.4), which creates patchiness of conditions across its range at any given time, thus many portions of its range are unaffected or lightly affected by any given threat; (2) its high abundance (at least several billion colonies; NMFS 2020b), together with high habitat heterogeneity, likely result in billions of colonies surviving even the worst disturbances; (3) even when high mortality occurs, its high productivity provides the capacity for the affected populations to recover quickly, as has been documented at sites within several ecoregions (*e.g.,* at Fagatele Bay in American Samoa, at the Kahe Power Plant in the main Hawaiian Islands, and at Moorea in the Society Islands; SRR, Section 3.2.3); (4) likewise, its high productivity provides the capacity for populations to recover relatively quickly from disturbances compared to more sensitive reef coral species, allowing SPR D to take over denuded substrates and to sometimes become more abundant after disturbances than before them, as has been documented in some of SPR D's ecoregions (SRR, Section

3.3); (5) it recruits to artificial substrates more readily than most other Indo-Pacific reef corals, often dominating the coral communities on the metal, concrete, and PVC surfaces of seawalls, Fish Aggregation Devices, pipes, and other manmade structures (SRR, Section 3.3); (6) in some sub-populations that suffered high mortality from warming-induced bleaching, subsequent warming resulted in less mortality (*e.g.,* Oahu, main Hawaiian Islands, SRR, Section 4.1), suggesting acclimatization or adaptation of the surviving populations; and (7) adaptation may be enhanced by its high genotypic diversity (SRR, Section 3.3) and high dispersal (SRR, Section 3.4).

Taken together, these demographic characteristics of SPR D are expected to substantially moderate the impacts of the worsening threats over the foreseeable future. Although SPR D only consists of approximately 14 percent of the range of *P. meandrina,* it nevertheless covers approximately 32,000 km^2 of reef area (Table 4), as well as extensive non-reef and mesophotic habitats, spread across the central Pacific, thus constituting a large distribution. In addition, SPR D's distribution includes over 1,000 atolls and islands with small or no human populations (NMFS 2020b) where local threats are relatively low. While broadly deteriorating conditions will likely result in a downward trajectory of SPR D's overall abundance in the foreseeable future, the demographic characteristics summarized above are expected to allow the population to at least partially recover from many disturbances, thereby slowing the downward trajectory. Thus, our interpretation of the information in the GSA (Smith 2019a), SRR (Smith 2019b), and this finding is that SPR D is currently at low risk of extinction, and that it will be at low to moderate risk of extinction in the foreseeable future. Therefore, *P. meandrina* is not warranted for listing as endangered or threatened under the ESA at this time based on its status within SPR D.

This is a final action, and, therefore, we are not soliciting public comments.

References

A complete list of the references used in this 12-month finding is available at *https://www.fisheries.noaa.gov/species/pocillopora-meandrina-coral#conservation-management* and upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 29, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14304 Filed 7–2–20; 8:45 am]

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Part V

Department of Commerce

Bureau of Industry and Security

Publication of a Report on the Effect of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended; Notice

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

RIN 0694–XC060

Publication of a Report on the Effect of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Publication of a report.

SUMMARY: The Bureau of Industry and Security (BIS) in this notice is publishing a report that summarizes the findings of an investigation conducted by the U.S. Department of Commerce (the ''Department'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (''Section 232''), into the effect of imports of aluminum on the national security of the United States. This report was completed on January 17, 2018 and posted on the BIS website on February 16, 2018. BIS has not published the appendices to the report in this notification of report findings, but they are available online at the BIS website, along with the rest of the report (*see* the **ADDRESSES** section).

DATES: The report was completed on January 17, 2018. The report was posted on the BIS website on February 16, 2018.

ADDRESSES: The full report, including the appendices to the report, are available online: *https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination.*

FOR FURTHER INFORMATION CONTACT: For further information about this report contact Erika Maynard, Special Projects Manager, (202) 482–5572; and David Boylan-Kolchin, Trade and Industry Analyst, (202) 482–7816. For more information about the Office of Technology Evaluation and the Section 232 Investigations, please visit: *http://www.bis.doc.gov/232*

SUPPLEMENTARY INFORMATION:

The Effect of Imports of Aluminum on the National Security an Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended

January 17, 2018

Prepared by U.S. Department of Commerce Bureau of Industry and Security Office of Technology Evaluation

Table of Contents

[i] BIS has not published the appendices, but they are available online at *https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination,* along with the rest of the report.

Prepared by Bureau of Industry and Security http://www.bis.doc.gov

I. Executive Summary

A. Overview

This report summarizes the findings of an investigation conducted by the U.S. Department of Commerce (the ''Department'') pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862 (''Section 232'')), into the effect of imports of aluminum on the national security of the United States.

In conducting this investigation, the Secretary of Commerce (the ''Secretary'') noted the Department's prior investigations under Section 232. This report incorporates the statutory analysis from the Department's 2001 Report [1] with respect to applying the terms ''national defense'' and ''national security'' in a manner that is consistent with the statute and legislative intent.[2] As in the 2001 Report, the Secretary in this investigation determined that ''national security'' for purposes of Section 232 includes the ''general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical to minimum operations of the economy and government.'' [3]

As required by statute, the Secretary considered all factors set forth in Section 232(d). In particular, the Secretary examined the effect of imports on national security requirements, including: domestic production needed for projected national defense requirements; the capacity of domestic industries to meet such requirements; existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense; the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth; and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries; and

[1] U.S. Department of Commerce, Bureau of Export Administration; The Effect of Imports of Iron Ore and Semi- Finished Steel on the National Security; Oct. 2001 (''2001 Report'').

[2] *Id.* at 5.

[3] *Id.*

the capacity of the United States to meet national security requirements.

The Secretary also recognized the close relation of the economic welfare of the United States to its national security; the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills, or any other serious effects resulting from the displacement of any domestic products by excessive imports, without excluding other factors, in determining whether a weakening of the U.S. economy by such imports threaten to impair national security. In particular, this report assesses whether aluminum is being imported ''in such quantities'' and ''under such circumstances'' as to ''threaten to impair the national security.'' [4]

B. Findings

In conducting the investigation, the Secretary found:

(1) Aluminum is essential to U.S. national security. Aluminum is needed to satisfy requirements for:

a. *The U.S. Department of Defense* (''DoD'') for maintaining effective military capabilities including armor plate for armored vehicles, aircraft structural parts and components, naval vessels, space and missile structural components, and propellants; and

b. *Critical Infrastructure Sectors* that are central to the essential operations of the U.S. economy and government, including power transmissions, transportation systems, manufacturing industries, construction, and others.

(2) The U.S. Government does not maintain any strategic stockpile of bauxite, alumina, aluminum ingots, billets or any semi-finished aluminum products such aluminum plate.

(3) The present quantity of imports adversely impacts the economic welfare of the U.S. aluminum industry.

a. Imports and global aluminum production overcapacity, caused in part by foreign government subsidies—particularly in China, have had a substantial negative impact on the economic welfare and production capacity of the United States primary aluminum industry. The decline in U.S. production has occurred despite growing demand for aluminum both in the U.S. and abroad.

b. In 2016, the United States imported five times as much primary aluminum on a tonnage basis as it produced; the import penetration level was about 90 percent, up from 66 percent in 2012.

c. U.S. primary aluminum production in 2016 was about half of what it was in 2015, and output further declined in 2017. U.S. smelters are now producing at 43 percent of capacity and at annual rate of 785,000 metric tons. As recently as 2013, U.S. production was approximately 2 million metric tons per year.

d. Since 2012, six smelters with a combined 3,500 workers have been permanently shut down, totaling 1.13 million metric tons in lost production capacity per year.

e. The loss of jobs in the primary aluminum sector has been precipitous between 2013 and 2016, falling 58 percent from about 13,000 to 5,000 employees.

f. The U.S. currently has five smelters remaining, only two smelters that are operating at full capacity. Only one of these five smelters produces high-purity aluminum required for critical infrastructure and defense aerospace applications, including types of high performance armor plate and aircraft-grade aluminum products used in upgrading F–18, F–35, and C–17 aircraft. Should this one U.S. smelter close, the U.S. would be left without an adequate domestic supplier for key national security needs. The only other high-volume producers of high-purity aluminum are located in the UAE and China (internal use only).

g. The impact so far has been greatest on the primary (unwrought) aluminum sector. Now, however, the downstream aluminum sector also is threatened by overcapacity and surging imports.

h. Imports accounted for 64 percent of U.S. consumption of aluminum (primary and downstream mill products combined) in 2016.

i. U.S. imports in the aluminum categories subject to this investigation totaled 5.9 million metric tons in 2016, up 34 percent from 4.4 million metric tons in 2013. In the first 10 months of 2017, aluminum imports rose 18 percent above 2016 levels on a tonnage basis.

j. In the downstream aluminum sectors of bars, rods, plates, sheets, foil, wire, tubes and pipes, imports rose 33 percent from 1.2 million metric tons in 2013 to 1.6 million metric tons in 2016.

k. Overall in 2016, for the aluminum product categories covered by this investigation, the United States ran a trade deficit of $7.2 billion.

(4) Global excess aluminum capacity is a circumstance that contributes to the weakening of the U.S. aluminum industry and the U.S. economy.

a. A major cause of the recent decline in the U.S. aluminum industry is the rapid increase in production in China. Chinese overproduction suppressed global aluminum prices and flooded into world markets.

b. China's aluminum production is largely unresponsive to market forces. China produced approximately one million metric tons of excess supply in 2016. This excess alone exceeds the total U.S. 2016 production of primary aluminum of 840,000 metric tons.

c. China's industrial policies encourage development and domination of the entire aluminum production chain. These policies are further intended to stimulate the export of aluminum processed into sheets, plates, rods, bars, foils and other semi-manufactures and to target development of increasingly sophisticated and high-value product sectors such as automotive and aerospace.

d. China imposes an excise tax that creates a disincentive for the export of primary aluminum ingots and billets. It provides tax rebates on exports of semi-finished or finished aluminum products. Thus, U.S. imports of aluminum from China are not in the form of unwrought aluminum, but primarily semi-finished downstream aluminum products.

e. As imports make further inroads into the higher value-added, more sophisticated downstream sectors, U.S. downstream companies supporting the defense sector will be increasingly impacted.

C. Conclusion

Based on these findings, the Secretary of Commerce has concluded that the present quantities and circumstance of aluminum imports are ''weakening our internal economy'' and threaten to impair the national security as defined in Section 232. The Department of Defense and critical domestic industries depend on large quantities of aluminum. But recent import trends have left the U.S. almost totally reliant on foreign producers of primary aluminum. The U.S. is also at risk of becoming completely reliant on foreign producers of high-purity aluminum that is essential for key military and commercial systems. The domestic aluminum industry is at risk of becoming unable to satisfy existing national security needs or respond to a national security emergency that requires a large increase in domestic production. These risks and long-run industry trends ''threaten to impair the national security'' as defined by Section 232.

The Secretary has determined that to remove the threat of impairment, it is necessary to reduce imports to a level that will provide the opportunity for U.S. primary aluminum producers to

[4] 19 U.S.C. 1862(b)(3)(A).

restart idled capacity. This will increase and stabilize U.S. production of aluminum at the minimal level needed to meet current and future national security needs. If no action is taken, the United States is in danger of losing the capability to smelt primary aluminum altogether.

The imposition of a quota or tariff on downstream products also is necessary because global overcapacity, coupled with industrial policies that promote exports of downstream products, have had a negative impact on the U.S. primary aluminum industry through reduced demand for inputs from downstream companies, as well as directly on the downstream companies that face increased import penetration in many aluminum product sectors.

D. Recommendation

Due to the threat, as defined in Section 232, to national security from the quantities and circumstances of aluminum imports, the Secretary recommends that the President take immediate action by adjusting the level of these imports. Under alternatives 1 and 2, the quotas or tariffs would be designed, even after any exemptions (if granted), to enable U.S. aluminum production to utilize an average of 80 percent of production capacity. The quotas and tariffs described below should be sufficient to enable U.S. aluminum producers to operate profitably under current market prices for aluminum and will allow them to reopen idled capacity (*see* Table 1).

Table 1 - Import Levels and U.S. Primary Aluminum Capacity Utilization Rates*

Primary Aluminum Market Snapshot (thousands of metric tons)	2013-2016 Average	2017 Annualized
Total Demand for Primary Aluminum in U.S. (production+imports-exports)	4,681	5,516
U.S. Annual Capacity	2,195	1,818
U.S. Annual Production (liquid)	1,518	785
Capacity Utilization Rate (percentage)	69%	39%
Imports and Exports (millions of metric tons)		
Imports of Primary Aluminum to U.S.	3,536	5,046
Exports of Primary Aluminum from the U.S.	373	315
Percent Import Penetration	76%	91%
Production at Various Utilization Rates (thousands of metric tons)		
Maximum Capacity	2,195	1,818
Production at 75% Capacity Utilization	1,646	1,364
Production at 80% Capacity Utilization	1,756	1,454
Production at 85% Capacity Utilization	1,866	1,545
Import Levels and Domestic Production Targets Based on 80% Capacity Utilization		
Partial Equilibrium (No Projected Reduction in Exports and Demand)		
Maximum Import Level (mmt)	4,377	
Estimated Import Penetration	79%	
Estimated Production (mmt)	1,454	
Alternative 1: Quota Applied to 2017 Import Levels	86.7%	
Alternative 1: Tariff Rate Applied to All Imports	7.7%	

*Numbers may differ slightly due to rounding.

Source: United States Department of Commerce, Bureau of the Census. Annualized Data based on 2017 year-to-date figures through October.

Two alternatives for achieving this object are described. In each alternative, quotas or tariffs would be imposed on imports of: 1) unwrought aluminum (Harmonized Tariff Schedule (HTS) Code 7601); 2) aluminum castings and forgings (HTS Codes 7616.99.51.60 and 7616.99.51.70); 3) aluminum plate, sheet, strip, and foil (flat rolled products) (HTS Codes 7606 and 7607); 4) aluminum wire (HTS Code 7605); 5) aluminum bars, rods and profiles (HTS Code 7604); and 6) aluminum tubes and pipes (HTS Code 7608); and 7) aluminum tube and pipe fittings (HTS Code 7609) based on 2017 annualized imports in those categories.

In either alternative, the Secretary recommends that the action taken to adjust the level of imports must be in effect for a duration sufficient to allow necessary time and assurances to stabilize the U.S. industry. It takes up to nine months to restart idled smelting capacity. Market certainty is needed to build cash flow to pay down debt and to raise capital for plant modernization to improve manufacturing efficiency.

The Department of Commerce, in consultation with other appropriate departments and agencies, will monitor the status of the U.S. aluminum industry and the effectiveness of the remedies to determine if the remedies should be terminated, extended, or adjusted as needed.

Alternative 1—Global Quota or Tariff

Global Quota

A worldwide quota of 86.7 percent on imports described above would restrict aluminum imports sufficiently to allow U.S. primary aluminum producers to increase production by about 669,000 metric tons, bringing total production to about 1.45 million metric tons, or about 80 percent of U.S. primary aluminum production capacity. This quota would also be applied to the five other aluminum product categories listed above and would help ensure the viability of those U.S. producers to meet national security needs.

Global Tariff

A tariff rate of 7.7 percent on imports of unwrought aluminum and the other aluminum product categories listed above should have the same impact as the 86.7 percent quota. This tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product.

This tariff rate also will adequately adjust for the price distortions in downstream aluminum product sectors that are caused by global overcapacity and overproduction being exported in the form of downstream products.

Alternative 2—Tariffs on a Subset of Countries

Tariffs on a Subset of Countries

A tariff rate of 23.6 percent on imports of aluminum products from China, Hong Kong, Russia, Venezuela, and Vietnam should also restrict aluminum imports sufficiently to allow U.S. aluminum producers to utilize an average of 80 percent of capacity. These five countries are the source of substantial imports due to significant overcapacity, and/or are potential unreliable suppliers or likely sources of transshipped aluminum from China.

As in Alternative 1 above, this tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product. (For targeted tariff, all other countries would be limited to 100 percent of their 2017 import volumes.)

Exemptions

In selecting an alternative, the President could determine that specific countries should be exempted from the proposed quota (by granting those specific countries 100 percent of their prior imports in 2017 or exempting them entirely), based on an overriding economic or security interest of the United States, which could include their willingness to work with the United States to address global excess capacity and other challenges facing the U.S. aluminum industry.

The Secretary recommends that any such determination should be made at the outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of aluminum to the United States remain at or below the level needed to enable the domestic aluminum industry to return to 2012 production and import penetration levels.

Exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) Lack of sufficient U.S. production capacity of comparable products; or (2) specific national security-based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change. The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to ensure that U.S. aluminum production meets target levels.

II. Legal Framework

A. Section 232 Requirements

Section 232 provides the Secretary with the authority to conduct investigations to determine the effect on the national security of the United States of imports of any article. It authorizes the Secretary to conduct an investigation if requested by the head of any department or agency, upon application of an interested party, or upon his own motion. *See* 19 U.S.C. 1862(b)(1)(A).

Section 232 directs the Secretary to submit to the President a report with recommendations for ''action or inaction under this section'' and requires the Secretary to advise the President if any article ''is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A).

Section 232(d) directs the Secretary and the President to, in light of the requirements of national security and without excluding other relevant factors, give consideration to the domestic production needed for projected national defense requirements and the capacity of the United States to meet national security requirements. *See* 19 U.S.C. 1862(d).

Section 232(d) also directs the Secretary and the President to ''recognize the close relation of the economic welfare of the Nation to our national security, and

. . .take into consideration the impact of foreign competition on the economic welfare of individual domestic industries'' by examining whether any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports,[5] or other factors, result in a ''weakening of our internal economy'' that threaten to impair the national security. *See* 19 U.S.C. 1862(d).

Once an investigation has been initiated, Section 232 mandates that the Secretary provide notice to the Secretary of Defense that such an investigation has been initiated. Section 232 also requires the Secretary to do the following:

(1) ''Consult with the Secretary of Defense regarding the methodological and policy questions raised in [the] investigation;''

(2) ''Seek information and advice from, and consult with, appropriate officers of the United States;'' and

(3) ''If it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.'' [6] *See* 19 U.S.C. 1862(b)(2)(A)(i)-(iii).

As detailed in Parts III and VI of this report, each of the legal requirements set forth above has been satisfied.

In conducting the investigation, Section 232 permits the Secretary to request that the Secretary of Defense provide an assessment of the defense

[5] An investigation under Section 232 looks at excessive imports for their threat to the national security, rather than looking at unfair trade practices as in an antidumping investigation.

[6] Department regulations (i) set forth additional authority and specific procedures for such input from interested parties, see 15 CFR 705.7 and 705.8, and (ii) provide that the Secretary may vary or dispense with those procedures ''in emergency situations, or when in the judgment of the Department, national security interests require it.'' Id., § 705.9.

requirements of the article that is the subject of the investigation. *See* 19 U.S.C. 1862(b)(2)(B).

Upon completion of a Section 232 investigation, the Secretary is required to submit a report to the President no later than 270 days after the date on which the investigation was initiated. *See* 19 U.S.C. 1862(b)(3)(A). The required report must:

(1) Set forth ''the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security;''

(2) Set forth, ''based on such findings, the recommendations of the Secretary for action or inaction under this section;'' and

(3) ''If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security . . . so advise the President.'' *See* 19 U.S.C. 1862(b)(3)(A)

All unclassified and non-proprietary portions of the report submitted by the Secretary to the President must be published.

Within 90 days after receiving a report in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall:

(1) ''Determine whether the President concurs with the finding of the Secretary''; and

(2) ''If the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.'' *See* 19 U.S.C. 1862(c)(1)(A).

B. Discussion

While Section 232 does not contain a definition of ''national security,'' both Section 232, and its implementing regulations at 15 CFR part 705, contain non-exclusive lists of factors that Commerce must consider in evaluating the effect of imports on national security.

Congress in Section 232 explicitly determined that ''national security'' includes, but is not limited to, ''national defense'' requirements. *See* 19 U.S.C. 1862(d). The Department in 2001 determined that ''national defense'' includes both defense of the United States directly and the ''ability to project military capabilities globally.'' [7]

The Department also concluded in 2001 that ''in addition to the satisfaction of national defense requirements, the term ''national security'' can be interpreted more broadly to include the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical to the minimum operations of the economy and government.'' The Department called these ''critical industries.'' [8] This report once again uses these reasonable interpretations of ''national defense'' and ''national security.'' However, this report uses the more recent 16 critical infrastructure sectors identified in Presidential Policy Directive 21 [9] instead of the 28 critical industry sectors used by the Bureau of Export Administration in the 2001 Report.[10]

Section 232 directs the Secretary to determine whether imports of any article are being made ''in such quantities'' or ''under such circumstances'' that those imports ''threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A). The statutory construction makes clear that either the quantities or the circumstances, standing alone, may be sufficient to support an affirmative finding. They may also be considered together, particularly where the circumstances act to prolong or magnify the impact of the quantities being imported.

The statute does not define a threshold for when ''such quantities'' of imports are sufficient to threaten to impair the national security, nor does it define the ''circumstances'' that might qualify.

Likewise, the statute does not require a finding that the quantities or circumstances are impairing the national security. Instead, the threshold question under Section 232 is whether those quantities or circumstances ''threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A). This formulation leaves the matter to the Secretary's discretion, and makes evident that Congress expected an affirmative finding under Section 232 would occur before there is actual impairment of the national security.

Section 232(d) contains a considerable list of factors for the Secretary to consider in determining if imports ''threaten to impair the national security'' [11] of the United States, and this list is mirrored in the implementing regulations. *See* 19 U.S.C. 1862(d) and 15 CFR 705.4. Congress was careful to note twice in Section 232(d) that the list they provided, while mandatory, is not exclusive.[12] Congress' illustrative list is focused on the ability of the United States to maintain the domestic capacity to provide the articles in question as needed to maintain the national security of the United States.[13] Congress broke the list of factors into two equal parts using two separate sentences. The first sentence focuses directly on ''national defense'' requirements, thus making clear that ''national defense'' is a subset of the broader term ''national security.'' The second sentence focuses on the broader economy, and expressly directs that the Secretary and the President ''shall recognize the close relation of the economic welfare of the Nation to our national security.'' [14] *See* 19 U.S.C. 1862(d).

Two of the factors listed in the second sentence of Section 232(d) are most relevant in this investigation. Both are directed at how ''such quantities'' of imports threaten to impair national security. *See* 19 U.S.C. 1862(b)(3)(A). In administering Section 232, the Secretary and the President are required to ''take into consideration the impact of foreign competition on the economic welfare of individual domestic industries'' and any ''serious effects resulting from the

[7] *Id.*

[8] *Id.*

[9] Presidential Policy Directive 21; *Critical Infrastructure Security and Resilience;* February 12, 2013 (''PPD-21'').

[10] *See Op. Cit.* at 16.

[11] 19 U.S.C. 1862(b)(3)(A).

[12] *See* 19 U.S.C. 1862(d) (''the Secretary and the President shall, in light of the requirements of national security and without excluding other relevant factors. . .'' and ''serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors. . .'').

[13] This reading is supported by Congressional findings in other statutes. *See, e.g.,* 15 U.S.C. 271(a)(1)(''The future well-being of the United States economy depends on a strong manufacturing base. . .'') and 50 U.S.C. 4502(a)(''Congress finds that—(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services. . . (2)(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions. . . (3). . . the national defense preparedness effort of the United States government requires—(C) the development of domestic productive capacity to meet—(ii) unique technological requirements. . . (7) much of the industrial capacity that is relied upon by the United States Government for military production and other national defense purposes is deeply and directly influenced by—(A) the overall competitiveness of the industrial economy of the United States; and (B) the ability of industries in the United States, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve competitiveness with respect to military and civilian production; and (8) the inability of industries in the United States, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair the ability to sustain the Armed Forces of the United States in combat for longer than a short period.'').

[14] *Accord* 50 U.S.C. 4502(a).

displacement of any domestic products by excessive imports'' in ''determining whether such weakening of our internal economy may impair the national security.'' *See* 19 U.S.C. 1862(d).

Another factor, not on the list, that the Secretary found to be a relevant is the presence of massive foreign excess capacity for producing aluminum. This excess capacity results in aluminum imports occurring ''under such circumstances'' that that they threaten to impair the national security. *See* 19 U.S.C. 1862(b)(3)(A). The circumstance of excess global aluminum production capacity is a factor because, while U.S. production capacity has declined dramatically in recent years, other nations have increased their production capacity, with China alone able to produce as much as the rest of the world combined. This overhang of excess capacity means that U.S. aluminum producers, for the foreseeable future, will face increasing competition from imported aluminum, often subsidized by foreign national governments, as other countries export more downstream products to the United States to bolster their own economic objectives and offset loss of markets to Chinese aluminum exports.

It is these three factors—displacement of domestic aluminum by excessive imports and the consequent adverse impact on the economic welfare of the domestic aluminum industry, along with global (primarily Chinese) excess capacity in aluminum– that the Secretary has concluded are ''weakening. . .our internal economy'' and therefore ''threaten to impair'' the national security as defined in Section 232.[15]

The Secretary also considered whether or not the source of the imports affects the analysis under Section 232. The Department has previously determined ''imports can threaten to impair U.S. national security if the United States is excessively dependent on imports from unreliable or unsafe sources, and thereby is vulnerable to a supply disruption'' for an input or article.[16] Such an analysis is permissible under the statutory command to consider whether articles are ''being imported into the United States. . . under such circumstances as to threaten to impair the national security.'' *See* 19 U.S.C. 1862(b)(3)(A). Such an inquiry would be necessary and appropriate in ''such circumstances'' where the United States is dependent on imports to meet national security needs, for example when a mineral is not produced in the United States or domestic producers are unable to meet demand but imports from an unreliable source are preventing investment needed to increase domestic production.

The source of imports could also be a ''factor'' the Secretary considers under the analysis required by Section 232(d). *See* 19 U.S.C. 1862(d). That is up to the Secretary's discretion. However, because Congress in Section 232 chose to explicitly direct the Secretary to consider whether the ''impact of foreign competition'' and ''the displacement of any domestic products by excessive imports'' are ''weakening our internal economy'' yet made no reference whatsoever to an assessment of the sources of imports, it is evident that Congress recognized that those adverse impacts might well be caused by imports from allies or other reliable sources.[17] As a result, the fact that some or all of the imports causing the harm are from reliable sources does not compel a finding that those imports do not threaten to impair national security.

The statute allows the Secretary to reasonably conclude that, in the absence of adequate domestic supply, imports from allies should not be relied upon in order to ensure domestic production facilities are sufficient to meet U.S. national security as defined in Section 232. Similarly, the statute also permits the Secretary to consider the availability of reliable imports as a factor that supports a conclusion that imports are not threatening to impair U.S. national security.

III. Investigation Process

A. Initiation of Investigation

On April 26, 2017, U.S. Secretary of Commerce Wilbur Ross initiated an investigation to determine the effect of imported aluminum on national security under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862).

Pursuant to Section 232, the Department notified the U.S. Department of Defense in an April 26, 2017 letter from Secretary Ross to Secretary James Mattis. On April 27, 2017, President Donald Trump signed a Presidential Memorandum directing Secretary Ross to proceed expeditiously in conducting his investigation and submit a report on his findings to the President.

B. Public Comment

On May 3, 2017, the Department invited interested parties to submit written comments, opinions, data, information, or advice relevant to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR 705.4) as they affect the requirements of national security, including the following:

(a) Quantity of the articles subject to the investigation and other circumstances related to the importation of such articles;

(b) Domestic production capacity needed for these articles to meet projected national defense requirements;

(c) The capacity of domestic industries to meet projected national defense requirements;

(d) Existing and anticipated availability of human resources, products, raw materials, production equipment, facilities, and other supplies and services essential to the national defense;

(e) Growth requirements of domestic industries needed to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth;

(f) The impact of foreign competition on the economic welfare of any domestic industry essential to our national security;

(g) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects;

(h) Relevant factors that are causing or will cause a weakening of our national economy; and

(i) Any other relevant factors. (*See* **Federal Register**, Vol. 82, No. 88, Tuesday, May 9, 2017.)

The public comment period ended on June 23, 2017. The Department received 91 written submissions concerning this investigation. These public comments are set forth in Appendix A.

[15] The 2001 Report used the phrase ''fundamentally threaten to impair'' when discussing how imports may threaten to impair national security. *See* 2001 Report at 7 and 37. Because the term ''fundamentally'' is not included in the statutory text and could be perceived as establishing a higher threshold, the Secretary expressly does not use the qualifier in this report. The statutory threshold in Section 232(b)(3)(A) is unambiguously ''threaten to impair'' and the Secretary adopts that threshold without qualification. 19 U.S.C. 1862(b)(3)(A).

[16] 2001 Report at 6. *See also,* 2001 Report at 7 (describing prior Department reports under Section 232 that considered supply vulnerability.

[17] When Congress adopted the text of section 232(d) in 1962 the immediately preceding section was Section 231, 19 U.S.C. 1861, which required the President, as soon as practicable, to suspend most-favored-nation tariff treatment for imports from communist countries. Given the bipolar nature of the world at the time, the absence of a distinction between communist and non-communist countries in Section 232 suggests that Congress expected Section 232 would be applied to imports from all countries—including allies and other ''reliable'' sources.

C. Public Hearing

The Department held a public hearing to elicit further information concerning this investigation in Washington, DC on June 22, 2017. The Department heard testimony from 32 witnesses at the hearing. A transcript of the testimonies given at the Public Hearing is included in Appendix B.

D. Interagency Consultation

Pursuant to the requirements of Section 232, Commerce Secretary Ross notified Defense Secretary Mattis of this investigation on April 26, 2017. In addition, Department of Commerce staff consulted with their counterparts in the Department of Defense regarding methodological and policy questions that arose during the investigation.

The Department also consulted with other agencies of the U.S. Government with expertise and information regarding the aluminum industry, including the U.S. Geological Survey of the Department of the Interior and the U.S. International Trade Commission.[18]

IV. Product Scope of the Investigation

For this report, aluminum is defined at the Harmonized Tariff Schedule (HTS) 4-digit level. The HTS codes covered by this report are listed in Table 2. In addition, two HTS codes at the ten digit level are included, covering aluminum castings and forgings.

Table 2 - Harmonized Tariff Schedule For Aluminum Products

HTS Code	Description
7601	Unwrought aluminum
7604	Aluminum bars, rods and profiles
7605	Aluminum wire
7606	Aluminum plates, sheets, and strip, of a thickness exceeding 0.2mm*
7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm
7608	Aluminum tubes and pipes
7609	Aluminum tube and pipe fittings
7616.99.51.60	Other articles of aluminum: castings
7616.99.51.70	Other articles of aluminum: forgings
*Note: This category includes can sheet for aluminum can packaging.	
Source: U.S. International Trade Commission	

The scope of this investigation does not include bauxite or alumina, which are feedstocks for production of primary (unwrought) aluminum. Also excluded from analysis are aluminum waste and scrap (HTS 7602) and aluminum powders and flakes (HTS 7603) as these represent different industrial sectors.

V. Background on the Aluminum Industry

Aluminum is the most abundant naturally occurring metal in the earth's crust, and it is an essential element of modern life. Virtually every person in the United States, and indeed most of the world, uses aluminum every single day. More aluminum is consumed today than at any point in the 125-year history of the metal's commercial production. Lightweight, corrosion resistant, easily formed, highly conductive, highly reflective, durable and recyclable—aluminum is a highly useful material for manufacturers. It offers a wide range of options for product innovation and process improvements. Aluminum is critical to modern mobility, increasing sustainability, and the national economy.

Aluminum is used in a wide variety of applications, and global demand for it is expected to grow at an annual rate of 3.8 percent.[19] Transportation applications, including aircraft and automobiles, account for 40 percent of domestic consumption, followed by packaging with 20 percent, building construction with 15 percent, electrical with eight percent, and machinery with seven percent.[20] One of the factors driving increasing demand for aluminum is its ability to reduce weight, thereby improving energy efficiency.

Aluminum originates from bauxite, an ore typically found in the topsoil of various tropical and subtropical regions; the United States is not a significant

[18] The U.S. International Trade Commission conducted an investigation at the request of the Committee on Ways and Means of the U.S. House of Representatives entitled ''Aluminum: Competitive Conditions Affecting the U.S. Industry,'' Publication Number 4703, Investigation Number 332–557, June 2017. This report provided information useful and pertinent to this Section 232 investigation and is cited henceforth as ''USITC Report.''

[19] The Aluminum Association.

[20] U.S. Geological Survey, Mineral Commodity Series, January 2017.

source of bauxite as it cannot be economically extracted here. Once mined, aluminum within the bauxite ore is chemically extracted in a refinery into alumina, an aluminum oxide compound. In a second step, the alumina is smelted to produce pure aluminum metal.

The industry can be divided into three basic segments: **upstream, downstream,** and secondary. The upstream segment includes primary or ''unwrought'' **aluminum production**, in which aluminum is produced from raw materials. The products of the upstream industry segment are classified within HTS Code 7601.

The majority of U.S. aluminum production today is based on recycled scrap, called secondary production, and is captured within HTS Code 7602. The United States is the world's leading producer of secondary unwrought aluminum, due to its long established aluminum recycling industry. Secondary production increased from 22 percent of aluminum production in 1980, to 64 percent of domestic production in 2016.[21] While aluminum produced through secondary production is an important feedstock for the U.S. aluminum industry, it is fundamentally a different industry sector and is not the focus of this report.

The processing of aluminum into semi-finished aluminum goods such as rods, bars, sheets, plates, castings, forgings and extrusions is the **downstream segment** of the industry. These aluminum products can be manufactured using primary aluminum, secondary aluminum, or a combination depending on the unique requirements or specifications. Aluminum products manufactured by the downstream segment of the industry are included in HTS Codes 7604, 7605, 7606, 7607, 7608, 7609, 7616.99.51.60 and 7616.99.51.70.

(*See* Appendix C for a more detailed description of the aluminum industry)

VI. Findings

A. Aluminum Is Essential to U.S. National Security

Aluminum products are used widely across U.S. society in a range of consumer products, commercial applications, and industrial products. The supply of aluminum ingot, bar, rod, coils, sheet, cable and wire, and plate products is essential to the functioning of the U.S. economy, critical infrastructure, and the national defense. This lightweight, electrically conductive, corrosion resistant material has widespread uses in consumer goods, commercial products, and in many industrial applications.

From food packaging to advanced military aircraft, aluminum is a vital material used in industry and in infrastructure critical to U.S. economic growth. These sectors consume large quantities aluminum for new construction, production of aircraft, automobiles, bridges, building materials, heating and cooling systems, housing, power transmission cable, trucks and trailers and other applications.

A predictable supply of this versatile metal is required for the supply of many types of products and systems supporting U.S. government civilian and defense operations. For economic stability and to support national security requirements for U.S. critical infrastructure and the national defense, the United States needs domestic capability to produce both primary aluminum and semi- finished aluminum products.

Specifically, U.S. capability must be maintained for: 1) primary aluminum production, 2) processing of recycled aluminum into products, and 3) making bar and rod, plate and sheet, coils, extrusions, castings, forgings, pigments and powders, and other aluminum products. In 2016, imports of aluminum ingot and semi-finished aluminum products accounted for 64 percent of U.S. aluminum consumption.[22] In 2016, the U.S. imported more than 90 percent of the primary aluminum it consumed.[23]

Total reliance on imports cannot provide an assured supply of aluminum to meet U.S. critical infrastructure and defense needs in a national emergency—as production facilities are vulnerable and supply lines are easily disrupted. A significant shortfall in the flow of imported aluminum to U.S. manufacturers could disrupt essential commercial production in the absence of a domestic supply base for aluminum. Moreover, the aluminum smelting and downstream aluminum products industry are critical to the minimum operations of the economy and government.

Critical infrastructure sectors where there is significant dependence on aluminum content include:

- *Defense Industrial Base:* Design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts to meet U.S. military requirements
- *Energy:* Electric power transmission and distribution (over 6,000 power plants)
- *Transportation:* Aircraft, automobiles, railroad freight cars, boats, ships, trains, trucks, trailers, wheels
- *Containers and Packaging:* Cabinets, cans, foils, storage bins, storage tanks
- *Construction:* Bridges, structural supports, conduit, piping, siding, doors, windows, wiring
- *Manufacturing:* Machinery, stampings, castings, forgings, product components, consumer goods, heating and cooling devices, and utility lighting fixtures

1. Aluminum Is Required for U.S. National Defense

The U.S. Department of Defense (DoD) and its contractors use a small percentage of U.S. aluminum production. The DoD ''Top Down'' estimate of average annual demand for aluminum during peacetime is [TEXT REDACTED], or [TEXT REDACTED] percent of total U.S. demand [24] Despite the low percentage of aluminum consumed directly by the DoD, a healthy, vibrant commercial aluminum industry (both primary and downstream) is critical to U.S. national security.

[TEXT REDACTED][25, 26, 27]

The following sections of the report describe the use of aluminum in U.S. military systems and in critical infrastructure.

Use of Aluminum in U.S. Military Systems

a. Ground Systems/Weapons

In the area of ground weapons, cold-rolled thick aluminum plate is an integral part of the structure of armored vehicles such as tanks, personnel carriers, and amphibious vehicles. Such plate is classified within Harmonized Tariff Schedule (HTS) 7606. In these applications, aluminum provides outstanding ballistic protection and excellent corrosion resistance. Aluminum bar and other extrusions (HTS 7604) are used in cage armor on a number of vehicles. Aluminum cage armor is approximately 50 percent lighter than steel cage armor.

The use of aluminum also allows the design of low-weight, reliable, and cost-efficient components for light-armored

[21] Aluminum: The Element of Sustainability; The Aluminum Association, September 2011 and USGS Mineral Commodity Series.

[22] Based on Aluminum Association data.

[23] Based on U.S. Geological Survey data for the U.S. production and on U.S. Census data for exports and imports.

[24] [TEXT REDACTED]

[25] [TEXT REDACTED]

[26] [TEXT REDACTED]

[27] [TEXT REDACTED]

civilian and tactical vehicles, as well as for heavy constructions like military bridges. Using aluminum plate in place of steel also improves the agility and transportability of defense and rescue vehicles and systems (by air transport, for example) into areas of conflict or disaster.

Table 3 - U.S. Defense Ground/Weapon Systems Using Aluminum
Systems Requiring Components Made of Plate, Sheet, Piping, Tubing, Castings and/or Forgings

Armored Multi-Purpose Vehicle (AMPV)	Ground Vehicle Trailers: Aircraft Loading System, 105-mm Howitzer, Minuteman Missile Transporter, Nuclear Ordinance Trailer
Amphibious Assault Vehicle (AAV)	Ground Vehicle Components: Cross Braces, Forged Front Hubs, Gasoline Tanks, Radiators, Transmission Support Brackets, Wheel Discs, Wheels
Bradley Fighting Vehicle (BFV)	Bridges: Improved Float Bridge (Ribbon Bridge); Armored Vehicle Launch Bridge (AVLB); Aluminum Pneumatic Floating Bridge (M4T6)
Bradley M-1 Tank*	Javelin Anti-Tank Missile
Joint Light Tactical Vehicle (JLTV)	Patriot Advanced Capability – 3 (PAC-3)
Expeditionary Fast Transport (EPF)	M224 60 MM Mortar
M109A7 Paladin Artillery Vehicle (M1009)	Small Arms: Pistols, Rifles, Grenade Launchers
*Out of production, but the manufacture of spare parts using aluminum may continue.	
Source: The Aluminum Association, U.S. Dept. of Defense, assorted industrial publications	

b. Aircraft

Aluminum alloys are the predominant choice for the fuselage, wing, and supporting structures of many military aircraft. These types of products are classified within HTS 7606 (aluminum sheet) as well aluminum casting and forgings classified within HTS 7616.99.51. The use of aluminum has been key to the success of advanced aircraft over the decades, including planes such as the Lockheed SR–71 Blackbird, C–17 Globemaster, Boeing F–18—and today, the F–35 Joint Strike Fighter.

Because of aluminum's light weight and excellent damage tolerance capability, it is used in a large number of aircraft applications: vertical stabilizers, horizontal stabilizers, plate for trailing edges, spars, ribs, fuselage frames, and air intake shells. A variety of aircraft-related systems, including bombs, decoy systems, and radar also require aluminum. The airframe of a military aircraft can be as much as 80 percent aluminum by weight. The military aircraft industry also demands high-strength aluminum products that can perform in harsh environments without cracking or outright failure.

Aluminum products used in military aircraft are often highly engineered to meet specific performance attributes to facilitate machining complex aircraft parts. Structural components of U.S. military aircraft may be made of cast or fabricated wrought aluminum (forged, machined and assembled parts) as well as rolled sheet products.

The supply of high-purity aluminum is critical to the production of high-performance aluminum alloys used in military aircraft and other applications. To meet aircraft component performance requirements, ''Purity'' and ''High-purity'' grades of aluminum must be used to enable the manufacture of aluminum materials with greater tensile strength, fracture toughness, improved high-temperature operating ability, and corrosion resistance.[28] These advanced aluminum materials are used not only in aircraft, but in space, naval, and ground vehicles as well. While the industry classifies aluminum by purity, U.S. government trade and industry statistics (such as Harmonized Tariff Schedule (HTS) and North American Industrial Classification (NAICS)) are not differentiated based on purity.

Aircraft deployed by the DoD are expected to continue to use significant amounts of aluminum, even as composite materials replace parts traditionally made of aluminum or titanium. At least 36 types of U.S. military aircraft and related systems that require aluminum parts are in service today. These aircraft are purchased and used by the U.S. Government and foreign governments. In addition, there are 19 other military aircraft systems for which spare aluminum parts continue to be required or may be required (*See* Table 4).

[28] High-Purity aluminum grades are: P0406,P0405, P0404, P0305, P0304, P0303, and P0202. Source: Arconic, Century Aluminum, Harbor Aluminum, other industry sources. The average purity level of primary aluminum produced is 99.9 percent, compared to standard-purity aluminum which is approximately 99.7 percent.

Table 4 - Department of Defense Aircraft Systems Using Aluminum Systems Requiring Components Made of Plate, Sheet, Piping, Tubing, Castings and/or Forgings	
A-10/AO-10 Thunderbolt*	Northrop F-5 Fighter*
AE2100 – Engine*	F-100*Super Sabre
AH-1 Super Cobra Helicopter	F-110*
AH-64 Apache Helicopter	F-117*
ALE-50 Towed Decoy System	Grumman F-14 Tomcat*
Air and Missile Defense Radar (AMDR)	Boeing F-15 Eagle*
APS-137 Radar	General Dynamics F-16 Fighting Falcon
B-1 Bomber*	Boeing F/A-18 Super Hornet
B-2 Bomber*	Lockheed Martin F-22 Raptor
B-52 Bomber*	F-24-Ultra Raptor
C-5*	F-35 Joint Strike Fighter
C130J Super Hercules Cargo Plane	Bell UH-1 Iroquois Helicopter*
C-17 Globemaster Cargo Plane*	Bell OH-58 Kiowa Helicopter
C-27J Spartan Cargo Plane*	Sikorsky UH-60 Blackhawk Helicopter
Northrop Grumman E-2 Hawkeye*	S-70 Black Hawk Helicopter
E-2C Hawkeye*	Sikorsky S-92 Helicopter
E-2D Advanced Hawkeye	Sikorsky CH-53E Super Stallion
Boeing E-3A Sentry (AWAC)*	Sikorsky CH-53K King Stallion Helicopter
Boeing KC-46 Fueling Tanker	Boeing Vertol CH-46 Sea Knight
KC-135 Stratotanker*	Boeing Vertol CH-47 Chinook
KC-46A Pegasus Tanker	V-22
P-3 Orion*	MK 84 Bomb
P-8 Poseidon	LM2500 Gas Turbine
Boeing V-22 Osprey	PW200 Helicopter Engine*
Northrop Grumman EA-6B Prowler*	F-135* Afterburner Turbofan Engine
MQ-9 Reaper (Predator B)	F-414 General Electric Engine
Global Hawk	ETF40 Gas Turbine
EPF	Air and Missile Defense Radar (AMDR)
T-38 Trainer Aircraft*	APS-137 Radar
T-45 Goshawk Trainer Aircraft*	Multi-Spectral Targeting System (MTS)
T-45 Goshawk trainers	Long Range Discrimination Radar (LRDR)
TF-50*Trainer Aircraft	Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensor (M-TADS
*Out of production, but the manufacture of spare parts using aluminum may continue.	
Source: U.S. Department of Commerce/Bureau of Industry and Security, U.S. Department of Defense, industry web sites.	

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The U.S. manufacturers of products based on aluminum require 250,000 metric tons of high-purity aluminum a year. Approximately 90 percent of this is for commercial aerospace and other applications. Ten percent is used to support the manufacture of defense-related products. The United States produced annually, until recently, 125,000 metric tons of high-purity aluminum (Grades P0404, P0303, P0202). The balance is imported, principally from the UAE, but also small quantities from Canada, New Zealand, and Russia.

Century Aluminum operates the only high-volume, pure aluminum smelter in the United States. Its Hawesville, Kentucky facility has demonstrated capability to produce at least 100,000 metric tons of high-purity aluminum a year (it manufactured 60,000 metric tons high-purity aluminum in 2016). Arconic currently has an annual capability to produce approximately [TEXT REDACTED] of high-purity aluminum using standard aluminum ingot in a fractionalization crystallization process. All of its production is for internal consumption for the manufacture of company products; it supplements its own production with imported high-purity aluminum (from the UAE).

Aluminum from Century's Hawesville smelter supplies the electrical

conductor, remelt ingot, and high-purity ingot markets, as well as the defense and aerospace industries. A large portion of Hawesville's specially configured facility provides the high-conductivity metal required by this facility's largest customer, Southwire. This company is a major manufacturer of electrical wire (including power transmission conductor), cable, and other electrical products.

[TEXT REDACTED] [29]

The actions of Century's customers are driven in part because of concerns about Century Aluminum's future financial viability. Century has been closing smelting facilities in response to reduced orders for aluminum product from traditional customers—a situation attributed to foreign government intervention in the aluminum industry with massive subsidies. This has produced a global aluminum supply glut and a collapse of world aluminum prices. In turn, it has driven up U.S. imports of aluminum, which have drastically reduced company production and income.

[TEXT REDACTED]

c. Space Applications

There is a history of extensive use of aluminum in space applications, including launch vehicles, space capsules, satellites, and missiles. Aluminum has been a preferred material because of it is light weight, able to withstand stress, heat reflectance, and has other properties.

For missile and space applications, aluminum has been the material used across a wide range of structures. Once again, its light weight and its ability to withstand the stresses that occur during launch and operation in space environments are why aluminum has been used on Apollo spacecraft, the Skylab, the space shuttles and the International Space Station, as well as in missiles.

Table 5 - Space Launch Vehicles Using Aluminum
Systems Requiring Components Made of Plate, Sheet, Piping, Tubing, Castings and/or Forgings

System	Components
United Launch Alliance - Atlas V [Boeing, Lockheed Martin]	Aluminum Fuel Tanks
United Launch Alliance - Delta IV Heavy [Boeing, Lockheed Martin]	Second Stage –Propellant Tank Dome, Isogrid ring forgings, Tank skirts Booster Tanks – Barrels, domes, skirts
SpaceX - Falcon 9	Capsule Pressure Vessel
SpaceX - Dragon	First Stage – Aluminum Lithium Tanks; Second Stage – Aluminum-Lithium Tube
Orbital Sciences - Minotaur	Interstage Structure
Orion Multi-Purpose Crew Vehicle	Crew Capsule Structure
Space Launch System - NASA Mars Mission	
Rocket Fuel Propellant	Aluminum Powder

Sources: Boeing, Lockheed Martin, Orbital Sciences, SpaceX, https://biz360tours.com/ula-delta-iv-afspc-6

Aluminum alloys consistently exceed other metals in such areas as mechanical stability, dampening, thermal management and reduced weight. Powdered aluminum is also used as the key ingredient in primary propellant for solid rocket booster motors for tactical missiles and space-launch platforms. The reason for this is because it has a high volumetric energy density and is difficult to ignite accidentally.

d. Naval Applications

Military marine designers and naval engineers recognize that aluminum's low density, high strength, and corrosion resistance make it an advantageous material for some types of shipbuilding. Use of aluminum enhances ship speeds and enables operation in shallower water because of reduced draft. Increased fuel efficiency and higher cargo carrying capability also are enabled by vessel weight reductions achieved using aluminum.

The greatest use of aluminum in the U.S. Navy is with four classes of ships: Expeditionary Fast Transport, Joint High Speed Vessel, Littoral Combat Ship—Monohull and the Littoral Combat Ship—Tirmarian. Smaller quantities of aluminum will be required for the construction of smaller craft—*e.g.,* Dauntless Patrol Boats and the High Speed Maneuverable Surface Target (HSMST) boat. The HSMSTs will be used to support weapon systems testing and evaluation, and fleet training exercises.

Although the cost of aluminum material is higher than for steel, and more labor hours are required to build the structure for aluminum ships, for some types of vessels there is an overall cost savings due to the life-cycle benefits of aluminum's significantly lower weight.[30] The Navy's future fleet program anticipates the use of aluminum in new vessel platforms that are under development.

[29] [TEXT REDACTED]

[30] Lamb, Thomas, Nathaniel Beavers, Thomas Ingram and Anton Schmieman, ''The Benefits and Costs Impact of Aluminum Naval Ship Structure,'' accessed through sname.org.

Table 6 - Department of Defense Naval Systems Using Aluminum Systems Requiring Components Made of Plate, Sheet, Piping, Tubing, Castings and/or Forgings	
Expeditionary Fast Transport (EPF)	Littoral Combat Ship (LCS) – Monohull
Joint High Speed Vessel (JHSV)	Littoral Combat Ship (LCS) – Trimarian
Dauntless Patrol Boats	High Speed Maneuverable Surface Target (HSMST)
Ship-To-Shore Connector (SSC)	Landing Craft, Air Cushion (LCAC)
Tomahawk Missile	Torpedoes (Mark 37,44,45,46,48)
Sources: U.S. Department of Defense, assorted industrial sources.	

e. Future DoD Aluminum Requirements

DoD projects that its requirements for defense products and systems using aluminum will grow in the years ahead. DoD estimates that annual consumption for just wrought aluminum plate used in nine defense systems will climb from [TEXT REDACTED] in 2017 to more than [TEXT REDACTED] tons in 2020.

Much of this increase for wrought aluminum plate is attributed to orders for the Joint Light Tactical Vehicle (JLTV), Armored Multi-Purpose Vehicle (AMPV), M109 Paladin Artillery Vehicle, and the Amphibious Assault Vehicle (AAV), and the Littoral Combat Ship. Aluminum also is required for foreign military sales of Bradley Fighting Vehicles. These DoD aluminum projections do not include aluminum consumed for the production of spare parts for more than 70 Army, Air Force, and Navy systems in use by DoD.

In addition, ongoing research focused on improving sheet aluminum performance characteristics as well as casting and forging technology for aircraft and other defense application could result in greater use in DoD platforms. Indeed, R&D is expected to drive expanded use of the material—raising overall DoD tonnage requirements for production of defense systems.

Yet the pace of expansion of aluminum use in defense and commercial markets may be slower than it might be were it not for the collapse of aluminum prices and loss of revenue at U.S. aluminum producers. At this time most aluminum companies cannot afford to fund research. The importance of research in this industry is clear, however. More than 90 percent of all alloys currently used in the aerospace industry were developed through Alcoa's research.[31]

Retention of domestic capacity to meet DoD production requirements for conventional aluminum plate, armor plate, and other aluminum production capacity is of concern to DoD. DoD does not keep any type of aluminum product, including armor plate, in the U.S. Government's national stockpile.[32]

With U.S. commercial applications accounting for 90 percent of high performance aluminum consumption, limited commercial stockpiles located in the United States are not likely to be sufficient to support DoD aluminum requirements in a time of a major war. The ability to ship aluminum products across the ocean could be severely restricted, if not impossible.

As of June 2017, there were approximately 295,000 metric tons of primary and alloy aluminum held in U.S. warehouses operated by the London Metals Exchange (LME). Based on 2016 U.S. consumption of 5.1 million metric tons, the amount of aluminum held in LME warehouses in Baltimore, Detroit, and New Orleans represents three weeks of domestic industrial demand.[33]

[TEXT REDACTED] [34]

U.S. national security cannot be assured if the United States becomes entirely dependent on foreign suppliers for primary aluminum and high-purity aluminum. The U.S. in 2016 relied on imports for 89 percent of its primary aluminum requirements, up from 64 percent in 2012.[35] Canada, which is highly integrated with the U.S. defense industrial base and considered a reliable supplier, is the leading source of imports. With Canadian smelters operating at near full capacity and with the vast majority of their production already going to customers in the United States, there is limited ability for Canada to replace other suppliers.

In the future there is no assurance that some non-U.S. suppliers such as Russia (the largest supplier of primary aluminum to the U.S. after Canada) will provide all the necessary aluminum products on a timely basis and in the quantities requested, particularly in a time of war or national emergency. Shifts in the policies of the governments of offshore aluminum suppliers, many of them state- owned, could leave the United States stranded.

2. Aluminum Is Required for U.S. Critical Infrastructure

The Department of Homeland Security has designated 16 critical infrastructure sectors in the United States, which are considered so vital that their incapacitation or destruction would have a debilitating effect on defense capability, national economic security, national public health or safety.[36] Virtually all of these sectors rely on aluminum products as a part of their principal missions.

Specifically, these sectors include chemical production, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, food and agriculture, government facilities, transportation systems, and water

[31] Alcoa, *http://www.alcoa.com/global/en/home.asp*

[32] In June 1966, the National Defense Stockpile contained 920,000 short tons of aluminum. Over time, the Congress steadily reduced the stockpile's aluminum holding to zero. The purpose of the stockpile is to limit, if not preclude dependence by the United States upon foreign sources in times of a national emergency. U.S. Department of Defense requirements for aluminum in the stockpile have been reduced as a consequence of demand/supply modelling by the Institute for Defense Analysis. The accuracy of the modelling can be affected by assumptions on the duration and intensity of conflicts, capability to import materials in a time of war, expansion and contraction of the supplier base, and other factors. Sources: Congressional Record; Managing Materials for a Twenty-First Century Military (2008), The National Academies Press.

[33] Sources: U.S. Department of Interior/USGS, U.S. Department of Commerce/BIS, and industry data sources.

[34] Kaiser Aluminum.

[35] Calculations were based on U.S. production of 840,000 metric tons, imports of 4.26 million metric tons, and U.S. exports of 303,000 metric tons of primary aluminum (HTS 7601).

[36] *https://www.dhs.gov/critical-infrastructure-sectors*

management and waste water systems. No significant uses were identified for financial services and nuclear reactors and related waste management. Detailed information on the use and importance of aluminum in the various critical infrastructure sectors is described below.

Use of Aluminum in Critical Infrastructure Sectors

Of particular importance to U.S. critical infrastructure are core manufacturing activities such as primary metals manufacturing, including aluminum production and processing.[37] The manufacture and supply of primary aluminum (HTS 7601), secondary production (HTS 7602), bars, rods, (HTS 7604) plate, and sheet material (HTS 7606) are key to the creation of aluminum-based products employed across the U.S. economy (*see* Table 7).

Although aluminum use for electrical applications accounted for approximately seven percent of total U.S. aluminum consumption in 2016 (or about 836,000 metric tons),[38] its importance to critical infrastructure cannot be overstated. Aluminum transmission cables (contained in HTS classification 7605) power the nation, delivering electricity from power-generation facilities across- long-haul transmission grids for distribution at the regional, state, and local level.

The health of the U.S. economy hinges on functioning power transmission systems and the timely supply of reliable, durable aluminum cable for use by electric utilities. Predictable supply is especially important for recovery from storms and other natural disasters. Commercial office buildings also use large amounts of aluminum cable; and it is widely used as the primary service feed to residential power meters and breaker boxes.

The sector consuming the largest amount of aluminum is transportation. The manufacture of aircraft, automobiles, buses, freight and subway cars, boats and ships, tractor trailers, and related components accounted for about 35 percent (about 4.2 million metric tons) of U.S. aluminum consumption in 2016, according to the Aluminum Association.

The ready availability of high quality aluminum bar, rod, coils, plate, sheet, and extrusions is critical to the ability of manufacturers to deliver product to their customers in a timely way and to respond to national emergencies. For this reason, Boeing purchases [TEXT REDACTED] percent of the aluminum it uses for the manufacture of aircraft from suppliers in the United States.[39]

The agriculture and food supply industries are another of the Department of Homeland Security's (DHS) 16 critical infrastructure sectors. This industry relies heavily on the availability of aluminum packaging, including canning materials and foils (HTS 7607). Aluminum containers and packaging accounted for about 18 percent of U.S. aluminum consumption in 2016 (about 2.2 million metric tons). Aluminum is also widely used in crop irrigation piping in fields.

Building and construction, according to the Aluminum Association, was the third-largest major market for aluminum products in 2016, accounting for about 12 percent of total U.S. consumption (about 1.5 million metric tons). Aluminum is used for structural supports; door, wall, and door framing; roofs and awnings; architectural trim; utility cabinets; air conditioning systems; drawbridges and portable emergency bridges; and many other applications. Many of these applications of aluminum are classified in HTS 7604 and HTS 7608.

[37] *https://www.dhs.gov/critical-manufacturing-sector#.*

[38] Aluminum Association, ''Fast Facts at Glance—2016,'' December 2017

[39] Source: Provided to the U.S. Department of Commerce/BIS by The Boeing Company.

Table 7 - DHS Critical Infrastructure Sectors – Use of Aluminum		
Sectors		Aluminum End Uses
1	Chemicals	Product ingredients (small amounts)
2	Commercial Facilities	Structural Components, Architectural Trim, Doors, Window Frames, Aluminum Wiring
3	Communications	Antenna Towers, Antennas, Electronics Cabinets, Satellites, Circuit Boards, Connectors
4	Critical Manufacturing	Primary Aluminum Production, Semi-Finished: Extrusions, Bars, Rods, Coil, Plate, Sheet, Tube, Pipe Production
5	Dams	Aluminum Water Conduits, Drainage Systems
6	Defense Industrial Base	Aircraft, Ground Vehicles, Boats, Bridges, Ships, Missiles, Assorted Weapons Systems
7	Emergency Services	Portable Bridges, Fire Engines, Ambulances, Gurneys
8	Energy	Power Transmission, Commercial Wiring, Liquid Natural Gas Storage Tanks
9	Financial Services	----------
10	Food and Agriculture	Packaging, Irrigation, Green Houses, Storage Buildings
11	Government Facilities	Federal Research Laboratories, DoD Repair Depots, Y-12
12	Health Care/Public Health	Walkers, Wheel Chairs, Splints, Packaging
13	Information Technology	Electronic Cabinets, Capacitors, Heat Sinks
14	Nuclear Reactors, Materials, and Waste Sector	High voltage Power Transmission Cable
15	Transportation Systems	Aircraft, Automobile, Buses, Engines, Freight Cars, Subway Cars, Tractor Trailers, Trucks, Transmission Housings, Truck Tankers, Boats, Ships
16	Water and Waste Water Systems	Temporary Piping, Cold Water Storage Tanks, Water Tankers
Note: Presidential Policy Directive (PPD-21) on Critical Infrastructure Security and Resilience, issued in February 2016, identified 16 industrial sectors. *See*: https://www.dhs.gov/critical-infrastructure-sectors.		
Source: U.S. Department of Commerce/Bureau of Industry and Security, The Aluminum Association, Association of Water Technologies, North American Freight Car Assn., Applied Aerospace Structures Corp., Society of Chemical Manufacturers and Affiliates		

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Excessive reliance on offshore producers as the primary suppliers of aluminum ingot, semi-finished, and finished products to sustain systems for critical infrastructure would pose risks. The ability of the United States to respond to national emergencies could be constrained by a lack of domestic production capability. Domestic inventories of aluminum products are often limited. Dependence on offshore manufacturers can hinder U.S. capabilities to respond to catastrophes and market surges.

B. Domestic Production of Aluminum is Essential to National Security

Continued access to U.S.-based aluminum production is important to critical infrastructure and to the nation's overall defense objectives as well as economic security. All segments of the U.S. aluminum industry contribute, directly or indirectly, to the U.S. defense industrial base as aluminum is used in a variety of defense applications. High-strength aluminum alloys have become among the most commonly used materials to make military aircraft; and aluminum armor plate is used to protect against explosives and other threats. A number of U.S. Navy ships are now made with aluminum.

The U.S. Department of Defense has a large and ongoing need for a range of aluminum products. These include:

- High-purity aluminum for the F–35 Joint Strike Fighter, the F–18, and the C–17.
- High-purity aluminum for the armor plate in military vehicles, littoral combat vessels, and missiles. The percentage of aluminum content in armor plate in military platforms is increasing and may reach as much as 60 percent in the next generation military vehicles.

• The U.S. Coast Guard employs aluminum-intensive 47-foot first-response lifeboats. The craft are self-bailing, self-righting and have a long cruising radius for their size.

Reliance on foreign suppliers for essential aluminum and aluminum products is contrary to U.S. national security. Moreover, overreliance on assumed future U.S. production capacity without adequate analysis given to the financial health and viability of the U.S. aluminum industrial base can lead to shortfalls in needed production, capabilities and related skilled work force when called upon.

To ensure U.S. national security response capability, the nation must have sufficient domestic aluminum production capacity to meet most commercial demand and to fulfill DoD contractor and critical infrastructure requirements. The economic stability of companies manufacturing aluminum in the United States is undermined by growing volumes of imported aluminum in key product sectors.

Although the United States imports large quantities of aluminum products from foreign suppliers, historically U.S. aluminum manufacturers have been industry leaders. Innovation by U.S. aluminum producers has provided technological and cost advantages to many domestic industries that use aluminum, including the aerospace, automotive, and defense sectors.

U.S. manufacturers have produced numerous high performance alloys to increase the strength, durability, performance of aluminum products. The wide- spread adoption of high-strength aluminum structural components and panels in automobiles, trucks, and aircraft are examples.

To maintain the health of advanced aerospace and defense product lines, the domestic industry must have a strong aluminum manufacturing capability and commercial product portfolio (*e.g.,* automotive, industrial, packaging). Without a robust level of commercial business, aluminum manufacturers cannot afford to conduct research and development, make capital investments, nor maintain their production infrastructure, including that needed for making products for critical infrastructure and national defense.

C. Domestic Aluminum Production Capacity Is Declining

1. Primary Aluminum Production Capacity

In 2016, global aluminum smelter capacity totaled 72.5 million metric tons, which was approximately two percent higher than the 2015 level.[40] The top six aluminum-producing countries accounted for nearly 77 percent of the world's total aluminum capacity, with China alone accounting for 55 percent of total global production capacity and 54 percent of global production. The United States' production capacity is ranked 6th in the world in 2016; in 2017 U.S. capacity has dwindled further.

During World War II, aluminum was considered so important to U.S. national security that the U.S. government embarked on a program to expand U.S. production capacity, which in 1940 was limited to one producer (Alcoa). Through the government-owned Defense Plant Corporation, the U.S. expanded primary aluminum production capacity by building new smelters to meet military demands. The government-owned plants were ultimately sold to U.S. corporations Kaiser Aluminum and Reynolds Aluminum in 1950.[41]

During the Korean War, the U.S. government sought to further expand U.S. primary aluminum capacity to meet military needs. This time, incentives were used including accelerated amortization (reducing or eliminating corporate taxes) and purchase contracts (in which the government purchased all unsold aluminum). Further expansion in U.S. production capacity took place in the 1960's, but during these years it was driven by increasing commercial demand.

U.S. primary aluminum production and capacity was relatively stable at between 3.5 million and 4 million metric tons per year from 1970 to 2000. Since 2000, there has been a steep decline in U.S. production. It corresponds with a large increase in U.S. imports of primary aluminum (*see* Figures 1 and 2 below).

One of the main reasons for the decline in U.S. primary aluminum production capacity is that the United States is a relatively high cost producer. Because aluminum production is highly energy intensive, the world's leading producers are generally the countries with the lowest energy costs (including Canada, Russia, the United Arab Emirates (UAE), and Bahrain). The exception is China, where electricity costs are actually higher than those of the United States ($614 per metric ton of aluminum produced in China versus $532 per metric ton in the United States); China' overall production costs were equal to that of U.S. producers.[42]

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[40] U.S. Geological Survey, Mineral Commodity Summary, January 2017.

[41] Routledge Revivals: The World Aluminum Industry in a Changing Energy Era, edited by Merton J. Peck, 2015.

[42] CRU Group, included US ITC Report, p. 110.

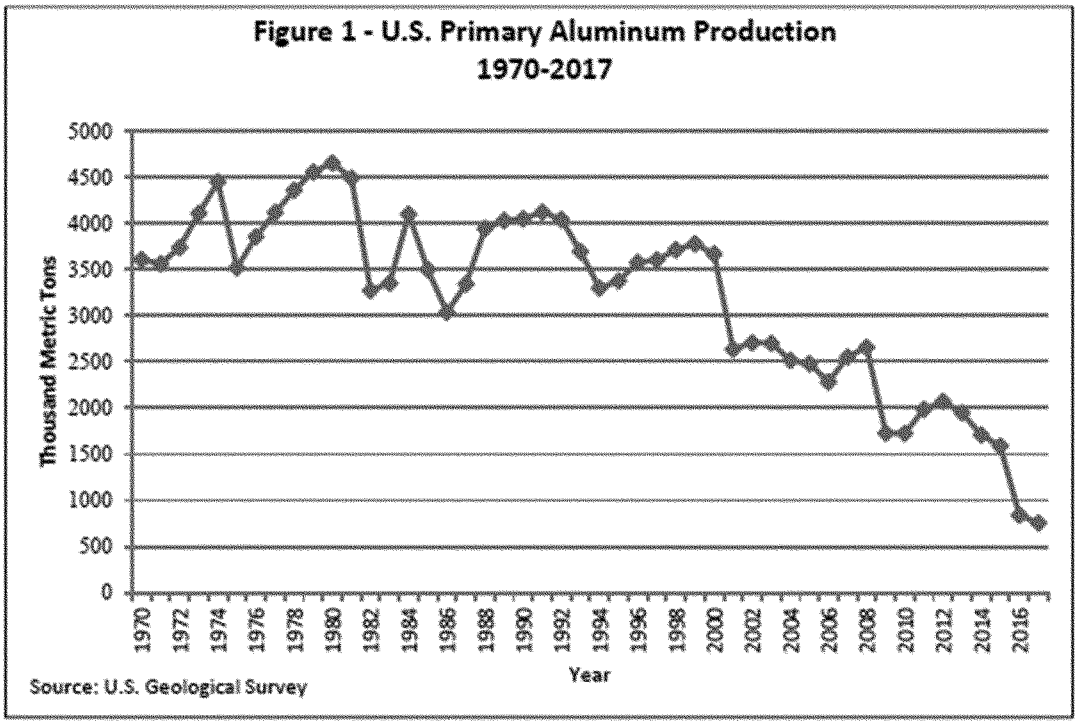


Figure 1 - U.S. Primary Aluminum Production
1970-2017
Thousand Metric Tons
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
1970
1972
1974
1976
1978
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004
2006
2008
2010
2012
2014
2016
Year
Source: U.S. Geological Survey

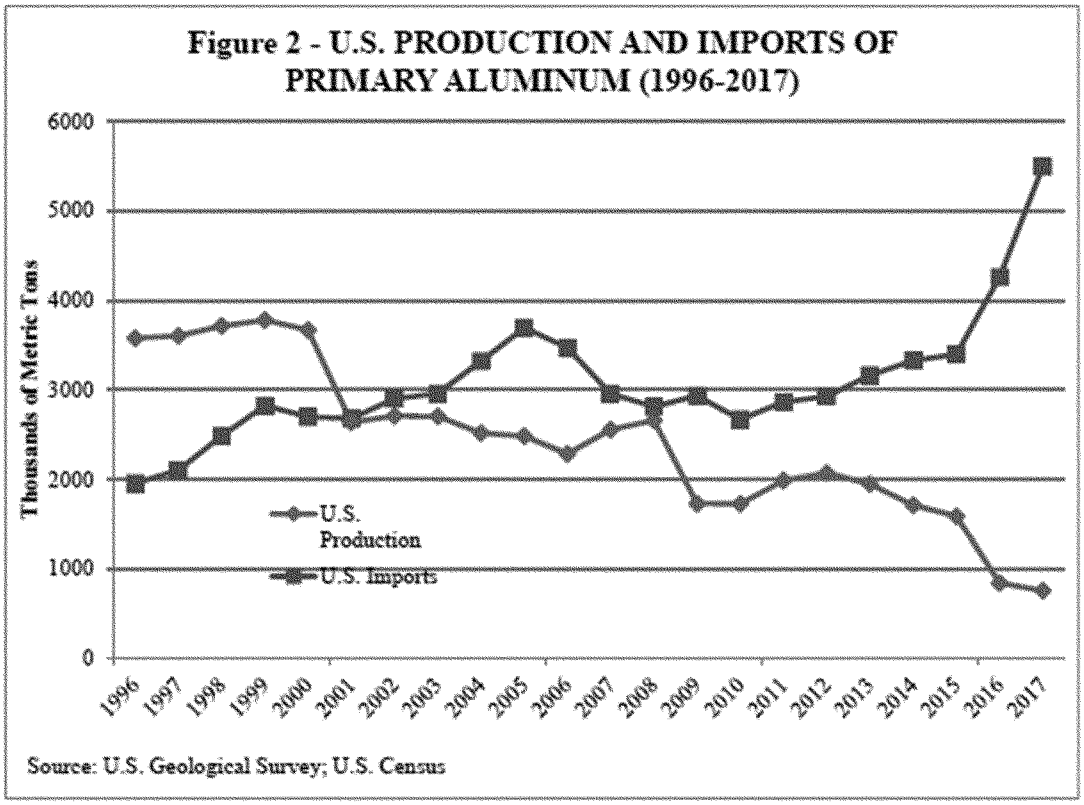


Table 8 - Global Aluminum Smelter Capacity and Production – 2016

Country	Production Metric Tons (000)	Capacity Metric Tons (000)	Capacity Utilization Rate
China	31,000	40,100	77%
Russia	3,580	4,180	85%
India	2,750	3,850	71%
Canada	3,250	3,270	99%
UAE	2,400	2,400	100%
United States	840	1,740	48%
All Other	13,780	16,790	82%
Total	**57,600**	**72,500**	**79% Average**

Source: U.S. Geological Survey, Mineral Commodity Summaries, January 2017

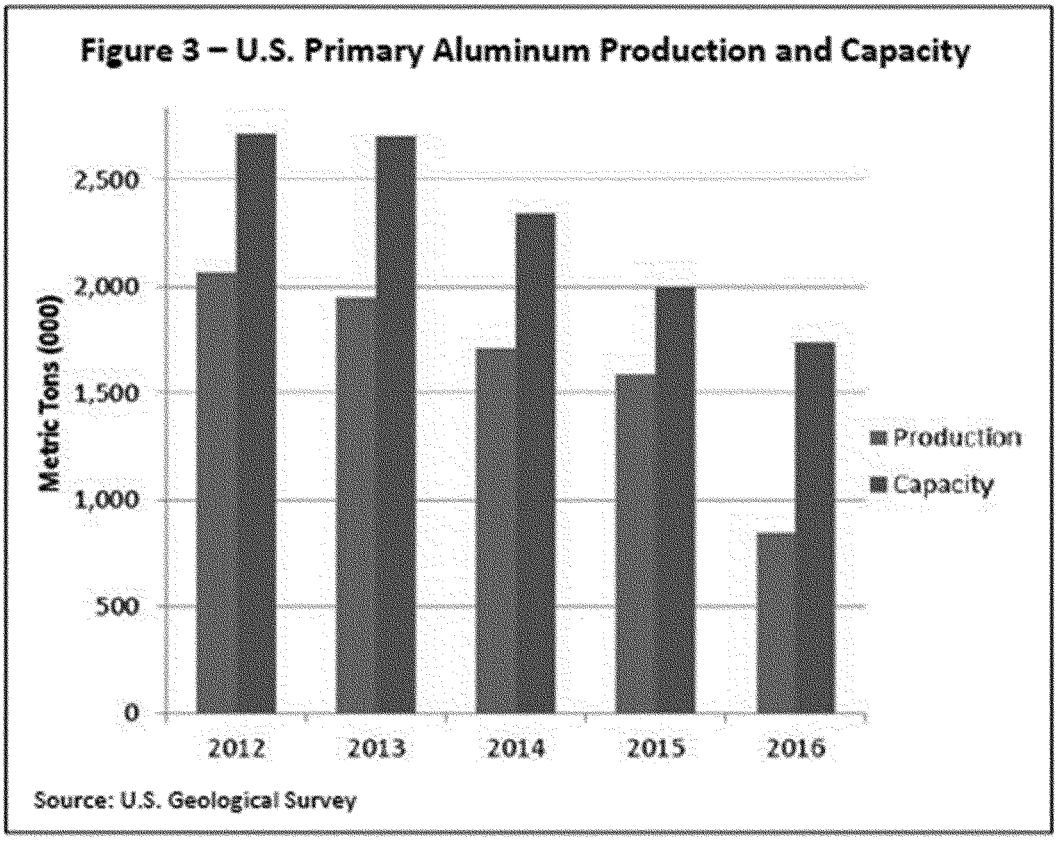
Total U.S. primary aluminum production capacity and actual production for the most recent five-year period is shown in Table 9 below. The decline in U.S. production and capacity utilization has been particularly dramatic in just the past two years, during which aluminum prices were at near record lows. The erosion of primary aluminum production capacity in the United States due to falling aluminum prices and subsequent closure of smelters has been precipitous.

In 1981, the U.S. produced 30 percent of the world's primary aluminum and it remained the world's largest producer until 2000, when there were 23 smelters in operation. In 2016, the U.S. accounted for just 1.5 percent of global production.

In the same timeframe, production of primary aluminum in China grew from less than 15 percent of global production in 2000 to about 55 percent in 2016.

Table 9 - U.S. Primary Aluminum Production and Capacity			
Year	Production Metric Tons (000)	Capacity Metric Tons (000)	Capacity Utilization Rate
2012	2,070	2,720	76%
2013	1,946	2,700	72%
2014	1,710	2,340	73%
2015	1,587	2,000	79%
2016	840	1,740	48%
2017 (based on Jan-Nov)	785	1,818*	39%

Source: U.S. Geological Survey Mineral Commodity Series; Mineral Industry Surveys, Companies
*In July, 2017 Alcoa announced that it would partially reopen its Warrick smelter in 2018 with 269,000 metric ton capacity; it had previously announced that this smelter was to be permanently shut down.; In December, 2017 the company announced permanent closure of its Rockdale, TX smelter (idled since 2008)



In 2017, there are only two aluminum (upstream) producers in the United States that operate smelters: Alcoa and Century Aluminum. A third company, Noranda, is in bankruptcy and its idled smelter was sold to ARG International AG of Switzerland. Table 10 below lists the status of aluminum smelting in the United States. At the beginning of 2016, three companies operated eight primary aluminum smelters in six U.S. states. In November, 2017, domestic smelters were operating at about 43 percent of capacity of about 1.8 million metric tons per year.[43]

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Table 10 - Current U.S. Smelter Production Capacity (As of November, 2017)

Company	Location	Capacity (Metric Tons/Year)	Current Operating Level (Metric Tons/Year)	Idle Aluminum Smelter Capacity (Metric Tons/Year)	Comments
Alcoa	Ferndale, WA	279,000	230,000	49,000	Temporary shutdown of 79,000 tons in 3/2016
Alcoa	Wenatchee, WA	184,000	0	184,000	Temporary shutdown in 2/2016
Alcoa	Massena, NY (West)	130,000	130,000	0	Operating at full capacity
Alcoa	Evansville, IN "Warrick"	269,000	0	269,000	Shut down in 03/16; Expects to open 3 of 5 pot lines in 2018
Century	Hawesville, KY†	252,000	100,000	152,000	Pot line operations curtailed to 100,000 tons
Century	Sebree, KY	210,000	210,000	0	Operating at full capacity
Century	Mt. Holly, SC	229,000	115,000	114,000	Temporary shutdown of 114,000 tons in 2/2015
Magnitude 7 Metals (formerly Noranda)	New Madrid, MO	265,000	0	265,000	Temporary shutdown in 3/2016 - bought by ARG Int'l.* of Switzerland
Total		**1,818,000**	**785,000**	**1,033,000**	
	Average U.S. Smelter Facility Capacity Utilization in 2017 = 43.2%				

Notes: Although Alcoa announced in 2016 that its Warrick smelting operations in Evansville, Indiana would be permanently closed, in July 2017 it said that three of five pot lines would be restarted by the second quarter of 2018, providing 275 jobs.
†This smelter is capable of producing high-purity aluminum.
* ARG International of Switzerland renamed the New Madrid MO smelter Magnitude 7 Metals.

Source: U.S. Geological Survey; Aluminum Manufacturers

There are five smelters in the United States currently producing at some level, of which only two are operating at full production capacity. Three others are operating, but have reduced output levels below capacity by shutting down pot lines. During periods of weak demand or low aluminum prices, firms often shut down individual pot lines rather than run them at reduced capacity due to the 24/7 nature of primary smelting operations.

Industry leader Alcoa has just one fully operational smelter in the U.S.: Massena West (NY), with 130,000-ton-per-year capacity. It was saved from closure by $73 million in aid from New York State.[44] Alcoa's Ferndale, Washington smelter was also set to be temporarily shut down, but in April 2016 the company reached an agreement with the Bonneville Power Administration that enabled it to continue operations at a reduced level until early 2018.[45]

Although Alcoa announced in 2016 that its Warrick smelting operations in Evansville, Indiana would permanently close in July 2017 the company reversed that position announcing that three of five pot lines would be restarted by the second quarter of 2018, providing 275 jobs. Similarly, Century was close to idling one third of its Sebree, Kentucky smelter output in 2015, but made some organizational changes that enabled it to keep operating at full capacity.[46]

[43] *https://minerals.usgs.gov/minerals/pubs/commodity/aluminum/mcs-2017-alumi.pdf;* companies

[44] *https://www.northcountrypublicradio.org/news/story/33518/20170306/massena-hopeful-as-alcoa-deadline-hits-two-year-mark.*

[45] *http://www.bellinghamherald.com/news/local/article75151737.html*

[46] *https://www.platts.com/latest-news/metals/louisville-kentucky/century-aluminum-shelves-plans-to-shut-one-third-21631114*

Two additional smelters are currently shut down, although no formal announcement of their permanent closure has been made: Alcoa's Wenatchee, WA and Magnitude 7 Metals' New Madrid, Missouri smelter (formerly Noranda). On October 28, 2016, ARG International AG of Switzerland completed the purchase of Noranda's idle smelter and renamed it Magnitude 7 Metals; the new owner is attempting to negotiate a power contract that will enable it to restart operations.[47]

Of the five smelters currently in operation at some level, only one is capable of producing high-purity aluminum needed for many advanced aerospace and defense applications: Century Aluminum's Hawesville, KY plant. Century attributes its production decline to Chinese overproduction of high-purity aluminum and associated increases in Chinese exports of aluminum products. This smelter is a major source of high-purity aluminum to product fabricators, including Constellium, and Kaiser. These companies use high-purity materials to produce aluminum products for DoD, including types of high-performance armor plate and aircraft-grade aluminum products used in upgrading F–18, F–35, and C–17 aircraft.

Aluminum Smelters Permanently Shut Down

Since 2012, six aluminum smelters have been permanently shut down, totaling 1.13 million metric tons of annual production capacity,[48] and about 3,500 jobs. Excluded from these statistics is Alcoa's Evansville, IN plant (currently the largest U.S. smelter in existence), which was closed ''permanently'' in the first quarter of 2016,[49] but which Alcoa later announced would be partially reopening in 2018.

In addition, the reopening of Noranda's Missouri smelter (now Magnitude 7 Metals) is in doubt. If these smelters were to make their closures permanent, total lost U.S. annual smelting capacity since 2012 could reach 1.5 million metric tons, and a loss of over 4,000 jobs.

The closures of these facilities have had a significant impact on the local economies that relied on them for high quality jobs. Even temporary idling of plants threatens the U.S. industry as there are significant financial costs with re- opening an aluminum plant. According to industry experts, it takes six to nine months to restart aluminum production at an idled smelter or pot line. The longer the facility is idled, the more difficult it is to bring back the highly skilled workforce needed to operate the facility, adding additional costs for worker training and production delays.

Table 11 – U.S. Aluminum Smelters Shut Down Permanently Since 2012

Company	Location	Capacity (Metric Tons/Year)	Jobs Lost	Comments
Alcoa	Alcoa, TN	215,000	450	Last produced 2009; shutdown made permanent 2012
Alcoa	Massena, NY (East)	125,000	500	Last production 2014; shutdown permanent 2015
Alcoa	Rockdale,TX	191,000	1,000	Last production 2008; shutdown permanent 2017
Century	Ravenswood, WV	170,000	600	Last production 2009; shutdown permanent 2014
Ormet	Hannibal, OH	265,000	700	Last production 2012; shutdown permanent 2014
Columbia Falls/Glencore	Columbia Falls, MT	168,000	200	Last production 2009; shutdown permanent 2015
TOTAL		1,134,000	3,450	

Note: Although Alcoa announced in 2016 that its 269,000 metric ton capacity Warrick smelting operations in Evansville Indiana would be permanently closed, in July 2017 it said that three of five pot lines would be restarted by the second quarter of 2018, providing 275 jobs.

Source: U.S. Geological Survey

[47] Testimony of Bob Prusak, CEO of Magnitude 7 Metals, June 22, 2017.

[48] U.S. Geological Survey, companies.

[49] *http://www.businessinsider.com/r-alcoa-plans-to-close-largest-us-aluminum-smelter-amid-tumbling-prices-2016-1*

Secondary Aluminum Production Capacity

As has been noted, secondary aluminum production today accounts for a substantial portion of the total supply of aluminum in the United States. According to the Aluminum Association, about 75 percent of all the aluminum ever produced is still in use today. Table 12 below provides statistics on the recovery of aluminum from new and old scrap. In 2016, aluminum recovered from scrap was 3.6 million metric tons, which was over four times primary aluminum production that year (841,000 metric tons). This figure represents secondary production by merchant producers; captive secondary production by downstream aluminum companies is not included.

The USITC study also included an estimate for change in U.S. production and production capacity for secondary unwrought aluminum. The ITC found thatU.S. secondary production capacity increased by 5.6 percent between 2011 and 2015, while actual production increased by 13.4 percent during that timeframe. The USITC report estimates that merchant secondary aluminum producers operated at about 80 percent of capacity in 2015.[50]

Despite its increasing usage, there is insufficient recycled aluminum available to meet growing demand for aluminum. Most of the major downstream aluminum manufacturers rely on a combination of secondary aluminum and primary aluminum in their manufacturing operations. The amount of primary versus recycled aluminum used varies on the specific product and its applications; manufacturers must control the properties of the alloy precisely to meet product specifications, which often requires using primary aluminum.

Moreover, as aluminum is repeatedly recycled, impurities from paint, labels and other metals build up, affecting product composition and performance. A study by materials scientists at the Massachusetts Institute of Technology[51] found that as more and more aluminum scrap its recycled, there are likely to be more problems caused by impurities.

Specialized applications such as airplane parts and electronics require the cleanest materials, for which recycled aluminum is not suitable. The MIT scientists note that there is a need for more research on ways to reduce accumulated contaminants, and that this is an area in which there has been underinvestment to date. As U.S. aluminum capacity shifts away from primary to secondary production, developing methodologies to increase the usability of ever- decreasing quality scrap is of major importance. Since secondary scrap production in the United States is dominated by numerous smaller operations, their investment in R&D in this area is not likely to be sufficient.

Table 12– U.S. Secondary Recovery of New Aluminum and Old Aluminum Scrap
Metric Tons (000)

Year	Scrap Recovery
2011	3,110
2012	3,380
2013	3,420
2014	3,570
2015	3,380
2016	3,610
Note: The data presented on secondary recovery of aluminum are different from those reported by The Aluminum Association in its U.S. consumption information.	
Source: U.S. Geological Survey: Mineral Industry Surveys	

[50] US ITC Report, p. 151.

[51] *http://news.mit.edu/2012/aluminum-recycling-study-0306.*

2. Canadian Primary Aluminum Capacity

The U.S. and Canadian defense industrial bases are integrated. This cooperative relationship has existed since 1956 and is codified in a number of bilateral defense agreements. For example in 1987, DoD (all Services), the Defense Logistics Agency (DLA), the Office of the Secretary of Defense (OSD), and the Canadian Department of National Defence (DND) joined together to form a North American Technology and Industrial Base Organization (NATIBO). NATIBO is chartered to promote a cost effective, healthy technology and industrial base that is responsive to the national and economic security needs of the United States and Canada. Current policy calls for a national defense force that derives its strength and technical superiority from a unified commercial- military industrial base.

While small compared to China's production, Canada is the third largest producer of primary aluminum in the world, with an estimated 3.15 million metric tons produced in 2016, up from 2.83 million metric tons in 2015.[52] There are 10 operational smelters in Canada owned by three companies: Alcoa, Rio Tinto Alcan, and Aluminerie Alouette.

In 2016, Canada exported about 2.3 million metric tons of primary aluminum to the United States—which represents over 70 percent of its total production. Canadian primary aluminum production is important to the U.S. aluminum industry.

3. Downstream Aluminum Production

There are over a thousand companies in the United States involved in the production of downstream aluminum products—such as bars, rods, sheet, plate, extrusions, tubes, pipes, forgings and castings. Many of these are small- and medium-sized businesses that serve specialized markets. The downstream industry is the largest segment of the overall aluminum industry in the United States, and is second in size only to that of China.[53]

This industry segment is diverse—from production of large-volume commodity-grade articles such as can sheet for beverage cans, to high value added goods, including specialized products for the defense sector. Overall, downstream production is a capital-intensive process; some products require sophisticated manufacturing techniques. The U.S. industry is widely considered to be one of the world's most technically advanced.

Due to its size and diversity, there is little publicly available information on the production of the downstream aluminum industry as a whole. According to the American Foundry Association, there are 130 U.S. aluminum foundries in the defense casting supplier database maintained by the Defense Logistics Agency.

These firms—many of which are small businesses—have been identified as qualified suppliers available to produce the over 10,000 distinct aluminum cast components procured by the military.[54]

The U.S. International Trade Commission's report contains data from market research firm CRU Group for U.S. production of certain downstream aluminum products –flat rolled, extrusions, and wire and cable.

For flat-rolled aluminum, which includes HTS categories 7606 (plate, sheet and strip) and 7607 (foil), the U.S. is the world's second largest producer, after China. These types of products are used extensively in automobile and aerospace applications. While U.S. production has been essentially flat between 2012 and 2015, China's production has grown from 6.64 million metric tons in 2011 to 9.2 million metric tons in 2015—a 38 percent increase in just four years. According to CRU, the U.S. flat-rolled aluminum sector is operating at about 70 percent of capacity throughout the period.

Extruded aluminum products (including bars, rods and profiles in HTS 7604 as well as pipes and tubes in HTS 7608) are used mainly in building and construction applications. The U.S. produced 1.9 million metric tons of aluminum extrusions in 2015, with the sector showing modest growth in production over the past four years. U.S. production, while second in the world, is small compared to China's production, which topped 17 million metric tons in 2015. China's production of extrusions accounted for nearly two thirds of global production, and has been increasing year over year (due to demand for China's massive infrastructure development).

U.S. production of aluminum wire and cable is small and declining (*see* Table 13), with just 129,000 metric tons produced in 2015 (ranking fifth in the world after China, India, Canada, and Russia).

For comparison purposes, China produced nearly five million metric tons in 2015 (60 percent of global production). Wire and cable is used in building and construction, and also in electricity transmission and distribution systems.

[52] USGS and Aluminum Association of Canada, January, 2017.

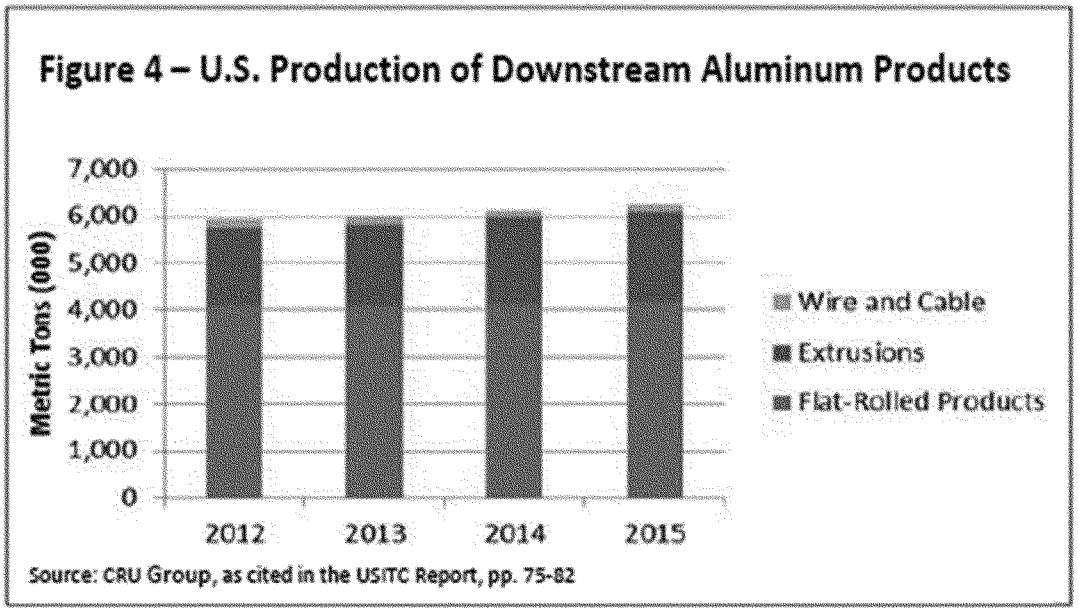
[53] USITC Report, page 142.

[54] Written submission of Doug Kurkul, CEO of the American Foundry Society.

Table 13 – U.S. Production of Wrought Aluminum Products
(000 Metric Tons)

Product	HTS	2012	2013	2014	2015
Flat-Rolled					
HTS 7606, 7607	Production	4,088	4,070	4,130	4,180
	Capacity	5,752	5,772	5,913	6,094
	Capacity Utilization	71%	71%	70%	69%
Extrusions HTS 7604, 7608	Production	1,673	1,728	1,853	1,908
Wire and Cable HTS 7605	Production	168	177	134	129

Source: CRU Group, as cited in the USITC Report, pp. 75-82



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Additional data on the U.S. downstream aluminum industry are available based on the U.S. International Trade Commission's survey (which had a 64 percent response rate). While the survey did not capture the entire U.S. industry, the agency estimated total U.S. production based on these responses. The Table below shows data on U.S. production, capacity, and capacity utilization for downstream aluminum products, based on the responses to the USITC industry survey.

USITC's survey results indicate that production rose 13 percent between 2011 and 2015. The biggest sector of the downstream industry in the United States is flat rolled products (62 percent), followed by extrusion (32 percent). The USITC study also reported on capacity utilization rates for the companies responding to their survey: overall, the downstream industry was operating at 78 percent of capacity. However, this figure varied significantly by product sector: 99 percent for aluminum plate manufacturers (benefiting from strong demand from the auto sector); 62 percent for wire and cable; 72 percent for rod, bar and profile; and just 41 percent for tube and pipe producers.[55]

[55] USITC Report, p. 152

Table 14 – U.S. Production, Capacity, and Capacity Utilization – Wrought Aluminum Products
(000 Metric Tons)

Product	HTS	2012	2013	2014	2015
Plate, Sheet, Strip and Foil (Flat Rolled Products)					
HTS 7606, 7607	Production	4,470	4,266	4,361	4,393
	Capacity	4,965	4,684	4,649	4,735
	Capacity Utilization	90.0%	91.1%	93.8%	92.8%*
Wire					
HTS 7605	Production	454	451	422	445
	Capacity	741	745	720	718
	Capacity Utilization	61.3%	60.5%	58.6%	62.1%
Bars, Rods, Profiles					
HTS 7604	Production	1,597	1,682	1,764	1,835
	Capacity	2,328	2,436	2,508	2,566
	Capacity Utilization	68.6%	69.1%	70.3%	71.5%
Tube and Pipe					
HTS 7608	Production	325	356	402	434
	Capacity	959	994	1,049	1,049
	Capacity Utilization	33.9%	35.8%	38.3%	41.4%
TOTAL					
	Production	6,603	6,754	6,948	7,107
	Capacity	8,750	8,858	8,927	9,068
	Capacity Utilization	75.5%	76.3%	77.8%	78.4%

Source: USITC Survey, USITC Report – "Aluminum: Competitive Conditions Affecting U.S. Industry, " Appendix H, p. 518, July 2017.
*CRU Group reports 69 percent in 2015 for flat rolled aluminum producers

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While USITC survey respondents reported very high levels of capacity utilization in the plate, sheet and strip sector, this capacity utilization rate was markedly higher than the comparable number reported by CRU Group—69 percent in 2015 for flat rolled aluminum producers.

CRU data, as reported in the USITC report, indicate that Chinese flat rolled products manufacturers are operating at only 62 percent of capacity. Although extruded products account for the highest percentage of Chinese wrought aluminum production, the largest amount of U.S. imports from China are in the flat-rolled product categories—plate, sheet and strip (HTS 7606) and foil (7607). It is likely that excess Chinese capacity and production in this segment, for which internal Chinese demand is insufficient, is being unloaded onto world markets, including the United States.

Major U.S. Downstream Aluminum Companies

The leading integrated aluminum production companies in the United States making downstream products include Constellium, Novelis, Aleris, Kaiser, Arconic, and Sapa. While commercial/industrial sectors account for most of their sales, these companies are also major suppliers of aluminum products for the defense industry. While the defense-related production of these companies makes up a small portion of their business, the same equipment is used to make military as well as commercial production. It is large-volume standard products that enable the companies to invest in fixed equipment and capacity that support the production of high-value added products, including defense.

With U.S. headquarters in Atlanta, Georgia, *Novelis* operates 24 facilities in 10 countries; it is a subsidiary of Indian aluminum giant Hindalco. The company has 4,000 employees in the United States at seven production facilities and two research and development/engineering centers. Novelis is the world's largest producer of flat-rolled aluminum products (*e.g.,* plate and sheet) that are used to make beverage cans, building and structural products, and components for cars and trucks; it is also a leading recycler of beverage cans. Novelis states that unfairly priced imports originating from China and elsewhere are putting its U.S. operations at risk. The company was forced to shutter a facility in Kentucky and exit the aluminum converter foil business in 2008; in 2014, it reduced activities at its Indiana facility, exiting the household aluminum foil market due to unfairly priced imports from China.

Kaiser Aluminum, based in California, was founded in 1946 and was once a fully integrated aluminum producer with U.S. smelting operations. Its original smelter was purchased from the United States Government, which built it to satisfy World War II production needs. Kaiser's smelters were shut down in 2000, and the company underwent

bankruptcy in 2002. Today, Kaiser operates 11 fabricating facilities in the United States with 2,700 employees and is a leading producer of aluminum products (sheet, plate, extrusions, rod, bar) for defense, aerospace, satellite, automotive and custom industrial applications. The company has invested $630 million since 2006 to increase capacity, lower costs and improve quality.

Constellium, a Netherlands company with U.S. headquarters in Baltimore, Maryland is also a major manufacturer of downstream aluminum products, with 12,000 employees worldwide. The company designs and manufactures aluminum products for the aerospace, automotive, packaging and defense markets. The United States market generates about 40 percent of the company's $5 billion in revenue. Constellium invested $1.8 billion in its U.S. plants in the last five years, and opened a new R&D facility in Plymouth, Michigan.

In Muscle Shoals, Alabama, Constellium produces cansheet for the packaging industry at its plant with 1,200 employees. Its Ravenswood, West Virginia facility, with 1,050 employees produces advanced alloyed plates for military aircraft, armored vehicles and U.S. Navy vessels. The company partners with the U.S. Army through the U.S. Army Tank Automotive Research Development and Engineering Center (TARDEC) in developing new aluminum solutions for combat vehicles of the future. Constellium states that it has been negatively affected by imports of low-price aluminum plate from China, which have displaced Constellium's products in the market.

Arconic, headquartered in Pittsburgh, Pennsylvania, was created in 2016 when Alcoa split into two companies, manufactures high-value added downstream aluminum products. The company has 22,750 employees in 45 plants in the United States. While part of Alcoa, the company invested over $3.1 billion to modernize facilities since 2009. Arconic is a leading supplier of aluminum products to the DoD—including armor plate, aluminum bulkheads for aircraft, and marine applications. The company (again, as Alcoa), collaborated on R&D and manufacturing with the DoD to develop special alloys and manufacturing processes. Arconic's Davenport, Iowa rolling mill produces high-purity aluminum products needed for such defense programs as the Joint Strike Fighter and Joint Light Tactical Vehicle using a process called fractional crystallization.

Aleris, headquartered in Beachwood, Ohio, is a leading producer of rolled aluminum and extruded aluminum products for the aerospace, automotive, defense, construction and packaging markets. It is also a producer of secondary aluminum made from recycled scrap. The company filed for Chapter 11 bankruptcy in 2009, emerging in 2010 as a privately held company. It has 12 production facilities (nine in the U.S.; two in Europe and one in China) and three ''innovation centers'' (two in Europe and one in Zhengjiang, China). The Chinese R&D center opened in 2014 to support development of aircraft and commercial plate products for Aleris's Chinese plant. Aleris recently completed an expansion of its rolling mill in Lewisport, Kentucky (capacity 220,000 metric tons per year) and began commercial production of body sheet for the automotive industry. Chinese aluminum extrusion company Zhongwang sought to purchase Aleris, but the transaction was withdrawn in November, 2017 due to concerns of the federal Committee on Foreign Investment in the United States (CFIUS).

Sapa Extrusions, a Norwegian company, is the world's leading producer of aluminum extruded profiles and aluminum tubing. Its products are used in many industry sectors, including automotive, heating and ventilation, and building and construction.

The company has 22,800 employees in 40 countries; in North America there are 6,500 employees in 23 facilities. It has four R&D Centers—three in Europe and one in Troy, MI. According to the company's 2016 annual report, North American sales volume was 585,000 metric tons.

D. Domestic Production Is Well Below Demand

In 2016, global primary aluminum consumption was 59.7 million metric tons, reflecting a 5.4 percent year-over-year increase. This was the seventh straight year of significant growth for aluminum consumption, and growth is forecast to continue at this rate.

The world's top five leading consuming countries were responsible for more than 72 percent of total aluminum demand in 2016 (see Figure 5). According to CRU International, the leading aluminum consuming markets in 2016 were China, the United States, and Germany.

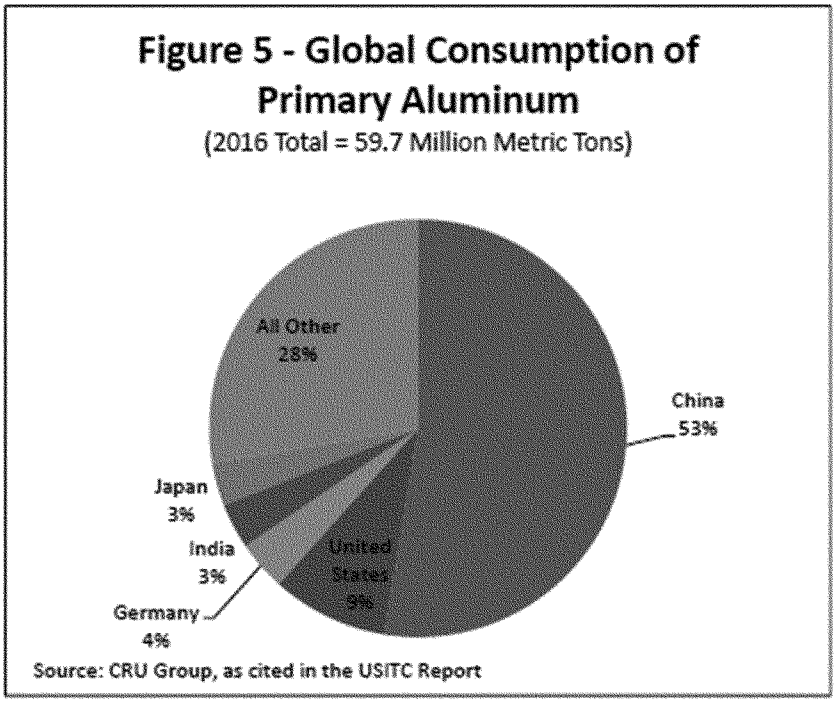

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Table 15 - Apparent North American Aluminum Consumption – By Major Market
Thousands of Metric Tons

Major Market	2015	% of Total	2016	% of Total
Building & Construction	1,421	14	1,468	14
Transportation	4,185	40	4,227	40
Consumer Durables	742	7	795	8
Electrical	799	8	837	8
Machinery & Equipment	768	7	769	7
Containers & Packaging	2,135	21	2,160	20
Other	328	3	312	3
Domestic, total	**10,378**	**100**	**10,583**	**100**

Source: The Aluminum Association (Converted from Millions of Pounds)

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Combined U.S. and Canadian shipments of all types of aluminum (primary, secondary, as well as downstream production of semi-manufactures) totaled 12.0 million metric tons in 2016, according to the Aluminum Association.[56] The transportation sector is the largest North American market for aluminum, accounting for 4.2 million metric tons or 35 percent of total consumption: this sector's use of aluminum is expected to continue to grow as automakers strive to make lighter and more fuel-efficient vehicles. Another major factor in demand from the transportation sector is aircraft; the International Aluminum Institute estimates that that 80 percent of an aircraft's weight is aluminum.

U.S. consumption of primary aluminum has steadily increased rising

[56] U.S. Government statistics are not available for U.S. production or consumption of aluminum other than for primary aluminum; Aluminum Association figure is based on U.S. and Canadian Producer Shipments plus imports and are included in the ''Fact at a Glance-2016,'' December, 2017 (converted to metric tons from pounds) and includes exports (except exports between the U.S. and Canada).

by 46 percent since 2000, according to the CRU International. In 2016, CRU estimates that the United States consumed nearly 5.4 million metric tons, or about nine percent of the world's total consumption of 60 million metric tons of primary aluminum. While China is by far the leading consumer of primary aluminum, its consumption is well below its production level, whereas the United States production is substantially lower than consumption.

The U.S. Geological Survey (USGS) statistics show increases in U.S. apparent consumption[57] of aluminum from 4.13 million metric tons in 2012 to 5.22 million metric tons in 2015 (a 26 percent increase over the 4-year period).[58] U.S. production in 2015 (primary and secondary) totaled just over three million metric tons; domestic production fell even further in 2016, while demand for aluminum continued to increase.

Based on USGS production and U.S. Census statistics for U.S. exports and imports of primary aluminum, U.S. import dependence for primary aluminum was nearly 90 percent of apparent consumption in 2016, up from 64 percent in 2012.

U.S. import reliance increased because domestic primary aluminum production decreased, so U.S. manufacturers by necessity filled their materials needs through imports. Since primary aluminum companies are globalized, some of the imported aluminum was from the foreign business units of U.S.-based companies.

The Aluminum Association uses a different methodology to estimate U.S. consumption[59] of aluminum (including unwrought and mill products). The Association's data show that U.S. aluminum consumption was nearly 10 million metric tons in 2006, before declining during the years of economic crisis that followed and not yet fully recovering. There has been a dramatic increase in the share of U.S. consumption that is satisfied through imports in just the past two years, rising from a stable 51 percent from 2011-2013 to over 64 percent for 2016. This is a direct result of the decline in U.S. primary aluminum production driven by falling prices and expanding non-U.S. production. This increase in imports has occurred in both primary aluminum and downstream products.

Table 16 - U.S. Aluminum Supply/Aluminum Consumption Balance
(Millions of Metric Tons)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Primary	2.28	2.56	2.66	1.73	1.73	1.99	2.07	1.95	1.71	1.59	0.82
Additives	0.05	0.05	0.05	0.03	0.03	0.04	0.04	*0.04*	*0.03*	0.03	0.02
Melt Loss	-0.02	-0.03	-0.03	-0.02	-0.02	-0.02	-0.02	-0.02	-0.02	-0.02	-0.01
Secondary Recovery	4.09	3.98	3.06	2.54	3.17	3.50	3.73	3.98	3.85	3.87	4.06
Imports (Mill Products)	1.58	1.43	1.25	1.07	1.26	1.23	1.29	1.25	1.42	1.60	1.68
Imports (Ingot)	3.47	2.95	2.81	2.93	2.67	2.86	2.93	3.16	3.33	3.40	4.26
Change in Prod Inv.	-0.01	0.00	-0.17	-0.28	0.08	0.02	0.09	-0.03	0.17	0.08	0.02
Total U.S. Supply*	**11.46**	**10.94**	**9.98**	**8.56**	**8.77**	**9.57**	**9.95**	**10.40**	**10.16**	**10.39**	**10.82**
Exports (Mill Products)	1.13	1.09	1.14	0.92	0.98	1.15	1.23	1.29	1.27	1.24	1.22
Exports (Ingot)	0.38	0.37	0.35	0.32	0.38	0.41	0.43	0.42	0.41	0.36	0.30
Total U.S. Consumption	**9.95**	**9.48**	**8.48**	**7.32**	**7.41**	**8.02**	**8.29**	**8.68**	**8.47**	**8.78**	**9.30**
Imports as % of Consumption	**51%**	**46%**	**48%**	**55%**	**53%**	**51%**	**51%**	**51%**	**56%**	**57%**	**64%**

Source: Aluminum Association
Note: Consumption figures cited in this table are slightly lower than those for Table 14, which reports for North America – including Canada and the United States. Table 15 data reports U.S. production and consumption only.

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E. U.S. Imports of Aluminum are Increasing

1. Overview of Aluminum Imports in Aggregate

Overall U.S. imports of the aluminum categories subject to this investigation *combined* (HTS #7601, 7604, 7605, 7606, 7607, 7608, 7609. 7616.99.51.60 and 7616.99.51.70) were valued at $13.0 billion in 2016 − a 15 percent increase over 2013 import levels. For the first ten months of 2017, imports are up 30 percent on a value basis compared to the same period in 2016. These import figures are heavily influenced by changes in global aluminum prices. While imports on a value basis leveled off between 2014 and 2016, this is largely due to declining aluminum prices.

Imports of aluminum on weight basis are a better indication of true trade

[57] Defined as primary production + secondary production + net import reliance for crude aluminum and aluminum semi-manufactures (excluding imported scrap).

[58] USGS, Mineral Commodity Summaries, January 2017.

[59] U.S. apparent aluminum consumption = primary aluminum production + recovery of secondary aluminum + imports of unwrought aluminum + imports of mill products − exports of unwrought aluminum − exports of mill products.

flows, because they are unaffected by fluctuations in prices. By weight, U.S. imports in these aluminum categories were 5.9 million metric tons in 2016, up 34 percent from 4.4 million metric tons in 2013. For the first 10 months of 2017, imports are running 18 percent above 2016 levels on a tonnage basis. There is no leveling off in the level of imports on a volume basis; rather, there has been a consistent increase year over year.

Canada is the leading source of aluminum imports into the United States, accounting for about 43 percent of total imports by both value and weight in 2016. Imports from Canada have been at consistent level over the four-year period at about 2.6 million metric tons per year.

In contrast, imports from the second leading source (by value), China, increased by 70 percent by value and 75 percent by weight between 2013 and 2015. Imports from China by weight were 531,000 metric tons valued at $1.3 billion in 2016, a slight decline from 2015 levels. However, imports from China in all aluminum categories are up by about 33 percent by value and 25 percent by weight for the first 10 months of 2017 compared with the same period last year.

By product category, unwrought aluminum (primary) makes up by far the largest portion of imports—63 percent of the total by value. The second largest category − aluminum plates, sheets and strips—accounts for an additional 19 percent of imports.

The following subsections present detailed information on U.S. imports of aluminum in specific product categories, as the source of the imports varies significantly. In general, the import data are provided in metric tons, which allows for a true picture of trends in import levels (versus import data by value, which fluctuate based on aluminum prices).

Table 17 – U.S. Imports of Aluminum by Country and Value
(HTS 7601, 7604, 7605,7606, 7607, 7608, 7609; 7616.99.51.60 & 7616.99.51.70)

Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	*Thousands of Dollars (000)*						
Canada	6,202,862	6,524,386	6,083,989	5,608,651	4,609,071	5,771,389	25.20%
Russia	525,499	796,395	716,134	1,349,508	1,116,152	1,301,650	16.60%
China	874,443	1,157,244	1,491,461	1,337,719	1,103,326	1,468,632	33.10%
United Arab Emirates	581,412	620,781	661,933	1,029,269	804,818	1,176,366	46.20%
Bahrain	165,496	246,133	282,696	398,164	321,512	498,850	55.20%
Germany	466,761	378,888	397,349	345,715	295,852	232,961	-21.30%
Argentina	229,620	175,859	198,159	330,666	277,140	368,008	32.80%
Qatar	208,908	202,360	224,177	300,731	249,935	269,809	8.00%
France	85,536	160,366	168,485	192,993	164,489	165,625	0.70%
Mexico	186,479	228,357	219,742	189,505	157,617	200,427	27.20%
South Africa	221,733	235,281	178,286	186,206	155,008	322,552	108.10%
Austria	126,088	146,790	158,714	156,761	133,369	131,032	-1.80%
Japan	169,885	187,383	148,852	144,209	120,740	130,365	8.00%
Venezuela	102,845	219,705	126,485	116,038	81,800	159,401	94.90%
India	65,319	87,543	139,038	111,159	91,853	282,515	207.60%
All Other:	1,136,361	1,200,656	1,422,447	1,160,298	965,824	1,417,679	46.80%
Total	**11,349,245**	**12,568,126**	**12,617,948**	**12,957,591**	**10,648,507**	**13,897,259**	**30.50%**

Source: U.S. Census Bureau, accessed through USITC Dataweb

Table 18 - U.S. Imports of Aluminum by Country and Weight
(HTS 7601, 7604, 7605,7606, 7607, 7608, 7609; 7616.99.51.60 & 7616.99.51.70)

Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
Canada	2,677,401	2,631,222	2,661,770	2,759,687	2,274,594	2,478,455	9.0%
Russia	219,256	356,014	309,396	755,487	628,076	625,792	-0.4%
United Arab Emirates	250,852	260,934	292,785	555,857	435,170	569,405	30.8%
China	304,069	410,043	534,940	530,580	438,446	547,127	24.8%
Bahrain	63,522	96,579	114,654	190,042	153,705	213,614	39.0%
Argentina	104,465	79,475	91,182	187,562	157,572	182,004	15.5%
Qatar	94,985	91,731	86,325	115,705	96,155	103,711	7.9%
Germany	96,378	77,074	92,064	85,774	74,418	48,805	-34.4%
South Africa	71,814	83,748	57,037	73,195	60,749	141,600	133.1%
Venezuela	49,999	109,568	67,443	69,526	50,509	82,078	62.5%
India	20,769	31,830	60,041	53,986	45,115	132,014	192.6%
Saudi Arabia	471	14,404	76,132	53,768	44,288	40,620	-8.3%
Mexico	55,320	67,130	62,007	52,852	44,134	56,908	28.9%
Brazil	50,549	37,203	18,748	48,998	35,653	33,010	-7.4%
Indonesia	62,598	60,116	78,013	45,127	34,579	65,007	88.0%
All Other	287,050	335,970	379,703	360,390	309,595	443,793	43.3%
Total	4,409,497	4,743,040	4,982,238	5,938,536	4,882,759	5,763,945	18.0%

Source: U.S. Census Bureau, accessed through USITC Dataweb

Table 19 – U.S. Imports of Aluminum by Product Category
(HTS 7601, 7604, 7605,7606, 7607, 7608, 7609; 7616.99.51.60 & 7616.99.51.70)

Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Type of Aluminum Product By HTS Code	*Thousands of Dollars (000)*						
7601 ALUMINUM, UNWROUGHT	6,903,314	7,656,615	7,331,489	7,909,651	6,435,919	8,678,149	34.80%
7606 ALUMINUM PLATES, SHEETS AND STRIP, OVER 0.2 MM (0.0079 IN.) THICK	2,079,139	2,355,549	2,800,951	2,522,666	2,103,753	2,633,656	25.20%
7607 ALUMINUM FOIL (WHETHER OR NOT PRINTED OR BACKED WITH PAPER OR OTHER BACKING MATERIALS), NOT OVER 0.2 MM (0.0079 IN.) THICK (EXCLUDING ANY BACKING)	901,904	973,504	933,419	909,127	762,763	877,565	15.10%
7604 ALUMINUM BARS, RODS AND PROFILES	643,543	730,516	804,536	799,818	670,860	840,357	25.30%
7605 ALUMINUM WIRE	583,206	596,571	500,410	589,363	485,734	650,235	33.90%
7608 ALUMINUM TUBES AND PIPES	141,497	151,411	156,545	145,324	121,978	136,488	11.90%
7609 ALUMINUM TUBE OR PIPE FITTINGS (INCLUDING COUPLINGS, ELBOWS, AND SLEEVES)	96,643	103,961	90,598	81,641	67,500	80,808	19.70%
TOTAL	11,349,246	12,568,127	12,617,948	12,957,590	10,648,507	13,897,258	23.00%

Source: U.S. Census Bureau, accessed through USITC Dataweb

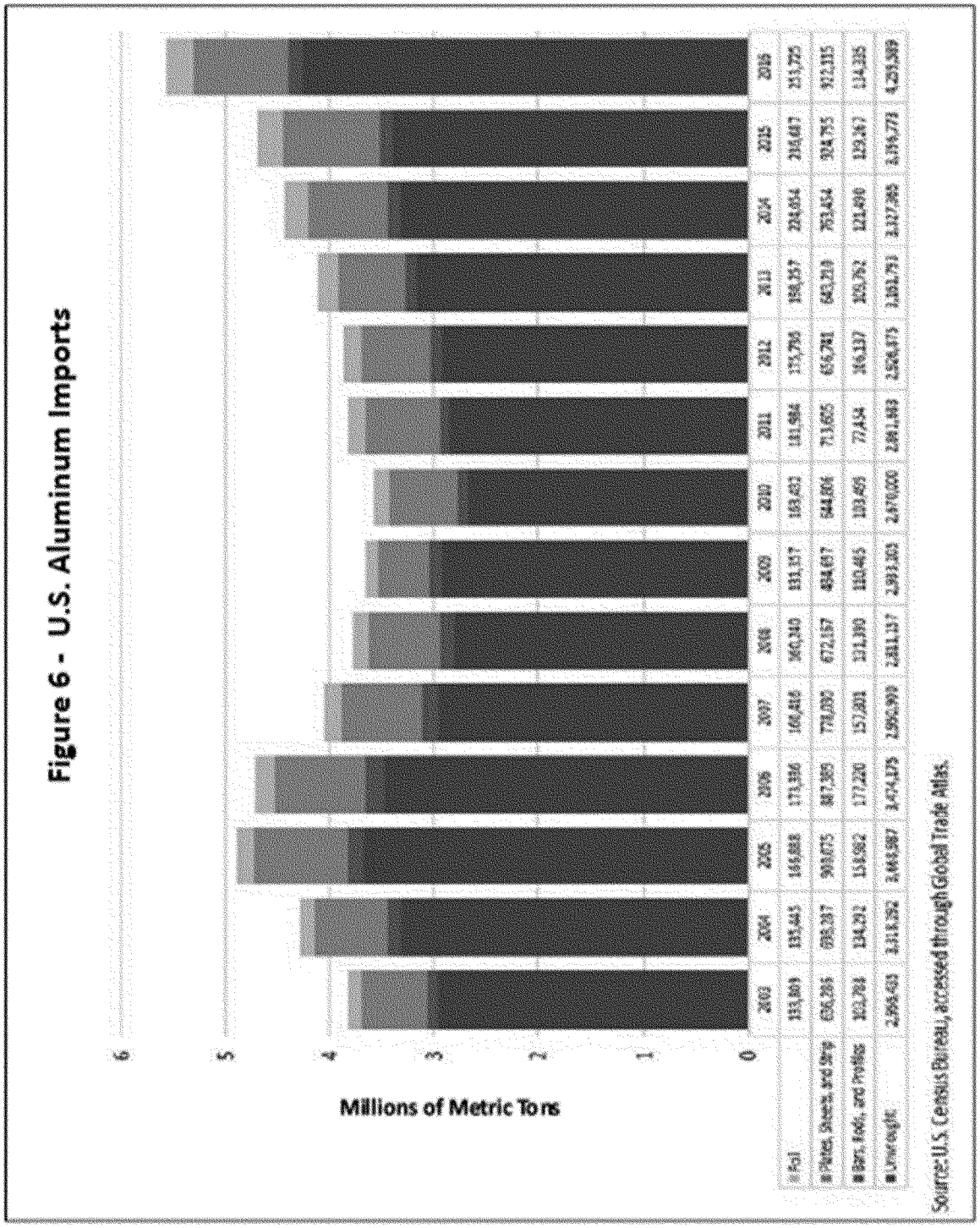
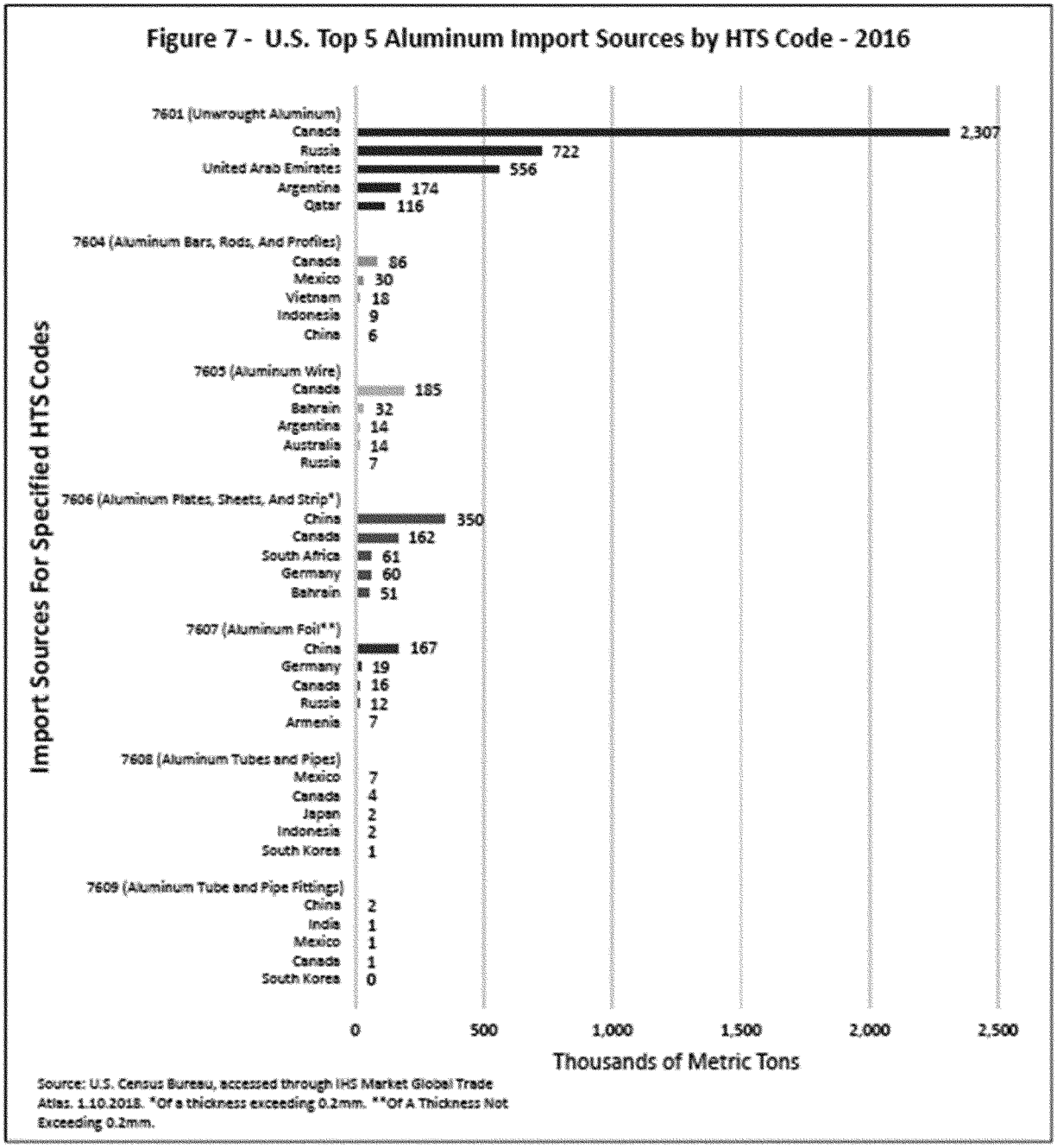


Figure 6 - U.S. Aluminum Imports
Millions of Metric Tons
0
1
2
3
4
5
6
Source: U.S. Census Bureau, accessed through Global Trade Atlas.



2. Unwrought Aluminum Imports

Of total U.S. aluminum imports, unwrought (primary) aluminum accounted for the bulk by weight (4.3 of 6.5 million metric tons), with a total value of $7.9 billion. U.S. imports of unwrought aluminum have increased dramatically in recent years—nearly 40 percent by weight since 2014. In 2016, of the total U.S. imports of 4.3 million metric tons, the majority was from Canada (54 percent), followed by Russia (16 percent), United Arab Emirates (13 percent), Argentina (4 percent), Qatar (3 percent); the rest of the world accounted for 10 percent. While still not among the top sources, imports from Oman, South Africa and Venezuela have shown tremendous growth in the past year.

Table 20 – U.S. Imports of Unwrought (Primary) Aluminum (HTS 7601)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
Canada	2,273,784	2,215,438	2,235,854	2,306,770	1,890,587	2,097,491	10.90%
Russia	189,599	325,420	279,980	721,614	599,295	581,465	-3.00%
United Arab Emirates	250,432	260,921	292,764	555,824	435,164	567,504	30.40%
Argentina	97,495	72,189	85,944	173,714	145,992	171,162	17.20%
Qatar	94,985	91,731	86,325	115,705	96,155	103,708	7.90%
Bahrain	29,268	53,873	74,423	106,592	91,675	97,582	6.40%
Venezuela	49,997	108,302	66,937	66,895	48,458	78,204	61.40%
Saudi Arabia	469	14,403	76,130	53,082	44,288	30,246	-31.70%
Brazil	33,923	22,372	3,701	28,828	18,912	8,389	-55.60%
India	8	322	38,795	26,497	22,537	91,135	304.40%
South Korea	14,841	15,283	16,364	14,624	12,560	10,951	-12.80%
South Africa	12,434	26,282	9,873	12,006	8,972	99,181	1005.50%
Mexico	25,262	32,485	22,660	11,864	9,619	16,052	66.90%
France	4,259	8,607	10,874	9,994	8,308	7,944	-4.40%
Oman	0	35	0	9,154	9,154	13,564	48.20%
All Other	85,037	79,704	96,186	46,226	41,188	136,705	231.90%
TOTAL	**3,161,793**	**3,327,367**	**3,396,772**	**4,259,587**	**3,482,864**	**4,111,283**	**18.04%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Aluminum Bars, Rods and Profiles

For aluminum bars, rods and profiles (HTS 7604) the total value of U.S. imports (from all sources) in this category was $801 million in 2016, down slightly from $804 million in 2015. By weight, there was a slight increase in import levels in 2016 over 2015 levels (200,000 metric tons). Canada and Mexico are major players in this category. Imports from China fell off beginning in 2015 from earlier levels. Imports from Vietnam increased dramatically during the period, rising by over 800 percent between 2013 and 2016, with the trend continuing in 2017. Some industry analysts have observed that a portion of the imports in this category from Vietnam are likely Chinese products that are being transshipped to avoid duties.

Table 21 - U.S. Imports of Aluminum Bars, Rods & Profiles (HTS 7604)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
Canada	78,733	84,031	91,062	85,820	72,619	76,400	5.20%
Mexico	19,377	24,234	26,603	29,992	25,173	27,765	10.30%
Vietnam	1,846	3,706	9,029	17,751	14,965	19,318	29.10%
Indonesia	2,441	6,833	8,872	8,852	7,057	9,309	31.90%
China	9,196	9,700	5,327	5,910	4,842	3,847	-20.50%
Colombia	2,438	2,564	4,107	5,806	4,895	6,404	30.80%
Malaysia	4,799	3,835	5,152	5,380	4,701	5,531	17.70%
Russia	5,445	6,628	6,076	4,715	3,906	5,823	49.10%
Germany	4,088	4,708	4,289	4,154	3,277	3,839	17.10%
Italy	3,307	4,422	4,168	4,093	3,342	5,163	54.50%
Dominican Republic	2,624	3,021	4,325	3,923	3,371	2,433	-27.80%
India	1,770	2,902	2,408	2,559	2,175	2,880	32.40%
Israel	64	1,194	1,394	2,424	2,198	2,154	-2.00%
Slovenia	2,717	2,739	2,424	2,423	2,134	2,028	-5.00%
Belgium	1,685	1,960	2,281	2,319	1,933	1,808	-6.50%
All Other	11,890	11,634	13,571	16,694	13,688	22,248	62.50%
TOTAL	152,421	174,111	191,086	202,815	170,275	196,952	15.67%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Aluminum Plate, Sheet and Strip

Aluminum plates, sheets and strip (HTS 7606) are the second largest category of imports (after unwrought aluminum) with a total value of $2.5 billion in 2016. On a weight basis, imports were essentially unchanged in 2016 compared to 2015 levels, but data for the first 10 months of 2017 show a nearly 20 percent increase over the same period in 2017.

Over a third of total imports came from China, and imports from China are on the rise again (after tapering off in 2016). Canada, South Africa, Bahrain and Germany also supply significant amounts of plates, sheet and strip. Imports from Indonesia are on the rise in this category, double in 2017 over 2016 levels.

Table 22- U.S. Imports of Aluminum Plate, Sheet & Strip (HTS 7606)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
China	173,449	264,943	369,291	349,628	289,567	381,705	31.80%
Canada	125,513	133,537	152,560	161,642	138,029	129,739	-6.00%
South Africa	59,304	57,428	47,053	61,160	51,750	42,324	-18.20%
Germany	74,509	53,372	62,240	60,049	52,462	29,772	-43.20%
Bahrain	24,634	30,593	34,966	51,224	41,575	48,260	16.10%
Indonesia	59,409	51,719	66,842	33,614	25,051	53,535	113.70%
Austria	20,063	26,032	28,376	30,878	26,487	25,976	-1.90%
Japan	2,109	10,820	22,657	24,697	20,746	19,589	-5.60%
India	16,826	26,982	16,727	22,825	18,647	35,749	91.70%
Greece	18,426	18,089	21,631	19,938	16,023	16,181	1.00%
France	3,070	10,658	9,454	15,913	13,061	21,175	62.10%
Brazil	8,053	6,943	9,858	14,845	12,015	15,993	33.10%
South Korea	998	22,165	18,973	10,744	9,972	8,785	-11.90%
Russia	8,670	8,785	10,190	10,218	8,480	9,059	6.80%
United Kingdom	13,942	9,615	11,653	9,451	8,485	5,217	-38.50%
All Other	34,236	31,559	41,911	47,194	37,510	71,722	91.20%
TOTAL	**643,210**	**763,239**	**924,381**	**924,020**	**769,860**	**914,781**	**18.82%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

3. Aluminum Foil

Aluminum foil imports are presented in the table below. The total value of imports in this category was $910 million in 2016, of which $475 million was from China.

On a weight basis, China dominates, accounting for two thirds of the total imports to the United States in 2016. (Note: Aluminum foil imports from China are the subject of an ongoing antidumping/countervailing duty investigation). *See* Appendix D for more information on trade actions related to aluminum.

Table 23 – U.S. Imports of Aluminum Foil (HTS 7607)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
China	107,130	128,254	151,749	167,464	138,082	152,194	10.20%
Germany	15,380	16,734	17,520	18,705	16,351	12,428	-24.00%
Canada	13,547	13,802	13,521	15,638	13,068	12,635	-3.30%
Russia	126	2,072	7,718	11,803	10,220	13,468	31.80%
Armenia	27,162	26,077	13,787	7,258	6,809	11,647	71.10%
Brazil	8,386	7,778	5,015	5,112	4,513	8,616	90.90%
Austria	3,799	4,136	4,140	3,898	3,385	3,976	17.50%
Sweden	2,326	3,079	3,574	3,505	2,957	2,300	-22.20%
France	3,007	2,969	2,956	2,825	2,372	1,742	-26.50%
South Korea	1,827	1,258	2,279	2,619	2,231	4,039	81.00%
Japan	3,310	3,964	1,275	1,513	1,134	2,158	90.20%
Italy	1,502	1,611	1,425	1,330	1,093	1,007	-7.90%
Turkey	199	290	408	1,021	723	3,512	385.70%
Costa Rica	842	803	999	970	787	2,111	168.30%
Belgium	1,067	555	878	847	740	516	-30.20%
All Other	8,647	10,670	9,370	9,109	7,350	11,913	62.10%
TOTAL	**198,257**	**224,052**	**236,615**	**253,617**	**211,815**	**244,263**	**15.32%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

4. Aluminum Pipe and Tubes

The table below presents data on imports of aluminum pipes and tubes (HTS 7608) as well as pipe and tube fittings (HTS 7609). Unlike the other sectors, imports were down slightly in this category in 2016, but are growing in 2017 due to increases in imports from Mexico. Mexico is the largest supplier in the segment, followed by Canada, China, and Japan.

Table 24– U.S. Imports of Aluminum Pipes and Tubes (HTS 7608-7609)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
Mexico	7,710	7,418	9,247	7,963	6,639	10,222	54.00%
Canada	6,417	7,862	7,785	4,755	4,076	4,103	0.70%
China	3,289	3,817	2,907	2,618	2,147	2,865	33.50%
Japan	2,605	2,656	2,771	2,587	2,110	1,746	-17.20%
Indonesia	0	849	1,799	1,881	1,691	1,153	-31.80%
India	1,610	968	1,174	1,559	1,342	1,840	37.10%
South Korea	964	1,007	1,035	1,490	1,314	989	-24.80%
Taiwan	1,457	1,510	1,341	1,282	1,074	1,144	6.50%
Germany	832	893	963	998	828	804	-2.90%
Israel	107	314	710	932	779	1,003	28.70%
Russia	798	559	455	535	486	400	-17.60%
Vietnam	360	411	651	388	266	811	205.60%
Switzerland	300	336	305	304	231	249	7.50%
France	220	203	210	299	250	184	-26.20%
Italy	103	149	143	162	135	197	45.70%
All Other	1,615	1,615	1,019	982	767	1,093	42.60%
TOTAL	**28,386**	**30,567**	**32,515**	**28,737**	**24,134**	**28,804**	**19.35%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

5. Aluminum Castings & Forgings

Aluminum castings and forgings, the final category addressed in the report, also are an area where imports are on the rise (*see* Table below). Overall, imports are up 11 percent in 2017 (January–October) compared with 2016. China is the leading source of imports; while imports from China fell in 2016 from 2015 levels, they increased thus far in 2017.

Table 25– U.S. Imports of Aluminum Castings and Forgings (HTS 7616.99.50.60; 7616.99.50.70; 7616.99.51.60;7616.99.51.70)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	% Change YTD 2016 -2017
Country	Metric Tons						
China	7,901	9,493	13,146	11,284	9,209	10,068	9.30%
Mexico	3,629	3,548	3,757	2,759	2,369	2,543	7.40%
Taiwan	2,401	2,184	2,262	2,242	1,889	1,288	-31.80%
Canada	1,831	2,086	1,869	2,196	1,781	2,581	44.90%
India	1,105	1,790	1,370	1,479	1,294	1,469	13.50%
Czech Republic	65	69	259	902	825	1,213	47.10%
Japan	34	41	335	491	393	477	21.60%
France	292	285	456	449	365	845	131.50%
Italy	293	452	469	343	298	220	-26.20%
Greece	214	273	232	263	245	202	-17.40%
Thailand	362	433	194	254	186	260	39.60%
Poland	12	74	269	248	186	372	100.00%
United Kingdom	242	178	405	218	185	74	-60.20%
South Korea	137	109	121	216	177	41	-76.60%
Hong Kong	25	26	139	195	173	71	-59.10%
All Other	1,941	2,843	3,977	778	694	771	11.10%
TOTAL	20,484	23,884	29,261	24,318	20,270	22,497	10.99%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

F. United States Aluminum Exports

In 2016, the United States exported a total of $ 6.4 billion in the aluminum product categories subject to this investigation (HTS 7601, 7604–7609, 7616.99.51.60; 7616.99.51.70). The value of U.S. exports fell each year between 2013 and 2016. Exports for the first ten months of 2017 also show a slight decline from the same period in 2016.

The largest category for U.S. exports is aluminum plates sheets and strip ($3.4 billion), followed by aluminum bars, rods and profiles ($1.0 billion) and then unwrought, primary aluminum with $640 million.

Table 26 – U.S. Domestic Exports of Aluminum by Product Category
(HTS 7601, 7604, 7605,7606, 7607, 7608, 7609; 7616.99.51.60 & 7616.99.51.70)

Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Type of Aluminum Product By HTS Code	*Thousands of Dollars (000)*						
7606 ALUMINUM PLATES, SHEETS AND STRIP, OVER 0.2 MM (0.0079 IN.) THICK	3,823,936	3,763,076	3,654,514	3,440,770	2,912,946	2,867,475	-1.60%
7604 ALUMINUM BARS, RODS AND PROFILES	877,081	855,962	864,016	1,048,692	927,545	691,283	-25.50%
7601 ALUMINUM, UNWROUGHT	1,017,585	1,027,678	834,703	639,838	543,750	616,819	13.40%
7607 ALUMINUM FOIL (WHETHER OR NOT PRINTED OR BACKED WITH PAPER OR OTHER BACKING MATERIALS), NOT OVER 0.2 MM (0.0079 IN.) THICK (EXCLUDING ANY BACKING)	513,918	503,743	476,236	458,659	392,299	400,432	2.10%
7608 ALUMINUM TUBES AND PIPES	256,168	285,241	268,566	259,486	221,808	249,122	12.30%
7609 ALUMINUM TUBE OR PIPE FITTINGS (INCLUDING COUPLINGS, ELBOWS, AND SLEEVES)	137,945	161,845	162,389	148,146	122,827	130,193	6.00%
7605 ALUMINUM WIRE	158,700	168,242	153,868	125,886	107,228	103,287	-3.70%
7616.99.51.60, 7616.99.51.70 CASTINGS AN FORGINGS	344,326	334,101	323,698	322,074	266,646	291,516	9.30%
TOTAL	7,129,659	7,099,888	6,737,990	6,443,551	5,495,049	5,350,127	-2.64%

Source: U.S. Census Bureau, accessed through USITC Dataweb

By country, the vast majority of U.S. exports of aluminum products go to neighboring countries and NAFTA partners, Mexico and Canada. By value, these two countries accounted for nearly two thirds of U.S. exports.

U.S. exports to Vietnam had a spike in 2016 that did not occur in any other year (including 2017); a closer look at these exports shows that they were primarily in HTS category 7604, and in particular, HTS 760421, which is ''Aluminum Alloy Hollow Profiles.'' The U.S. also saw a spike in imports from Vietnam in 2016.

The composition of U.S. aluminum exports varies significantly by product category. For unwrought (primary) aluminum, exports to Mexico and Canada account for 92 percent of total U.S. exports by value and 95 percent by weight. Currently, Mexico does not have a primary aluminum smelter due to its inability to provide reliable, steady energy.

Table 27 – U.S. Domestic Exports of Aluminum Products by Country (HTS 7601, 7604, 7605,7606, 7607, 7608, 7609; 7616.99.51.60 & 7616.99.51.70)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016-2017
Country	Thousands of Dollars (000)						
Mexico	2,466,070	2,616,709	2,540,224	2,262,702	1,910,290	2,077,114	8.70%
Canada	2,014,001	2,078,447	1,989,009	1,834,326	1,561,946	1,592,846	2.00%
Japan	230,043	233,545	248,810	291,370	246,276	130,808	-46.90%
China	328,672	306,023	288,155	276,576	230,832	175,285	-24.10%
South Korea	198,976	230,274	270,181	268,555	227,831	207,001	-9.10%
Vietnam	1,756	17,769	31,185	245,575	245,180	1,341	-99.50%
United Kingdom	188,249	216,728	210,718	193,888	167,247	127,559	-23.70%
France	166,581	157,754	154,687	134,378	110,876	89,070	-19.70%
Germany	140,434	150,749	141,555	114,041	93,441	87,323	-6.50%
Guatemala	58,896	63,414	58,220	56,392	46,690	25,173	-46.10%
Brazil	114,821	92,715	60,598	52,613	46,182	37,844	-18.10%
Taiwan	77,091	50,928	54,310	51,983	43,381	45,181	4.10%
Turkey	42,556	29,330	39,549	40,761	35,631	31,397	-11.90%
Israel	54,180	47,801	40,688	40,219	34,895	35,424	1.50%
Singapore	45,086	49,900	44,926	38,011	30,872	28,579	-7.40%
All Other:	1,002,248	757,801	565,173	542,161	463,478	366,666	-20.90%
Total	**7,129,659**	**7,099,887**	**6,737,989**	**6,443,550**	**5,495,049**	**5,058,610**	-7.90%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Table 28– U.S. Exports of Unwrought Aluminum by Value (HTS 7601)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016-2017
Country	Thousands of Dollars (000)						
Mexico	586,992	616,695	495,876	376,711	323,080	350,472	8.50%
Canada	296,882	315,948	249,336	188,746	159,265	185,749	16.60%
France	28,322	15,874	14,047	19,698	15,793	18,601	17.80%
Taiwan	12,819	11,694	12,474	7,816	6,082	9,352	53.80%
Argentina	8,439	5,121	2,748	6,379	6,339	6	-99.90%
Japan	6,855	7,397	7,433	6,116	5,418	6,190	14.20%
Germany	10,421	12,042	11,141	6,099	5,063	5,967	17.90%
The Netherlands	1,050	609	3,712	3,754	3,633	381	-89.50%
South Korea	6,459	5,422	4,967	3,752	3,421	2,389	-30.20%
United Kingdom	3,838	3,454	3,443	3,313	3,091	3,112	0.70%
China	20,777	5,121	2,482	2,221	1,798	2,877	60.00%
United Arab Emirates	36	44	76	2,208	109	8,780	7926.30%
Costa Rica	2,475	631	728	1,914	1,853	163	-91.20%
Singapore	3,953	5,027	3,943	1,609	1,190	1,605	34.80%
Dominican Republic	2,111	518	1,128	1,183	1,183	2,609	120.40%
All Other:	26,156	22,081	21,169	8,319	6,429	18,568	188.80%
Total	**1,017,585**	**1,027,678**	**834,703**	**639,838**	**543,750**	**616,819**	**13.40%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Table 29 – U.S. Domestic Exports of Unwrought Aluminum by Weight (HTS 7601)							
Year >>	2013	2014	2015	2016	2016 Jan - Oct	2017 Jan-Oct	% Change YTD 2016 - 2017
Country	Metric Tons						
Mexico	248,514	251,702	220,829	185,266	158,856	158,510	-0.20%
Canada	121,130	125,426	109,316	94,004	79,347	84,423	6.40%
France	8,282	4,980	4,443	5,895	4,733	5,094	7.60%
Argentina	3,358	1,891	1,138	3,172	3,152	3	-99.90%
Taiwan	4,896	4,260	4,570	3,138	2,448	3,668	49.80%
Japan	1,517	1,932	1,855	1,706	1,397	1,783	27.60%
Germany	3,608	3,429	3,167	1,475	1,157	1,802	55.80%
The Netherlands	352	64	1,296	1,449	1,435	60	-95.80%
United Kingdom	1,058	890	734	886	840	602	-28.30%
Costa Rica	882	225	258	840	825	59	-92.90%
South Korea	2,520	4,141	5,073	728	638	611	-4.30%
China	7,470	929	532	590	424	602	42.00%
United Arab Emirates	15	26	37	584	46	3,473	7436.20%
Dominican Republic	817	84	373	554	554	1,240	123.60%
Australia	129	361	306	272	231	627	171.10%
ALL OTHER	**11,911**	**9419**	**7979**	**1953**	**1583**	**6464**	**308.34%**
TOTAL	**416,458**	**409,762**	**361,906**	**302,517**	**257,668**	**269,012**	**4.40%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

The aluminum plate, sheet, and strip industry segment (HTS 7606) accounts for the biggest portion of U.S. exports of aluminum products subject to this investigation—nearly 900,000 tons valued at over $3.4 billion dollars in 2016. Once again, NAFTA partners Canada and Mexico account for the majority of exports.

Exports in the first 10 months of 2017 are down slightly from 2016 levels, continuing a declining trend that occurred throughout the 2013–2017 period. Overall, since 2013, U.S. exports are down 10 percent by value and weight.

Table 30 - U.S. Domestic Exports of Aluminum Plate, Sheet and Strip By Value (HTS 7606)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Country	Thousands of Dollars (000)						
Canada	1,159,462	1,219,151	1,232,554	1,172,381	998,394	1,034,915	3.70%
Mexico	1,075,112	1,191,241	1,230,767	1,099,531	911,712	1,033,508	13.40%
South Korea	132,557	167,065	196,829	190,856	162,533	152,615	-6.10%
Japan	146,345	148,459	165,085	188,718	161,112	89,159	-44.70%
China	225,497	202,777	201,585	187,273	158,502	120,480	-24.00%
United Kingdom	55,513	74,417	76,706	63,860	56,602	42,168	-25.50%
Germany	83,118	80,940	82,282	59,813	49,668	61,757	24.30%
Guatemala	56,272	60,605	55,550	53,835	44,595	19,695	-55.80%
France	75,691	71,386	65,244	44,200	36,929	41,097	11.30%
Turkey	25,353	16,896	22,636	27,405	25,137	24,152	-3.90%
Brazil	69,056	47,690	28,962	25,887	23,901	19,561	-18.20%
Taiwan	42,579	21,598	18,590	25,754	21,680	24,853	14.60%
Thailand	7,486	9,126	24,080	25,158	21,643	19,036	-12.00%
Malaysia	19,228	17,841	17,311	23,193	19,024	25,815	35.70%
United Arab Emirates	35,500	43,300	22,074	22,529	21,653	2,923	-86.50%
All Other:	615,166	390,585	214,259	230,377	199,862	155,740	-22.10%
Total	**3,823,936**	**3,763,076**	**3,654,514**	**3,440,770**	**2,912,946**	**2,867,475**	**-1.60%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Table 31 – U.S. Domestic Exports of Aluminum Plate, Sheet and Strip By Weight (HTS 7606)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Country	Metric Tons						
Canada	338,547	345,144	371,547	379,670	326,391	299,878	-8.10%
Mexico	295,073	310,147	338,529	318,309	264,429	272,101	2.90%
China	31,080	34,611	33,166	31,179	26,225	20,216	-22.90%
South Korea	21,431	24,496	27,584	27,246	23,211	22,952	-1.10%
Japan	14,839	15,097	17,861	21,815	19,229	9,964	-48.20%
Guatemala	18,297	18,233	18,670	19,631	16,406	6,121	-62.70%
United Kingdom	7,415	10,460	10,955	8,239	7,158	5,886	-17.80%
Germany	10,657	10,670	10,157	7,558	6,288	11,020	75.30%
United Arab Emirates	10,582	12,497	5,358	6,411	6,251	557	-91.10%
France	10,013	10,096	9,627	6,260	5,229	6,194	18.40%
Panama	4,111	4,296	5,061	6,128	4,917	1,675	-65.90%
Saudi Arabia	67,224	38,958	3,796	6,041	4,997	920	-81.60%
Thailand	1,144	1,242	4,656	4,932	4,251	3,575	-15.90%
Taiwan	4,907	3,528	3,174	3,905	3,322	3,603	8.50%
Brazil	13,640	8,955	4,439	3,895	3,579	2,533	-29.20%
All Other:	87,433	58,152	35,616	40,852	36,283	30,401	-16.20%
Total:	936,392	906,583	900,197	892,071	758,166	697,596	-7.99%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

A category of aluminum products that is a significant source of exports for the United States is bars, rods and profiles (HTS 7604) which are most commonly extrusions. Total U.S. exports in these aluminum products were just over one billion dollars in 2016. The export of 82,000 metric tons of these items valued at $233 million to Vietnam in 2016 appears to have been an anomaly.

After increasing significantly in 2016 over 2015 levels, exports of these items were down by a quarter in value in the first ten months of 2017 compared to the same period in 2016; the decline in exports on a weight basis is even greater (42 percent), largely due to the return of exports to Vietnam to typical levels in 2017. Canada and Mexico again account for the bulk of U.S. exports.

Table 32 - U.S. Exports of Aluminum Bars, Rods & Profiles By Value (HTS 7604)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Country	Thousands of Dollars (000)						
Mexico	344,761	323,471	349,301	345,849	299,349	288,552	-3.60%
Vietnam	635	635	21,690	233,561	233,494	213	-99.90%
Canada	237,966	240,556	228,005	195,781	165,399	183,004	10.60%
United Kingdom	51,666	54,652	46,575	50,349	43,412	38,634	-11.00%
Japan	50,603	41,476	37,466	45,316	38,083	19,235	-49.50%
South Korea	36,569	34,179	35,410	44,307	36,851	32,869	-10.80%
China	29,033	33,187	25,761	20,981	17,129	22,055	28.80%
France	18,482	20,028	20,002	20,548	17,263	20,038	16.10%
Israel	27,598	26,277	14,608	20,171	17,299	19,259	11.30%
Germany	10,437	15,852	16,711	13,083	10,938	5,063	-53.70%
Taiwan	5,080	4,360	7,266	5,822	4,741	5,637	18.90%
Brazil	3,992	3,832	3,271	3,945	3,366	2,337	-30.60%
Turkey	6,340	3,645	5,793	3,881	2,997	3,915	30.60%
Italy	4,085	4,656	3,422	3,716	3,095	5,147	66.30%
Singapore	3,621	3,928	3,724	3,264	2,766	4,058	46.70%
All Other:	46,214	45,228	45,013	38,118	31,361	41,264	31.60%
Total	**877,081**	**855,962**	**864,016**	**1,048,692**	**927,545**	**691,283**	**-25.50%**
Source: U.S. Census Bureau, accessed through USITC Dataweb							

Table 33 – U.S. Domestic Exports of Aluminum Bars, Rods and Profiles By Weight (HTS 7604)							
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Country	Thousands of Dollars (000)						
Mexico	70,194	92,274	95,979	89,245	78,209	63,306	-19.10%
Vietnam	119	137	10,689	82,133	82,123	29	-100.00%
Canada	49,690	49,265	46,744	41,215	35,068	37,032	5.60%
United Kingdom	5,492	5,581	4,735	5,100	4,269	4,994	17.00%
Israel	6,604	6,582	3,647	4,972	4,210	4,860	15.40%
South Korea	3,541	3,445	3,281	3,996	3,275	3,417	4.30%
Japan	3,862	3,432	2,722	3,400	2,849	1,424	-50.00%
France	3,587	3,180	3,178	3,153	2,625	2,592	-1.20%
China	3,330	4,113	3,355	2,427	1,921	2,853	48.50%
Taiwan	480	546	881	733	547	911	66.50%
Germany	880	1,056	1,038	656	560	396	-29.20%
Thailand	29	171	747	584	479	753	57.10%
Australia	343	380	434	468	401	359	-10.50%
Singapore	558	577	540	378	305	437	43.20%
Brazil	455	366	327	331	281	200	-29.00%
All other	7,614	7,396	5,300	3,863	3,154	3,761	19.30%
Total	156,777	178,499	183,597	242,655	220,276	127,323	-42.20%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

U.S. exports of aluminum castings and forgings, a relatively small category, were steady for the period 2013 to 2015, before rising in 2016 (*see* table below). Again, this increase in exports is attributed to an anomalous surge in exports to Vietnam. Data for the first ten months of 2017 show increased exports on a weight basis.

Table 34 - U.S. Exports of Aluminum Castings and Forging by Weight
(HTS 7616.99.50.60; 7616.99.50.70; 7616.99.51.60; 7616.99.51.70)

Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct	Change YTD 2016 - 2017
Country	Metric Tons						
Mexico	2,294	2,141	2,479	3,386	2,674	6,469	141.90%
Canada	4,850	3,795	3,402	3,016	2,563	569	-77.80%
France	1,614	1,929	1,921	1,720	1,445	1,250	-13.50%
Japan	594	829	1,231	1,363	1,124	1,663	47.90%
China	1,656	1,551	1,217	1,254	998	3,389	239.70%
Italy	1,647	1,686	1,240	1,093	913	805	-11.80%
United Kingdom	770	787	899	1,083	881	1,066	21.00%
Germany	702	500	435	912	659	1,348	104.50%
Brazil	850	790	601	690	550	403	-26.80%
South Korea	922	959	646	578	456	682	49.50%
Turkey	271	191	272	274	192	189	-1.40%
Spain	351	276	269	253	222	142	-36.30%
Singapore	327	264	255	208	175	193	9.90%
Malaysia	472	605	430	170	150	131	-12.50%
Poland	218	203	191	151	138	112	-18.70%
All Other	2,738	2,207	1,652	1,381	1,164	1,799	-18.84%
Total	20,275	18,713	17,140	17,533	14,304	20,209	54.55%
Source: U.S. Census Bureau, accessed through USITC Dataweb							

G. High Import to Export Ratio

Overall, for the aluminum product categories subject to this investigation (HTS 7601, 7604–7609), 7616.99.51.60; 7616.99.51.70), the United States ran a trade deficit of $7.1 billion in 2016. These data suggest that the trade deficit in aluminum will be larger in 2017.

The table below shows the U.S. trade balance by major trading partners. The U.S. runs substantial trade deficits in aluminum products with Canada, China, Russia, the United Arab Emirates and Bahrain, and the deficit is growing. For the first 10 months of 2017, the total trade deficit is nearly double what it was for the same period in 2016. The U.S. runs a large trade surplus with Mexico in aluminum products—about $2.1 billion in 2016, and a smaller trade surplus with the United Kingdom, Japan and South Korea.

Table 35 - U.S. Trade Balance with Selected Countries All Section 232 Aluminum Categories (HTS 7616.99.50.60; 7616.99.50.70; 7616.99.51.60; 7616.99.51.70)						
Year >>	2013	2014	2015	2016	2016 Jan-Oct	2017 Jan-Oct
Country	Thousands of Dollars (000)					
Mexico	2,371,834	2,455,539	2,387,534	2,173,122	1,826,582	1,942,402
Vietnam	(10,732)	(4,049)	(9,316)	283,067	293,382	(70,256)
Hong Kong	1,313	4,924	(479)	3,678	4,968	(55,437)
South Korea	119,143	79,682	129,516	154,779	128,825	126,470
Japan	50,939	42,402	90,285	135,567	116,124	31,904
United Kingdom	104,149	148,915	141,343	130,094	114,321	101,988
Venezuela	(91,415)	(196,083)	(113,191)	(110,262)	(77,358)	(158,447)
Qatar	(204,933)	(199,549)	(222,726)	(299,067)	(248,714)	(268,725)
Argentina	(210,147)	(166,711)	(191,493)	(320,816)	(268,540)	(365,281)
Bahrain	(163,748)	(245,600)	(282,206)	(397,677)	(321,112)	(496,891)
United Arab Emirates	(537,770)	(569,045)	(631,987)	(996,698)	(775,815)	(1,156,558)
Russia	(526,139)	(796,127)	(713,530)	(1,346,567)	(1,113,618)	(1,298,504)
China	(1,298,588)	(1,480,191)	(1,779,568)	(1,641,203)	(1,358,954)	(1,757,882)
Canada	(4,168,369)	(4,394,953)	(4,029,080)	(3,802,964)	(3,069,832)	(4,189,266)
Overall Total	(5,081,162)	(6,233,445)	(6,589,138)	(7,177,672)	(5,701,277)	(9,268,602)
Source: U.S. Census Bureau, accessed through USITC Dataweb						

The U.S. runs a substantial trade deficit with China, totaling $1.6 billion in 2016; the trade deficit with China in aluminum categories. Unlike the other countries with which the U.S. runs a trade deficit in aluminum (*e.g.,* Canada, Russia, UAE, Bahrain), the imports from China are not in the form of primary aluminum but rather downstream products.

Included in the table is the U.S. trade balance with Hong Kong and Vietnam; while not large in an absolute sense, the trade balance with these countries is volatile from year to year, reflective in unusual trade patterns that may indicate transshipments.

By industry sector, the U.S. trade balance varies: there is a trade surplus in a number of sectors such as hollow profiles and plate, sheet and strip. However, these surpluses are by far overshadowed by the categories in which the U.S. runs a trade deficit—primary aluminum and aluminum powders, foil, and wire.

Table 36 - U.S. Trade Balance by Aluminum Product Category
(HTS 7601; 7604--7609)

Year >>	2013	2014	2015	2016	2016 YTD Jan-Oct	2017 Jan-Oct
Type of Aluminum Product By HTS Code	Thousands of Dollars (000)					
760110 ALUMINUM, NOT ALLOYED, UNWROUGHT	(3,213,230)	(3,160,851)	(2,809,400)	(3,871,305)	(3,015,136)	(4,649,776)
760120 ALUMINUM ALLOYS, UNWROUGHT	(2,672,499)	(3,468,086)	(3,687,386)	(3,398,508)	(2,877,033)	(3,411,554)
760410 ALUMINUM BARS, RODS AND PROFILES, NOT ALLOYED	2,881	31,375	(11,267)	(12,994)	(10,464)	(20,872)
760421 ALUMINUM ALLOY HOLLOW PROFILES	(72,685)	(136,690)	(152,801)	45,720	78,021	(196,575)
760429 ALUMINUM ALLOY BARS, RODS AND PROFILES, OTHER THAN HOLLOW PROFILES	303,343	230,762	223,547	216,147	189,128	68,372
760511 ALUMINUM WIRE OF NONALLOYED ALUMINUM, WITH A MAXIMUM CROSS SECTIONAL DIMENSION OF OVER 7 MM	(347,680)	(333,949)	(308,439)	(418,253)	(339,598)	(504,712)
760519 ALUMINUM WIRE OF NONALLOYED ALUMINUM, WITH A MAXIMUM CROSS SECTIONAL DIMENSION OF 7 MM OR LESS	17,266	10,905	2,872	(894)	(483)	(2,429)
760521 ALUMINUM ALLOY WIRE, WITH A MAXIMUM CROSS SECTIONAL DIMENSION OF OVER 7 MM	(109,490)	(118,502)	(60,143)	(62,610)	(54,856)	(52,755)
760529 ALUMINUM ALLOY WIRE, WITH A MAXIMUM CROSS SECTIONAL DIMENSION OF 7 MM OR LESS	15,397	13,217	19,168	18,280	16,432	12,948

Table 36 - U.S. Trade Balance by Aluminum Product Category - *Continued* (HTS 7601; 7604–7609)						
760611 ALUMINUM NONALLOYED RECTANGULAR (INCLUDING SQUARE) PLATES, SHEETS AND STRIP, OVER 0.2 MM THICK	(36,164)	(32,713)	(45,728)	43,341	32,500	39,153
760612 ALUMINUM ALLOY RECTANGULAR (INCLUDING SQUARE) PLATES, SHEETS AND STRIP, OVER 0.2 MM THICK	1,694,642	1,369,395	847,662	851,659	754,432	163,165
760691 ALUMINUM NONALLOYED PLATES, SHEETS OR STRIP, OVER 0.2 MM THICK, NESOI (OTHER THAN RECTANGULAR OR SQUARE SHAPES)	18,787	45,760	24,525	33,686	26,153	40,176
760692 ALUMINUM ALLOY PLATES, SHEETS OR STRIP, OVER 0.2 MM THICK, NESOI (OTHER THAN RECTANGULAR SQUARE SHAPES)	67,533	25,085	27,104	(10,582)	(3,891)	(8,675)
760711 ALUMINUM FOIL, NOT OVER 0.2 MM THICK, NOT BACKED, ROLLED BUT NOT FURTHER WORKED	(205,299)	(301,531)	(325,798)	(321,609)	(265,163)	(342,571)
760719 ALUMINUM FOIL, NOT OVER 0.2 MM THICK, NOT BACKED, NESOI	(122,812)	(104,362)	(33,748)	(33,372)	(25,138)	(43,718)
760720 ALUMINUM FOIL, NOT OVER 0.2 MM THICK, BACKED	(59,875)	(63,867)	(97,638)	(95,487)	(80,163)	(90,843)
760810 ALUMINUM TUBES AND PIPES, NOT ALLOYED	37,855	37,627	38,987	35,451	30,480	47,665
760820 ALUMINUM ALLOY TUBES AND PIPES	76,816	96,203	73,034	78,710	69,350	64,968
760900 ALUMINUM TUBE OR PIPE FITTINGS (INCLUDING COUPLINGS, ELBOWS, AND SLEEVES)	41,302	57,883	71,792	66,505	55,327	49,385
OVERALL TOTAL	(4,563,912)	(5,802,340)	(6,203,656)	(6,836,115)	(5,420,104)	(8,838,649)
Source: U.S. Census Bureau, accessed through USITC Dataweb						

The U.S. trade deficit is particularly pronounced in the primary (unwrought) aluminum industry segment. The deficit for this category reached nearly $7 billion in 2016, and data for the initial six months indicate that it will be even greater in 2017.

The United States exported very little unwrought aluminum, but imported large amounts from Canada, Russia and other countries. On a weight basis, the U.S. deficit was nearly 4 million metric tons in 2016.

Table 37 - U.S. Trade Balance with Selected Countries Unwrought Aluminum (HTS 7601)						
Year >>	**2013**	**2014**	**2015**	**2016**	**2016 Jan-Jun**	**2017 Jan-Jun**
Country	**Thousands of Dollars (000)**					
Mexico	756,707	791,828	741,779	653,537	337,023	368,797
Saudi Arabia	(548)	(36,695)	(167,235)	(98,931)	(51,604)	(27,031)
Venezuela	(22,768)	(118,071)	(85,208)	(103,022)	(35,662)	(90,060)
Bahrain	(68,317)	(125,142)	(167,568)	(195,003)	(108,432)	(116,343)
Argentina	(195,002)	(152,932)	(184,196)	(297,358)	(128,448)	(165,873)
Qatar	(208,908)	(202,328)	(224,177)	(300,643)	(143,701)	(159,024)
United Arab Emirates	(579,762)	(620,648)	(661,738)	(1,026,925)	(519,748)	(783,000)
Russia	(424,889)	(693,426)	(643,647)	(1,234,395)	(632,628)	(760,662)
Canada	(4,151,656)	(4,408,487)	(4,360,271)	(4,016,914)	(1,931,387)	(2,633,196)
OVERALL TRADE BALANCE	**(5,117,050)**	**(5,876,301)**	**(6,058,537)**	**(6,982,268)**	**(3,374,127)**	**(4,809,136)**
Source: U.S. Census Bureau, accessed through USITC Dataweb						

In the area of semi-finished aluminum products (including bars, rods, plates, sheet and strip), the United States ran a trade surplus in 2016 of $2.2 billion. However, there are certain countries with which the U.S. ran a trade deficit, including China, South Africa, Germany and Bahrain.

The trade deficit with China in particular is substantial and growing in 2017 over 2016 levels. Countries with which the United States ran a trade surplus in are NAFTA partners Mexico and Canada, as well as South Korea, Japan and the United Kingdom.

Table 38- U.S. Trade Balance with Selected Countries Aluminum Semi-Manufactures including Bars, Rods, Plate, Sheet & Tubes (HTS 7604, 7606, 7608, 7609)						
Year >>	2013	2014	2015	2016	2016 Jan-Jun	2017 Jan-Jun
Country	U.S. Trade Deficit - Thousands of Dollars					
China	(243,021)	(426,807)	(677,567)	(619,141)	(300,537)	(490,221)
South Africa	(188,017)	(177,448)	(151,889)	(160,615)	(71,559)	(74,333)
Germany	(200,718)	($101,437)	(150,262)	(145,658)	(83,399)	(58,513)
Bahrain	(73,247)	(91,167)	(101,627)	(133,653)	(70,843)	(72,741)
Austria	(83,404)	(105,111)	(127,130)	(127,604)	(65,330)	(61,655)
Indonesia	(153,022)	(129,779)	(177,619)	(80,308)	(30,402)	(78,366)
Country	U.S. Trade Surplus – Thousands of Dollars					
Saudi Arabia	226,016	137,777	27,080	28,617	11,847	1,232
United Kingdom	39,260	58,818	62,923	50,344	28,176	20,768
Guatemala	56,712	61,629	56,382	54,149	25,616	11,639
Japan	108,006	85,411	57,297	80,283	38,800	6,402
South Korea	107,709	93,995	142,462	157,350	80,959	85,135
Canada	831,265	812,338	717,708	679,807	346,321	363,464
Vietnam	(3,870)	8,222	6,229	1,182,487	230,308	(19,718)
Mexico	1,272,233	1,346,203	1,440,162	1,343,950	678,883	708,834
OVERALL TRADE BALANCE	**2,031,686**	**1,680,024**	**1,086,855**	**2,234,466**	**783,431**	**198,001**
Source: Source: U.S. Census Bureau, accessed through USITC Dataweb						

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H. Impact of Imports on the Welfare of the U.S. Aluminum Industry

1. Declining Employment

The table below presents a snapshot of direct employment in the U.S. aluminum industry, by sector, based on data collected for the Aluminum Association. The loss of jobs in the primary aluminum sector has been precipitous between 2013 and 2016, falling 58 percent as several smelters were either permanently shut down or temporarily idled.

Other (older) data from the association indicated that in 2010, employment in the Alumina Refining/Primary Aluminum sector totaled 21,600; employment in that sector declined by 75 percent in just six years. Employment in secondary production was 6,400 in 2010, so that segment of the industry has nearly doubled in employment by 2013, but has not increased substantially since then.

Employment in the other segments of industry has seen moderate growth over the past three years as demand for aluminum has grown, with aluminum foundries and manufacturers of semi-finished goods such as plates, sheets, and extrusions showing the strongest growth (and also accounting for the largest level of employment). Data from 2010 found that employment in ''semi-fabrication'' facilities was 101,000, and in Service Centers, 27,000.

Table 39 – U.S. Aluminum Industry Direct Jobs by Sector			
INDUSTRY SECTOR	**2013**	**2016**	**% Change 2013-2016**
Alumina Refining/Primary Aluminum	12,787	5,379	-58%
Secondary Production/Alloying	11,538	11,747	+2%
Sheet/Plate/Foil/Extrusion/Coatings	62,465	67,155	+8%
Foundries	36,484	41,552	+14%
Forgings	10,328	10,442	+1%
Metal Service Centers	23,142	24,633	+6%
TOTAL	**156,744**	**160,888**	**+3%**
Source: Aluminum Association			

Information on employment in the domestic aluminum industry is also available from the Bureau of the Census' Annual Survey of Manufactures, which includes data on the Alumina and Aluminum Production and Processing industry (North American Industry Classification System (NAICS # 33131)). The table below presents employment data from the Annual Survey of Manufactures for 2013–2015, the latest year for which data are available. The employment data, too, show declining employment in the primary aluminum sector between 2013 and 2015, but do not reflect the jobs lost in 2016 as additional smelters closed. These data also show relatively stable/slightly growing employment in other industry sectors.

Modern aluminum production—particularly production of high-purity aluminum needed for critical infrastructure and military applications—is a complex and technical process. It requires a trained, skilled workforce that in some cases requires a decade or more of experience. As smelting facilities close, the loss of this skill-base is eroding and the workforce will become increasingly difficult to bring back.

While the primary aluminum industry sector has seen dramatic job losses in recent years, the downstream industry is likely to suffer as well in the future as foreign aluminum overcapacity drives into the domestic value-added industry sectors. This is already happening as evidenced by growing imports of aluminum semi-manufactured products.

Table 40–Employment in Aluminum Industry, NAICS Based				
NAICS #	**Sector Description**	**2013**	**2014**	**2015**
33131	Alumina & Aluminum Production and Processing (All Subsectors Combined)	56,381	54,953	56,381
331313	Alumina & Primary Aluminum Production	8,652	7,038	7,816
331314	Secondary Smelting & Alloying of Aluminum	5,672	5,560	6,174
331315	Aluminum Sheet, Plate & Foil Manufacturing	17,799	17,936	18,589
331318	Aluminum Rolling, Drawing & Extruding	24,258	24,419	24,900
NAICS = North American Industry Classification System, www.census.gov				
Source: Bureau of the Census, Annual Survey of Manufactures				

2. Poor Financial Status of the U.S. Aluminum Industry

Upstream Industry Sector

Low global aluminum prices and soaring imports due to overcapacity in the aluminum sector have damaged U.S. aluminum companies. *See* Appendix E for more information on global excess aluminum production. High costs for electricity are also a major factor affecting the U.S. aluminum industry, which is energy- intensive. As a result of adverse market conditions, in 2017, there are only two major players in remaining the domestic primary aluminum industry: Alcoa and Century Aluminum. Three other companies have declared bankruptcy in recent years and no longer have any operating aluminum smelters in the United States.

Noranda Aluminum (a Canadian company with U.S. smelting operations) filed for Chapter 11 bankruptcy in February 2016, citing high power prices and low prices for aluminum and the bauxite from its mine in Jamaica. Its New Madrid, Missouri smelter was shut down in March 2016. The facility was recently purchased by ARG International, a Swiss holding company, but its future as an aluminum smelter

(now known as Magnitude 7 Metals) is uncertain.[60]

Another former participant in the primary U.S. aluminum industry, Ormet, declared bankruptcy and sold its shuttered aluminum plant to a land developer in 2014. Ormet cited lower aluminum prices, Chinese competition, and high energy costs as the reasons for its financial problems.[61] One more casualty of poor market conditions was Columbia Falls Aluminum Company of Montana (owned by Glencore AG of Switzerland), which permanently closed and demolished its plant facilities in 2015; its smelter had been mothballed since 2009.[62]

Financial performance of upstream aluminum companies was particularly poor between 2013 and 2016, when aluminum prices began to fall sharply.

Chinese production of aluminum soared, and imports into the United States surged. The three publicly traded companies posted negative net incomes for much of those years. Alcoa and Noranda operated at a loss in three of the five years, including the two most recent years. Century Aluminum only had positive net income in one of the five years (2014). In 2016, the three remaining primary aluminum companies reported operating losses totaling $912 million. *See* the Table below.

While the two smaller aluminum manufactures posted relatively stable sales/revenue during the period, the biggest player, Alcoa, saw sales drop drastically between 2014 and 2015. That trend continued in 2016. Over the past several years, Alcoa attempted to adjust to the market realities facing the aluminum sector by shutting down or selling high cost upstream assets and investing in assets that produce value added products. In 2015, Alcoa announced planned production curtailments of 503,000 metric tons of aluminum and 1.2 million metric tons of alumina to ensure continued competitiveness amid deteriorating market conditions.[63]

As part of this strategy, in 2016, after 128 years of operating as a vertically integrated aluminum company, Alcoa split the company into two separate entities. Alcoa Corp. retained the upstream commodity assets including primary aluminum smelters, bauxite mines, alumina refineries, and power plants. Arconic, Inc. owns the downstream, value-added fabrication businesses, including rolling mills and associated secondary aluminum capacity, as well as specialty metal, aerospace and automobile product assets.

Financial analysts are bullish on the restructured Alcoa, predicting its sales revenues to grow by 25 percent in 2017 and by single digits in 2018. This optimism is predicated on improving market conditions in alumina and aluminum sectors based on strong demand and higher aluminum metal prices. However, the majority of Alcoa's production operations are no longer in the United States, and its financial success is based on its global operations in bauxite, alumina, aluminum smelting, and limited rolling and casting.

The domestic upstream industry showed improved financial performance in the first quarter of 2017, largely due to improved market pricing of aluminum.

Alcoa's First Quarter 2017 results (its first full quarter since spinning off its downstream businesses) showed a positive Net Income of $225 million ($1.21/share); Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) was $533 million, up 59 percent due to higher alumina and aluminum pricing. The company expects its full year 2017 adjusted EBITDA of between $2.1 and $2.3 billion.

Century Aluminum Company (CENX), too, reported improved First Quarter 2017 results, although it still posted a net income loss. The company had an Adjusted EBITDA of $22 million 1Q17 vs. $12 in 4Q16. The company's net loss in 1Q17 was $5 million, compared to $12 million loss in 4Q16. As a whole, the three primary aluminum companies together had EBITDA of $2.273 billion in 2012, but this figure decreased to $1.114 billion for 2016, a 50 percent decline.

While the U.S. industry is seeing an uptick in demand and better pricing, it is not clear that this can be maintained given the rise of imported aluminum products, which are steadily eroding the customer base for domestic production. A sustained improvement in profitability over many quarters is needed for companies to stabilize and recover from financial losses suffered over the past 10 years.

[60] *http://www.reuters.com/article/us-bankruptcy-noranda-aluminum-idUSKCN1212T7.*

[61] *http://www.peoplesworld.org/article/shutdown-of-ohio-aluminum-giant-ormet-appears-final/.*

[62] *http://www.dailyinterlake.com/archive/article-a06557e8-c1bc-11e4-ab8c-d7b2b1bc3deb.html.*

[63] *https://www.alcoa.com/global/en/who-we-are/history/default.asp.*

Table 41 – Aluminum Smelter Company Key Financial Statistics						
Trading Symbol	Company	2012	2013	2014	2015	2016
Sales Revenue						
AA	ALCOA	$26.68B	$23.06B	$23.88B	$11.22B	$9.33B
CENEX	CENTURY	$1.27B	$1.45B	$1.93B	$1.95B	$1.32B
NORNQ	NORANDA	$1.56B	$1.39B	$1.34B	$1.36B	$1.23B
NET INCOME						
AA	ALCOA	$191M	($2.29)B	$268M	($868)M	($400)M
CENX	CENTURY	($36.61)M	($40.31)M	$103.28M	($47.73)M	($252.42)M
NORNQ	NORANDA	$140.9M	$49.5M	($47.6)M	($26.6)M	($259.6)M
EBITDA						
AA	ALCOA	$2.00B	$2.57B	$3.53B	$1.77B	$1.10B
CENX	CENTURY	$53.99M	$37.06M	$214.92M	$66.54M	$29.8M
NORNQ	NORANDA	$219.6M	$133.1M	$83.2M	$107.4M	($15.5)M
B = Billions of Dollars; M = Millions of Dollars						
Source: Company Financial Statements						

Financial Performance of Downstream Aluminum Companies

The downstream sector as a whole experienced modest job growth across a range of industrial sectors between 2013 and 2016 based on increased demand for their products (such as the growing automotive sector). Downstream manufacturers of aluminum products have made investments in capital equipment to improve their manufacturing capabilities. According to the Aluminum Association, their member companies have invested $2.3 billion since 2013 in facilities to produce aluminum products—including aluminum sheet for automotive applications.

To date, the downstream sector has largely remained profitable by shifting production to markets not yet affected imports. Some formerly vertically-integrated companies have shifted to production of higher value-added products (*e.g.,* Arconic, Kaiser). Among the sectors hardest hit by soaring aluminum imports is the U.S. foil industry, which has all but disappeared. Alpha Aluminum closed its North Carolina foil facility in July, 2015 and Novelis idled its Terre Haute, IN foil plant in April, 2014.

While the impact of imports on the downstream industry sector has so far been limited to certain product categories, the USITC noted that Chinese firms are striving to enter the more profitable automotive and aerospace markets.[64]

3. Research and Development (R&D) Expenditures

Research and development in the aluminum sector is important—it has made possible new applications for this material and has enabled more effective manufacturing processes. Because aluminum is lightweight, resistant to corrosion, high strength and recyclable, it is an essential material for modern economies. Exploiting the material's properties required focused R&D.

Some areas of research that are important include reducing the high energy usage in smelting (which accounts for an estimated 30 to 40 percent of the cost of production) and reducing the undesirable by-products of smelting, such as pollution. R&D is also important to meet regulatory requirements; and developing new markets, processes, and products for various market sectors, including automotive, aerospace, packaging, and construction.

Arconic (formerly a part of Alcoa) is a leader in research and development in the aluminum industry. After establishing its first facility dedicated to improving production processes and finding new applications for aluminum in 1930, Alcoa established the Alcoa Technical Center outside of Pittsburgh in 1965 as a center for innovation. A success story of innovation, in 2005 Alcoa (now Arconic) signed a $1.1 billion, 10-year agreement with jet engine maker Pratt & Whitney to supply key engine parts. This supply pact included forging for the first-ever aluminum fan blades for jet engines.

As recently as 2015, Alcoa undertook a $60 million expansion of its Technical Center to pursue the development of advanced 3D printing materials and manufacturing processes to meet increasing demand for complex, high-performance 3D-printed parts for aerospace, automotive, medical, building and construction and other high-growth markets.

Of the three remaining companies with U.S. smelting operations in 2016, Alcoa is the only company to report spending on Research and Development over the past five years in its financial statements; Century Aluminum and Noranda reported zero spending on R&D since 2012.

Despite its long history of innovation in the aluminum industry, poor market conditions and financial health have apparently significantly affected both Alcoa's and Arconic's research and development efforts. Alcoa's R&D expenditures plunged from $95 million in 2014 to $33 million in 2016.[65] In the first quarter of 2017, Alcoa's R&D spending was $7 million (an annualized $28 million), a reduction attributable to the creation of Arconic as a completely separate business, and declining aluminum earnings.

[64] USITC Report, p. 148.

[65] Alcoa Corp., 2016 10-K Securities and Exchange Commission financial report, Statement of Consolidated Operations.

Most of Alcoa's R&D assets went to Arconic in the split. In 2016, Alcoa eliminated 90 positions at its technical center as part of an efficiency initiative; this followed a previous elimination of 50 workers in 2015. Alcoa is leasing a single R&D building at Arconic's New Kensington, PA R&D campus (previously Alcoa's R&D complex) for three years. Arconic reported R&D expenditures of $100 million for 2015, $132 million for 2016, and the company projects spending of [TEXT REDACTED] in 2017.[66]

Limitations on the funding of research and development caused by sliding revenues could have serious implications for development of next-generation aluminum-based products, including those required for U.S. national security. U.S. defense programs continue to rely on strong, lightweight aluminum for use in engine parts and structural components for aircraft, military vehicles, equipment, armor and many other applications. Aluminum is a critical part of any armor solution because it has better blast absorption characteristics. More than 90 percent of all alloys currently used in the aerospace industry were developed through Alcoa's research.

While downstream aluminum companies continue to conduct R&D in specific areas, the absence of fully integrated aluminum companies in the United States may be an inhibiting factor in development of next generation aluminum technologies.

4. Capital Expenditures

According to the Aluminum Association, since 2013 their member companies have invested $2.3 billion in facilities to produce downstream aluminum products. The USITC's survey of downstream aluminum companies indicated that capital investment was on the increase, rising by 65 percent from 2011 to 2015; much of this investment was by companies involved in the plate, sheet and strip industry segment.[67]

In the secondary aluminum industry, the ITC's survey found an average of

$291 million per year of investments, with merchant producers accounting for 60 percent of the investments. There was also a significant greenfield construction by a foreign firm (Shandong Nanshan Aluminum Co.), which built a captive secondary aluminum/extrusion mill in Lafayette, IN.[68] Foreign investors that increased capacity through capital investment include Toyota Tsusho America, which purchased U.S.-based merchant producer Bermco in 2015.

In the downstream wrought aluminum industry, the US ITC survey indicated that capital spending rose 65 percent between 2011 and 2015, to $995.3 million. Two thirds of this investment was by the flat rolled plate sector, which is due to the fact that the sector is experiencing demand growth and the high costs associated with rolling mill equipment compared to extrusion presses.[69]

Information on capital expenditures by the U.S. aluminum industry is available through the Bureau of Census' Annual Survey of Manufactures (NAICS #33131—Alumina and Aluminum Production and Processing) and is presented in the Table below.

Table 42 –Total Capital Expenditures by Aluminum Industry
(Millions of Dollars)

NAICS #	Sector Description	2013	2014	2015
33131	Alumina& Aluminum Production and Processing (All Subsectors)	$1,145	$1,037	$1,285
331313	Alumina & Primary Aluminum Production	$164	$156	$166
331314	Secondary Smelting & Alloying of Aluminum	$110	$109	$139
331315	Aluminum Sheet, Plate & Foil Manufacturing	$615	$521	$789
331318	Aluminum Rolling, Drawing & Extruding	$256	$251	$191
NAICS = North American Industry Classification System, www.census.gov				
Source: Bureau of the Census, Annual Survey of Manufactures				

These data include the total new and used capital expenditures reported by establishments in operation, including any known plants under construction, permanent additions, and major alterations to manufacturing and mining establishments, and new and used machinery and equipment. The table above shows that capital expenditures by the industry as a whole have been largely consistent over the three-year period. Capital investment by the primary and secondary aluminum smelting sectors account for a relatively small percentage of the total. The majority of capital expenditures are made by establishments in the downstream sector of the industry. As noted previously, 2015 is the most recent year for which this information is available; data for 2016 would likely show a decline in capital expenditures by the primary aluminum sector.

The USITC report on the Competitive Conditions Affecting the U.S. Aluminum Industry noted that several U.S. firms planned upgrades to smelting operations, but did not proceed due to financial considerations and market conditions. For example, in 2012 Alcoa announced plans to replace antiquated pot lines at its Massena East smelter, but cancelled the modernization plan in 2015—and instead shut down the facility. Noranda also planned to

[66] Arconic R&D figures are extrapolated from Alcoa's R&D program prior to Arconic's formation. Anne McInerney, Director of Federal Affairs, Arconic.

[67] USITC Report, p. 146–147.

[68] USITC Report, p. 141–142.

[69] USITC Report, p. 147.

upgrade its New Madrid, MO smelter, prior to the company declaring bankruptcy in 2016.[70]

5. Aluminum Prices

Aluminum is an exchange-traded commodity and global market prices for aluminum are determined on the basis of global supply and demand. The London Metal Exchange (LME) is the world's largest exchange for base and other metals, including aluminum. In Asia, the Shanghai Futures Exchange (SHFE) is a major commodity exchange for unwrought aluminum contracts. Aluminum contracts for the United States and Europe are traded on the LME. Aluminum prices in China are set on the SHFE. The LME price of aluminum is used as the global reference point both in the metal industry and in the investment community.

The price chart for aluminum on the LME illustrates the price weakness seen over recent years. The fundamental reason for the price drop is chronic oversupply, despite healthy growth in global demand for aluminum and stable costs of production. In fact, demand has increased by over nine times over the past decade and a half.

The oversupply situation in the global market is primarily caused by developments in the Chinese aluminum industry. Chinese consumption rose from 3.2 million metric tons in 2001 to 29.2 million metric tons in 2015. At the same time, production in the country increased by almost 14 times.

In 2016 the world produced a total of 57.6 million tons of aluminum of which 31 million (54 percent) came from China. The result is that in 2015, there were huge stockpiles of aluminum in the world with nearly 3 million tons on the London Metal Exchange, the world's primary market for trading in nonferrous metals. Since then, there has been a drawdown in global LME warehouse inventories to just over 2 million tons.

The figures below show prices on the London Metals Exchange for aluminum. First, the recession of 2008 is readily evident in the figure. After bottoming out in 2008–2009, the price of aluminum recovered, only to fall dramatically between 2011 and 2016 in response to global oversupply. The price drop for aluminum was particularly dramatic in 2015. In November, 2014 the LME price for aluminum was as high as $2,100 per metric ton; one year later the price was less than $1,500 per metric ton. Aluminum prices on the LME fell 18.6 percent in 2015 reaching a six-year low at $1,475 per ton, or an average of 75 cents per pound, and less than 73 cents per pound on average for 2016.

The sharp drop in aluminum prices had a devastating effect on the U.S. industry—a number of U.S. smelters were forced to either temporarily or permanently halt operations during 2014–2016; two primary aluminum producers declared bankruptcy.

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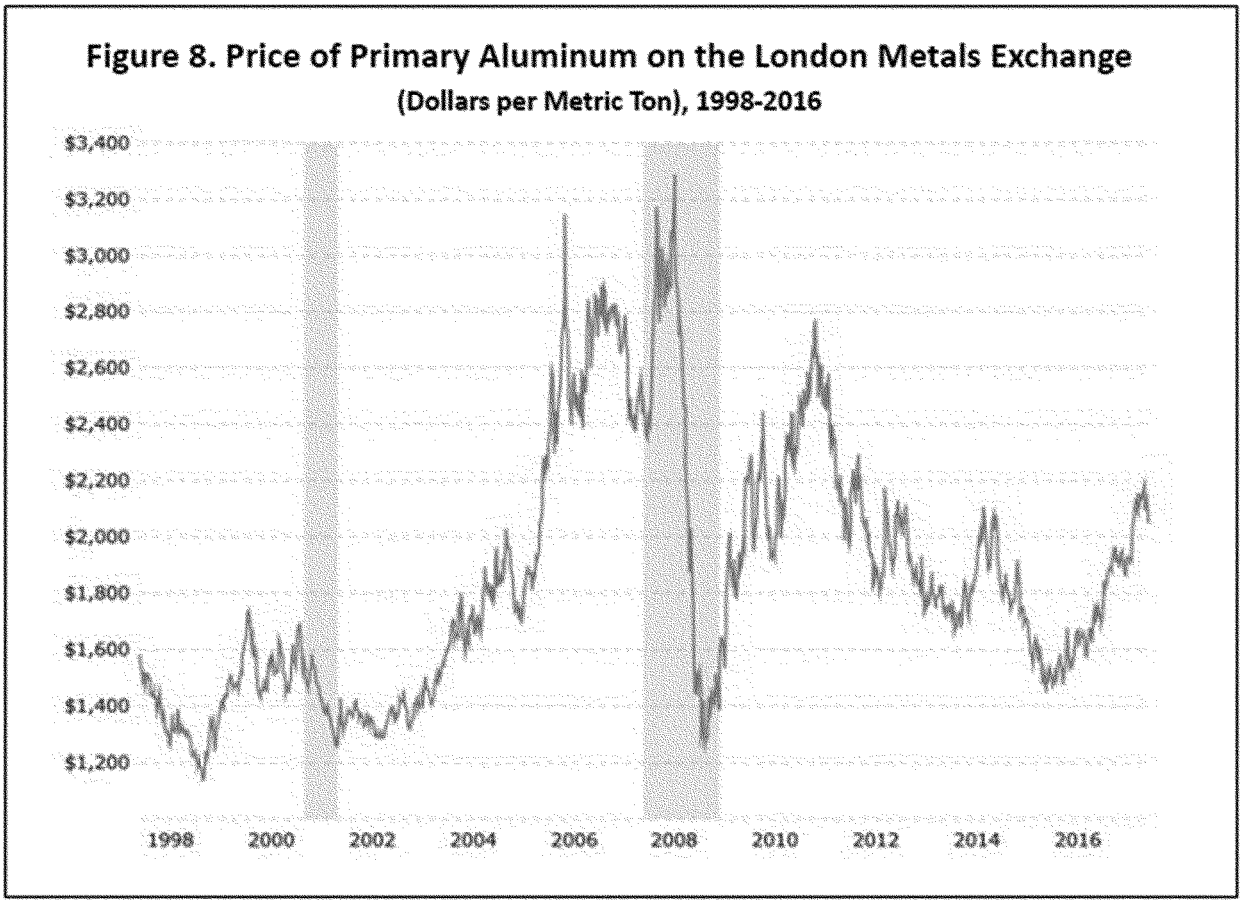
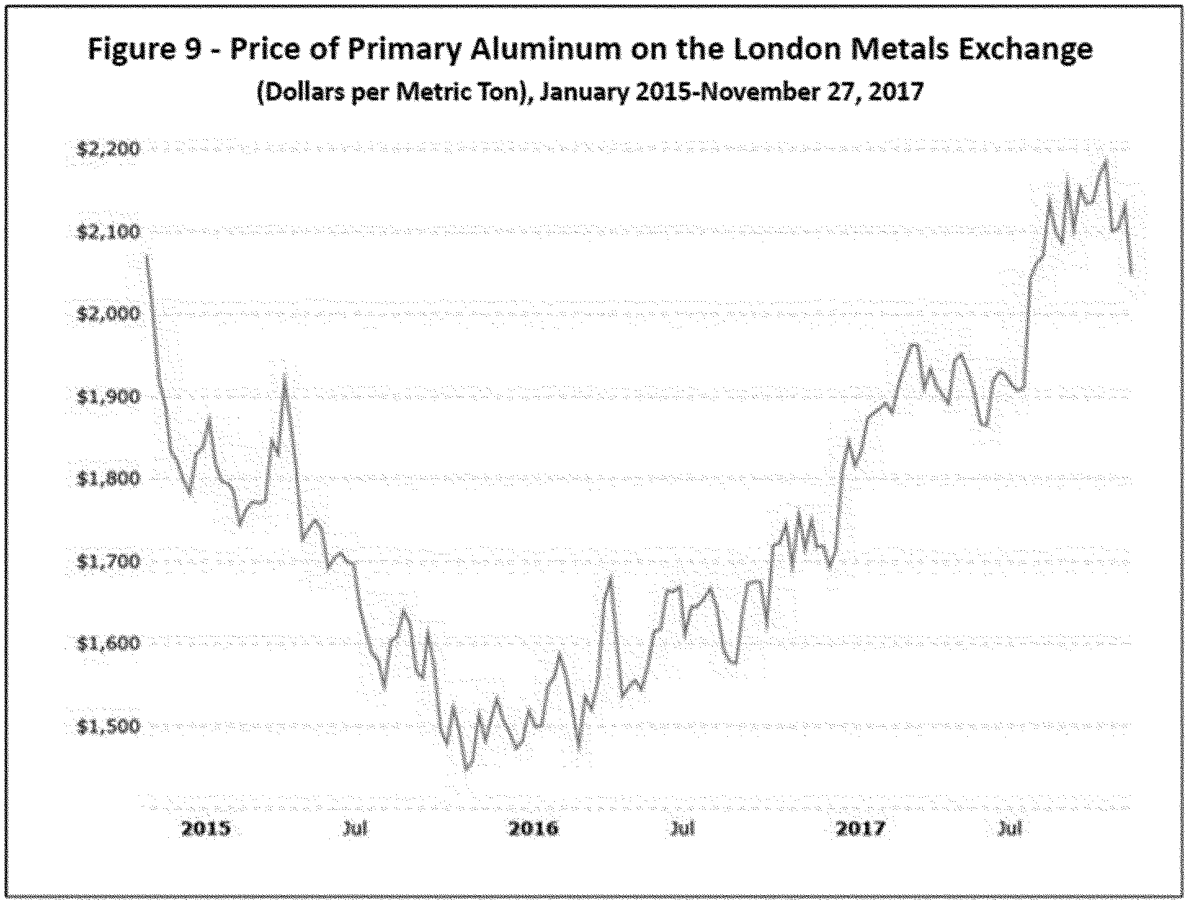


[70] USITC Report, p. 137.



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In recent months, the LME price for aluminum has rebounded to more typical levels, and reached a five-year high in October, 2017 at nearly $2,200 per ton. Despite the improvement in the market, U.S. smelter operators have no confidence that prices will remain at or above current levels that are needed in order for them to operate profitably.

Low aluminum prices, rising inventories and continued supply growth in China and other countries have caused many producers to close or curtail their U.S. smelting operations. While aluminum prices are beginning to rise from their historic low, it is not clear how readily the U.S. primary aluminum industry will rebound. Indeed, global aluminum production capacity continues to expand, which may mean that the increase in aluminum prices seen thus far in 2017 may not be sustained. While there has been a modest reduction in Chinese aluminum production in recent months, this trend, too, may be temporary. According to analysts at Bloomberg Intelligence, despite cuts to China's aluminum capacity earlier in 2017, Chinese aluminum makers added 4 million metric tons net capacity in 2017 and may add an additional 3 million metric tons in 2018.[71]

VII. Conclusion

Based on these findings, the Secretary of Commerce concludes that the present quantities and circumstance of aluminum imports (wrought and unwrought) are ''weakening our internal economy'' and threaten to impair the national security as defined in Section 232. The Secretary has determined that to remove the threat of impairment, it is necessary to reduce imports to a level that will provide the opportunity for U.S. primary aluminum producers to restart idled capacity. This will increase and stabilize U.S. production of aluminum at the minimal level needed to meet current and future national security needs. If no action is taken, the United States is in danger of losing the capability to smelt primary aluminum altogether.

A quota or tariff on downstream products is also necessary because global overcapacity, coupled with industrial policies that promote exports of downstream products, have had a negative impact on the U.S. primary aluminum industry through reduced demand for inputs from downstream companies, as well as directly on the downstream companies which face increased import penetration in many aluminum product sectors.

The continued rise in levels of imports of foreign aluminum threatens to impair the national security by placing the U.S. aluminum industry at substantial risk of losing the capacity to produce aluminum and aluminum products needed to support critical infrastructure and national defense.

A major factor contributing to the decline in domestic aluminum production and loss of domestic production capacity has been excess production and capacity in China, which now accounts for over half of global aluminum production. This is despite the fact that China has no natural competitive advantage for aluminum production. Chinese excess production, unresponsive to market forces, flooded world markets and caused a steep decline in global aluminum prices between 2014 and 2016. During this time of low prices, a number of U.S. aluminum smelters were forced to permanently shut down, while

[71] *https://www.bloomberg.com/professional/blog/aluminum-landscape-may-get-interesting-winter-passed/*

others were temporarily idled or curtailed their production.

Although global aluminum prices have regained lost ground in recent months, the damage to U.S. aluminum production capability was significant and irreversible. U.S. ability to smelt primary aluminum, including high-purity aluminum needed for the most sophisticated commercial and defense applications, has been reduced to minimal levels. Imports of primary aluminum now account for nearly 90 percent of domestic consumption. Imports of downstream aluminum products are surging as well, up 30 percent in 2017 over 2016 levels.

Since defense and critical infrastructure requirements alone are not sufficient to support a robust aluminum industry, U.S. primary and downstream aluminum producers must be financially viable and competitive in commercial markets to be able to produce the needed output. In fact, it is the ability to quickly shift production capacity used for commercial products to defense and critical infrastructure production that provides the United States a surge capability that is vital to national security, especially in an unexpected or extended conflict or national emergency. It is that capability that is now at serious risk.

In addition, it is in the interest of U.S. national security and overall economic welfare that the United States retains an aluminum industry that is financially viable and able to invest in research and development of the latest technologies. This is especially important given the growing role that aluminum plays in both commercial and defense applications.

The Secretary has determined that to remove the threat of impairment, it is necessary to reduce imports to a level that will provide the opportunity for U.S. primary aluminum producers to restart idled capacity. If no action is taken, the United States is in danger of losing the capability to smelt primary aluminum altogether.

Moreover, the Secretary has concluded that action to adjust imports must apply to imported downstream (wrought) aluminum products as well as primary (unwrought) aluminum. The reason for this is threefold. First, the downstream industry has been also adversely affected by surging imports. Foreign industrial policies that promote exports of downstream products while discouraging exports of primary aluminum have resulted in increased import penetration in many aluminum product sectors. Second, reducing imports of downstream products and their replacement by domestic production will serve to increase domestic demand for primary aluminum. Lastly, import relief to downstream producers is necessary in order to compensate for the increase in primary aluminum prices that they will face. If the raw materials costs are increased for U.S. downstream producers, a tariff on imported downstream products is necessary so as not to adversely affect them vis a vis their foreign competitors.

VIII. Recommendation

Due to the threat, as defined in Section 232, to national security from aluminum imports, the Secretary recommends that the President take immediate action by adjusting the level of these imports. There are a few different means by which import restrictions could help address the threat to U.S. national security. Under alternatives 1 and 2, the quotas or tariffs would be designed, even after any exemptions (if granted), to enable U.S. aluminum producers to utilize an average of 80 percent of their production capacity. The quotas and tariffs described below should be sufficient to enable U.S. aluminum producers to operate profitably under current market prices for aluminum and will allow them to reopen idled capacity.

Two alternatives for achieving this objective are described below. In each alternative, quotas or tariffs would be imposed on imports of: 1) unwrought aluminum (Harmonized Tariff Schedule (HTS) Code 7601); 2) aluminum castings and forgings (HTS Codes 7616.99.51.60 and 7616.99.51.70); 3) aluminum plate, sheet, strip, and foil (flat rolled products) (HTS Codes 7606 and 7607); 4) aluminum wire (HTS Code 7605); 5) aluminum bars, rods and profiles (HTS Code 7604); 6) aluminum tubes and pipes (HTS Code 7608); and 7) aluminum tube and pipe fittings (HTS Code 7609) based on 2017 annualized imports in those categories.

In either alternative, the Secretary recommends that the action taken to adjust the level of imports must be in effect for a duration sufficient to allow sufficient time and assurances to stabilize the U.S. industry. It takes up to nine months to restart idled smelting capacity. Market certainty is needed to build case flow to pay down debt and to raise capital for plant modernization to improve manufacturing efficiency.

The Department of Commerce, in consultation with other appropriate departments and agencies, will monitor the status of the U.S. aluminum industry and the effectiveness of the remedies to determine if the remedies should be terminated or extended.

Alternative 1—Worldwide Quota or Tariff

Quota

A worldwide quota of 86.7 percent on imports described above would restrict aluminum imports sufficiently to allow U.S. primary aluminum producers to increase production by about 669,000 metric tons, bringing total production to about 1.45 million metric tons, or about 80 percent of existing U.S. primary aluminum production capacity. This quota would also be applied to the five other aluminum product categories listed above and would help ensure the viability of those U.S. producers to meet national security needs.

Tariff

A tariff rate of 7.7 percent on imports of unwrought aluminum and the other aluminum product categories listed above should have the same impact as the 86.7 percent quota. This tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product.

This tariff rate also will adequately adjust for the price distortions in downstream aluminum product sectors that are caused by global overcapacity and overproduction being exported in the form of downstream products.

Alternative 2—Tariffs on a Subset of Countries

Tariff

A tariff rate of 23.6 percent on imports of aluminum products from China, Hong Kong, Russia, Venezuela, and Vietnam should also restrict aluminum imports sufficiently to allow U.S. aluminum producers to utilize an average of 80 percent of their capacity. These five countries are the source of substantial imports due to significant overcapacity and potential unreliable suppliers or likely sources of transshipped aluminum from China.

As in Alternative 1 above, this tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product. For the targeted tariff, all other countries would be limited to 100 percent of their 2017 import volumes.

Exemptions

In selecting an alternative, the President could determine that specific countries should be exempted from the proposed quota by granting those specific countries 100 percent of their prior imports in 2017 or exempting them entirely, based on an overriding

economic or security interest of the United States, which could include their willingness to work with the United States to address global excess capacity and other challenges facing the U.S. aluminum industry. The Secretary recommends that any such determination should be made at the outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of aluminum to the United States remain at or below the level needed to enable the domestic aluminum industry to return to 2012 production and import penetration levels.

Exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) Lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change. The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to ensure that U.S. aluminum production meets targeted levels.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–14358 Filed 7–2–20; 8:45 am]

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