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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS-DA-19-0075]

National Dairy Promotion and Research Program; National Dairy Promotion and Research Board Importer Representation

AGENCY: Agricultural Marketing Service, Agriculture (USDA).

ACTION: Direct final action.

SUMMARY: This document maintains the number of National Dairy Promotion and Research Board (Dairy Board) importer members at one member, as is stated in the Dairy Promotion and Research Order (Dairy Order). The Dairy Order requires that at least once every three years, after the initial appointment of importer members on the Dairy Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

DATES: This action is effective on October 5, 2020, unless significant adverse comments are received by September 4, 2020. If this direct final action is withdrawn as a result of such comments, notification of the withdrawal will be published in the **Federal Register**.

ADDRESSES: Interested persons may comment on this direct final action. All comments should reference the document number, date, and page number of this issue of the **Federal Register**. All comments submitted in response to this direct final action will be included in the rulemaking record

and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided.

- **Mail:** Comments may be submitted by mail to Whitney A. Rick, Director, Promotion, Research and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave. SW, Room 2958-S, Stop 0233, Washington, DC 20250-0233.

- **Email:** Comments may be emailed to Whitney.Rick@usda.gov.

- **Internet:** www.regulations.gov.

All comments on this direct final action submitted by the above methods will be available for viewing at: www.regulations.gov, or at USDA, AMS, Dairy Program, Promotion, Research and Planning Division, Room 2958-S, 1400 Independence Ave. SW, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday (except on official Federal holidays). AMS requests that persons wanting to view comments in Room 2958-S make an appointment in advance by calling (202) 720-6909.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, Director, Promotion, Research, and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave. SW, Room 2958-S, Stop 0233, Washington, DC 20250-0233. Phone: (202) 720-6909. Email: Whitney.Rick@usda.gov.

SUPPLEMENTARY INFORMATION: This direct final action is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983, Public Law 98-180 as codified in 7 U.S.C. 4501-4514, as amended.

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action. This action falls within a category of regulatory actions that the OMB exempted from Executive Order 12866 review. Additionally, because this direct final action does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'", as amended on April 5, 2017.

Executive Order 12988

This direct final action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this action.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order (7 U.S.C. 4509). Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this direct final action will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Act authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace

and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

According to the U.S. Customs and Border Protection (CBP), in 2018, approximately 1,476 importers paid assessments under § 1150.152(b) of the Dairy Order. Although many types of businesses import dairy products, data is not available concerning the size of these firms. Based on AMS' knowledge of the dairy importers subject to the assessment and the available categories in North American Industry Classification System (NAICS), it is reasonable to assume the most common classification for dairy importers is Dairy Product Manufacturing (NAICS 3115), of which most of the businesses have fewer than 500 employees. The Small Business Administration (13 CFR 121.201) defines such entities with fewer than 500 employees as small businesses. AMS has determined this direct final action will not have a significant economic impact on small entities. Additionally, program provisions are administered without regard for business size.

The Dairy Order is administered by a 37-member Dairy Board, with 36 members representing 12 geographic regions within the United States and one member representing importers. Section 1150.131(f) of the Dairy Order provides that at least once every three years, after the initial appointment of importer members on the Dairy Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion

the importer representation on the Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements and record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581-0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this action.

Background

The Dairy Order requires that at least once every three years the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

For initial importer member representation, section 113 of the Dairy Act required the Secretary to appoint two dairy importers to the Dairy Board. 7 U.S.C. 4504(b)(6)(A). For subsequent representation, the Dairy Act requires the Secretary to review the average volume of domestic production of dairy products compared to the average

volume of dairy products imported into the United States at least once every three years, and if necessary, reapportion importer representation to reflect the proportional share of the United States market by domestic production and imported dairy products. 7 U.S.C. 4504(b)(6)(B).

Section 1150.131(f) of the Dairy Order states that the basis for the comparison of domestic production of dairy products to imported products should be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes is the same as the calculation of total milk solids of imported dairy products for assessment purposes.

Using Supply and Allocation of Milk Fat and Skim Solids by Product annual data published by USDA's Economic Research Service, the average annual U.S. milk total solids for domestic dairy products for 2016 to 2018 was 23,510 billion pounds. Based on the total milk solids number, each of the 36 domestic Dairy Board producer members would represent 653 million pounds of total milk solids (23,510 billion pounds divided by 36 producer members equals approximately 653 million pounds per producer).

Using information received from CBP, the annual average of total milk solids imported during the years 2016 to 2018 was 720 million pounds. Table 1 summarizes the total milk solids represented by the 36 domestic producer members and the total milk solids represented by the 1 importer member. Table 2 shows Dairy Board representation based on the average U.S. total solids and average imported total solids.

TABLE 1—DAIRY BOARD REPRESENTATION BASED ON U.S. TOTAL SOLIDS AND IMPORTED TOTAL SOLIDS BY POUNDS

Year	U.S. total solids, lbs.	Imported total solids, lbs.
2016	23,138,000,000	802,240,354
2017	23,574,000,000	711,719,985
2018	23,819,000,000	647,458,004
Average	23,510,000,000	720,472,781

Source: National Agricultural Statistics Service, Dairy Products Annual Survey and CBP

TABLE 2—DAIRY BOARD REPRESENTATION BASED ON AVERAGE U.S. TOTAL SOLIDS AND AVERAGE IMPORTED TOTAL SOLIDS

	Average total milk solids (lbs.)	Current number of board seats	Average total milk solids represented per board member (lbs.)
Domestic Producer	23,510,000,000	36	653,069,007
Importer	720,472,781	1	720,472,781

Based on the calculations, Dairy Board importer member representation will remain the same at one member to accurately represent the volume of imported total milk solids compared to the volume of total solids represented by each of the 36 domestic producer members.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–15134 Filed 8–4–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 61, 63, 65, 91, 107, 125, and 141

[Docket No.: FAA–2020–0446; Amdt. No(s). Amendment Numbers 1–103, 61–146, 63–44, 65–61, 91–358, 107–4, 125–70, and 141–22]

RIN 2120–AL64

Limited Extension of Relief for Certain Persons and Operations During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published on June 29, 2020 in which the FAA amended regulatory relief originally provided in the Relief for Certain Persons and Operations during the Coronavirus Disease 2019 (COVID–19) final rule. The FAA inadvertently listed incorrect amendment numbers for the final rule. This document corrects that error.

DATES: Effective August 5, 2020 through March 31, 2021.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action for pilots, contact Craig Holmes, General Aviation and Commercial Division; Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1100; email 9-AVS-AFS800-COVID19-Correspondence@faa.gov. For technical questions concerning this action for mechanics and special flight permits, contact Kevin Morgan, Aircraft Maintenance Division; Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1675; email Kevin.Morgan@faa.gov. For technical questions concerning this

action for aircraft dispatchers and flight engineers, contact Theodora Kessariss and Sheri Pippin, Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8166; email 9-AVS-AFS200-COVID-Exemptions@faa.gov.

SUPPLEMENTARY INFORMATION:

Good Cause for Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” In addition, section 553(d) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except a substantive rule that relieves a restriction or “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(1) and (3).

Because this action merely makes a correction to the amendment number of a published final rule, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

Background

On June 29, 2020, the FAA published the Limited Extension of Relief for Certain Persons and Operations during the Coronavirus Disease 2019 (COVID–19) Public Health Emergency final rule (85 FR 38763). After that rule was published, the FAA discovered a minor error with the amendment numbers listed in heading of the final rule that required correction. The final rule listed the amendment numbers as Amdt. No(s). 21–102, 61–145, 63–43, 65–60, 91–357, 107–3, 125–69, and 141–21.

Correction

In the final rule, FR Doc. 2020–13960, published on June 29, 2020, at 85 FR 38763 make the following correction:

1. On page 38763 in the heading of the final rule, revise “Amdt. No(s). 21–102, 61–145, 63–43, 65–60, 91–357, 107–3, 125–69, and 141–21” to read “1–103, 61–146, 63–44, 65–61, 91–358, 107–4, 125–70, and 141–22”.

Issued under authority provided by 49 U.S.C. 106(f), 106(g), 44701(a), and Sec. 206 of Public Law 111–216, 124 Stat.

2348 (49 U.S.C. 44701 note) in Washington, DC, on July 17, 2020.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2020–16060 Filed 8–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0536; Product Identifier 2018–CE–054–AD; Amendment 39–21186; AD 2020–16–02]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pilatus Aircraft Ltd. Models PC–6, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–6–H1, and PC–6–H2 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as rudder shaft assemblies with incorrect rivet configurations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 9, 2020.

ADDRESSES: For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: techsupport@pilatus-aircraft.com; internet: <https://www.pilatus-aircraft.com>. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at <https://www.regulations.gov> by

searching for and locating Docket No. FAA-2019-0536.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0536; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the NPRM, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Pilatus Aircraft Ltd. Models PC-6, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, PC-6/C1-H2, PC-6-H1, and PC-6-H2 airplanes. The NPRM was published in the **Federal Register** on July 5, 2019 (84 FR 32099). The NPRM proposed to correct an unsafe condition for the specified products and was based on AD No. 2018-0222, dated October 19, 2018, issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community (referred to after this as “the MCAI”). The MCAI states:

During a recent check flight with a PC-6, the pilot experienced loss of rudder control. The consequent precautionary landing resulted in a runway excursion and damage to the aeroplane, but without serious injuries to the occupants. The post-event inspection of the affected rudder shaft assembly found an incorrect rivet configuration. Subsequent investigation results identified that the tapered pins had been replaced with an insufficient quantity of rivets of unknown origin, which effectively constituted a modification that does not conform to any of the three different Pilatus-approved configurations. Prompted by this event, five more aeroplanes were inspected and various non-standard rivet configurations were found in the same area. It cannot be excluded that more PC-6 aeroplanes have had a similar modification applied.

This condition, if not detected and corrected, could lead to failure or loss of

rivets, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Pilatus Aircraft Ltd issued the [service bulletin] SB to provide inspection instructions.

For the reasons described above, this [EASA] AD requires a one-time inspection of the affected part to determine the rivet configuration and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires inspection of affected parts held as spare, and depending on findings, corrective action(s), prior to installation.

You may examine the MCAI on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0536.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Related Service Information Under 14 CFR Part 51

The FAA reviewed Pilatus PC-6 Service Bulletin No. 27-006, Rev. No. 1, dated September 4, 2018. The service information contains procedures for inspecting the rivet configuration on the rudder shaft assembly for size, quantity, location, and type and contacting Pilatus to obtain repair instructions if any discrepancies are found. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD will affect 30 products of U.S. registry. The FAA also estimates that it will take about 7 work-hours per product to comply with the inspection requirement of this AD. The average labor rate is \$85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be \$17,850, or \$595 per product.

Since the repair instructions could vary significantly from airplane to airplane if discrepancies are found during the inspections, the FAA has no way of determining the number of products that may need follow-on actions or what the cost per product would be.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–16–02 Pilatus Aircraft Ltd.:

Amendment 39–21186; Docket No. FAA–2019–0536; Product Identifier 2018–CE–054–AD.

(a) Effective Date

This AD becomes effective September 9, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. (Pilatus) Models PC–6, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–6–H1, and PC–6–H2 airplanes, all serial numbers, certificated in any category.

Note 1 to paragraph (c) of this AD: These airplanes may also be identified as Fairchild Republic Company airplanes, Fairchild Heli Porter airplanes, or Fairchild-Hiller Corporation airplanes.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizers.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as rudder shaft assemblies with incorrect rivet configuration. The FAA is issuing this AD to prevent rudder shaft assembly failure, which could result in reduced control of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (2) of this AD:

(1) Within the next 100 hours time-in-service after September 9, 2020 (the effective date of this AD) or within the next 12 months after September 9, 2020 (the effective date of this AD), whichever occurs first, inspect the rudder shaft assembly for proper rivet configuration and repair any discrepancies before further flight in accordance with the Accomplishment Instructions—Part 1, paragraph 3.B. and table 1, of Pilatus PC–6 Service Bulletin No: 27–006, Rev. No. 1, dated September 4, 2018.

(2) After September 9, 2020 (the effective date of this AD), do not install a rudder shaft assembly on any airplane unless it has been inspected in accordance with paragraph (f)(1) of this AD and found to be free of discrepancies or all discrepancies have been repaired or replaced.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone:

(816) 329–4059; fax: (816) 329–4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) Related Information

Refer to MCAI European Aviation Safety Agency AD No. 2018–0222, dated October 19, 2018, for related information. The MCAI can be found in the AD docket on the internet at: <https://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0536.

(i) Material Incorporated by Reference

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

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

(i) Pilatus PC–6 Service Bulletin No: 27–006, Rev. No. 1, dated September 4, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: techsupport@pilatus-aircraft.com; internet: <https://www.pilatus-aircraft.com>.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, Airworthiness Products Section, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0536.

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

Issued on July 28, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–16989 Filed 8–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2020–0212; Product Identifier 2018–SW–097–AD; Amendment 39–21180; AD 2020–15–17]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Sikorsky Aircraft Corporation Model S–76C helicopters. This AD was prompted by reports of inaccurate main gear box (MGB) indications in flight. This AD requires updating the remote data acquisition unit (RDAU) software and re-identifying the RDAU and, for certain helicopters, updating the software of the display unit (DU) and re-identifying the DU. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2020.

ADDRESSES: For service information identified in this final rule, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; phone: 1–800–946–4337 (1–800–Winged–S); email: wcs_cust_service_eng.gr-sik@lmco.com. Operators may also log on to the Sikorsky 360 website at <https://www.sikorsky360.com>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0212; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Min Zhang, Aviation Safety Engineer, Boston ACO Branch, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7161; email: *min.zhang@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Sikorsky Aircraft Corporation Model S-76C helicopters. The NPRM published in the **Federal Register** on April 6, 2020 (85 FR 19110). The NPRM was prompted by reports of inaccurate MGB indications in flight. The NPRM proposed to require updating the RDAU software and re-identifying the RDAU and, for certain helicopters, updating the software of the DU and re-identifying the DU.

The FAA is issuing this AD to address inaccurate MGB indications in flight, resulting in multiple erroneous values/annunciations on channel B, which could cause the flight crew to land immediately, and consequent possible loss of the helicopter, injury, or fatality.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the

public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Sikorsky service information.

Alert Service Bulletin 76-31-3, Revision B, dated June 26, 2018; Alert Service Bulletin 76-31-4, Revision A, dated May 30, 2018; and Alert Service Bulletin 76-31-5, dated July 31, 2018. This service information describes procedures for updating the RDAU software and re-identifying the RDAU. This service information also describes procedures for sending the inspection results to Sikorsky Aircraft Corporation. These documents are distinct since they apply to specific helicopter models in different configurations (different part numbered RDAU units).

Service Bulletin 76-006, Revision A, dated August 23, 2018. This service information describes procedures for updating the software of DU part number 76450-01098-101, and re-identifying the DU as part number 76450-01098-108. This service information also describes procedures for sending the inspection results to Sikorsky Aircraft Corporation.

This service information is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the Service Information

The service information recommends accomplishing the update of the RDAU software and re-identification of the RDAU and, for certain helicopters, update of the software of the DU and re-identification of the DU, depending on service information, no later than a specific calendar date (April 30, 2019 for Alert Service Bulletin 76-31-3, Revision B, dated June 26, 2018; June 30, 2019 for Alert Service Bulletin 76-31-4, Revision A, dated May 30, 2018; or July 31, 2019 for Alert Service Bulletin 76-31-5, dated July 31, 2018). In developing an appropriate compliance time for this AD, the FAA considered factors including the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. After considering these factors, the FAA finds that a 500 hours time-in-service compliance time (which is approximately one year based on the average annual flight hours for Sikorsky Aircraft Corporation Model S-76C helicopters) represents an appropriate interval of time for affected helicopters to continue to operate without compromising safety.

Costs of Compliance

The FAA estimates that this AD affects 99 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update RDAU software (99 helicopters)	3 work-hours × \$85 per hour = \$255	(*)	\$255	\$25,245
Update display units (52 helicopters)	7 work-hours × \$85 per hour = \$595	(*)	595	30,940
Reporting (99 helicopters)	1 work-hour × \$85 per hour = \$85	\$0	85	8,415

* The FAA has received no definitive data that would enable the FAA to provide parts cost estimates for the actions specified in this AD.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject

to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120-0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and

reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–15–17 Sikorsky Aircraft Corporation:
Amendment 39–21180; Docket No. FAA–2020–0212; Product Identifier 2018–SW–097–AD.

(a) Effective Date

This AD is effective September 9, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Sikorsky Aircraft Corporation Model S–76C helicopters, certificated in any category, equipped with remote data acquisition unit (RDAU) part number 76450–01098–106, 76450–01098–107, or 76450–01098–109.

(d) Subject

Joint Aircraft Service Component (JASC) Code 3100, Indicating/recording system.

(e) Unsafe Condition

This AD was prompted by reports of inaccurate main gear box (MGB) indications in flight. The FAA is issuing this AD to address inaccurate MGB indications in flight, resulting in multiple erroneous values/annunciations on channel B, which could cause the flight crew to land immediately, and consequent possible loss of the helicopter, injury, or fatality.

(f) Compliance

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

(g) RDAU and Display Unit (DU) Updates

Within 500 hours time-in-service after the effective date of this AD, do the actions specified in paragraphs (g)(1) through (4) of this AD, as applicable to your helicopter.

(1) For helicopters equipped with RDAU part number 76450–01098–109, update the RDAU software and re-identify the RDAU in accordance with Section 3., Paragraphs A. through J. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–3, Revision B, dated June 26, 2018, except you are not required to return the RDAU to Parker Fluid Systems Division (FSD).

(2) For helicopters equipped with RDAU part number 76450–01098–107, update the RDAU software and re-identify the RDAU in accordance with Section 3., Paragraphs A. through J. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–4, Revision A, dated May 30, 2018, except you are not required to return the RDAU to Parker FSD.

(3) For helicopters equipped with RDAU part number 76450–01098–106, update the RDAU software and re-identify the RDAU in accordance with Section 3., Paragraphs A. through K. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–5, dated July 31, 2018, except you are not required to return the RDAU to Parker FSD.

(4) For helicopters equipped with RDAU part number 76450–01098–106, update the software of DU part number 76450–01098–101 and re-identify the DU as part number 76450–01098–108, in accordance with Section 3., Paragraphs A. through J. of the Accomplishment Instructions of Sikorsky Service Bulletin 76–006, Revision A, dated August 23, 2018, except you are not required to return the DU to Parker FSD.

(h) Parts Installation Limitations

As of the effective date of this AD, no person may install, on any helicopter, a DU part number 76450–01098–101, unless it has been modified in accordance with the requirements of paragraph (g)(4) of this AD.

(i) Reporting

At the applicable time specified in paragraph (i)(1) or (2) of this AD, submit a report of compliance with the actions specified in paragraphs (g)(1) through (4) of this AD, as applicable to your helicopter. The report must include the document number and title of the service information used, the owner and/or operator of the helicopter, the submitter's name, date, and the helicopter serial number. Submit the report to Sikorsky Aircraft Corporation in accordance with Section 3., Paragraph A. (Record of Compliance) of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–3, Revision B, dated June 26, 2018; Section 3., Paragraph L. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–4, Revision A, dated May 30, 2018; Section 3., Paragraph M. of the Accomplishment Instructions of Sikorsky Alert Service Bulletin 76–31–5, dated July 31, 2018; or Section 3., Paragraph L. of the Accomplishment Instructions of Sikorsky Service Bulletin 76–006, Revision A, dated August 23, 2018, as applicable to your helicopter.

(1) If the action was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the action was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (g)(1) and (i) of this AD, if those actions were performed before the effective date of this AD using Sikorsky Alert Service Bulletin 76–31–3, dated March 2, 2018; or Sikorsky Alert Service Bulletin 76–31–3, Revision A, dated March 29, 2018.

(2) This paragraph provides credit for the actions required by paragraphs (g)(2) and (i) of this AD, if those actions were performed before the effective date of this AD using Sikorsky Alert Service Bulletin 76–31–4, dated May 17, 2018.

(3) This paragraph provides credit for the actions required by paragraphs (g)(4) and (i) of this AD, if those actions were performed before the effective date of this AD using Sikorsky Service Bulletin 76–006, dated July 26, 2018.

(k) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public

reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(I) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

(1) For more information about this AD, contact Min Zhang, Aviation Safety Engineer, Boston ACO Branch, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7161; email: min.zhang@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (4) of this AD.

(n) Material Incorporated by Reference

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

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

- (i) Sikorsky Alert Service Bulletin 76–31–3, Revision B, dated June 26, 2018.
- (ii) Sikorsky Alert Service Bulletin 76–31–4, Revision A, dated May 30, 2018.
- (iii) Sikorsky Alert Service Bulletin 76–31–5, dated July 31, 2018.
- (iv) Sikorsky Service Bulletin 76–006, Revision A, dated August 23, 2018.

(3) For service information identified in this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, 124 Quarry Road, Trumbull, CT 06611; phone: 1–800–946–4337 (1–800–Winged-S); email: wcs_cust_service_eng_grsik@lmco.com. Operators may also log on to the Sikorsky 360 website at <https://www.sikorsky360.com>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For

information on the availability of this material at the FAA, call 817–222–5110.

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

Issued on July 16, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–16405 Filed 8–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR–6215–I–02]

RIN 2502–ZA34

Housing Counseling Program: Revision of the Certification Timeline

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim final rule.

SUMMARY: HUD's current rule states that participating agencies and counselors must comply with certification requirements by 36 months after HUD commences the administration of the certification examination. That 36-month grace period ends on August 1, 2020. Due to the COVID–19 national emergency, which has caused the shutdown of the testing centers where housing counselors take the certification examination, a large number of housing counselors will be unable to get certified by the end of the grace period, resulting in a loss of Federal funding for some HUD-approved housing counseling agencies and loss of the ability to provide counseling that is required or provided in numerous HUD programs. Therefore, this interim rule amends the time period in which to become certified to a new deadline of August 1, 2021.

DATES: This extension of the August 1, 2020 housing counseling certification deadline was effective upon the posting of HUD's interim rule. For purposes of providing valid notice of the contents of the interim final rule for any person who has not had actual knowledge of it the effective date is August 5, 2020.

Comment due date: September 4, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding

this interim final rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. In addition, all properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Lorraine Griscavage-Frisbee at Office of Housing Counseling, Office of Housing, Department of Housing and Urban Development, 302 Carson Street, Las Vegas, Nevada 89101, telephone number 702–366–2160 (this is not a toll-free number). Persons with hearing or

speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. Questions can also be addressed to Lorraine Griscavage-Frisbee, Office of Housing Counseling, at housing.counseling@hud.gov. Please include “Housing Counseling Program: Date Housing Counseling Agencies Must Comply with Certification Requirements” in the subject line of the email.

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) was amended by Subtitle D of title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376, approved July 21, 2010) to strengthen and improve the effectiveness of housing counseling that is required under or provided in connection with HUD programs (Section 106 amendments). The Section 106 amendments require that individuals providing housing counseling required under or provided in connection with HUD programs be certified by taking and passing an examination administered by HUD’s Office of Housing Counseling (HUD certified housing counselors) (12 U.S.C. 1701x(e)). On December 14, 2016, HUD published a final rule implementing the Section 106 certification requirements, including the requirement that, as explained in the rule preamble, “housing counseling, that is “required by or in connection with” HUD programs may only be provided by HUD certified housing counselors working for HUD-approved housing counseling agencies (HCAs) that are approved to provide such housing counseling by HUD’s Office of Housing Counseling”. See 81 FR 90632. The final rule codifies the grace period at 24 CFR 214.103(n)(4), which provides that “[p]articipating agencies and housing counselors “must be in compliance with requirements of paragraph (n) of this section by 36 months after HUD commences the administration of the certification examination by publication in the **Federal Register**.” On May 31, 2017, HUD published a notice announcing the availability of the certification examination beginning August 1, 2017, and providing the deadline of August 1, 2020, within which all housing counselors and HCAs must satisfy the certification requirements in the final rule. See 82 FR 24988.

On March 13, 2020, the President declared the Coronavirus Disease 2019 (COVID-19) outbreak a national

emergency, effective March 1, 2020. The Centers for Disease Control and Prevention (CDC) has issued guidelines on slowing the spread of COVID-19 by practicing social distancing and staying home, if one is sick. In addition, many municipal and state governments issued shelter-in-place orders requesting their residents to stay indoors. HUD housing counselor certification testing centers started to close in mid-March 2020, and by mid-April 2020, all 462 testing centers had closed. In addition, all 35 HUD in-person place-based housing counselor certification trainings originally scheduled were cancelled.

Without suspending the requirement that participating agencies and housing counselors must be certified by of August 1, 2020, housing counselors who had not yet passed the certification exam would be unable to provide housing counseling required by or in connection with HUD programs, including those who were unable to attend the cancelled in-person place-based housing counselor certification trainings, who were unable take the examination due to closed testing centers, or who did not have access to the appropriate technology to be able to take the exam online. HUD also recognizes that there will be a demand for housing counseling services by those experiencing economic hardship caused by previous compliance with guidelines to slow the spread of COVID-19.

As of June 29, 2020, approximately 45 percent of housing counselors participating in HUD programs affected by the certification were still required to be certified by August 1, 2020. In anticipation of the impending final compliance date, and with HUD’s substantial promotion of the certification, the average number of counselors passing the examination and becoming certified began to increase in early 2020. However, the COVID-19 national emergency and the resulting state stay-at-home orders have severely affected the increasing momentum seen prior to the start of the National Emergency.

Preparing for the exam and becoming certified can take several months. Preparation activities may include studying the examination topics with the knowledge assessment tool and taking the practice examination; studying through online or in-person training; taking the examination and retaking it, if needed; registering in FHA Connection; and requesting employment verification. HUD advises agencies to plan on at least a five-month timeline to complete the process from start to finish. Often, counselors must complete these activities over a longer period of

time, as agencies must continue to provide services to clients; in fact, more than 20 percent of agencies have only one counselor on staff. In these cases, preparing for the examination is especially challenging under time constraints.

As a result of the National Emergency, HUD’s housing counseling training partners cancelled all 35 in-person certification trainings scheduled through May 2020. Additionally, test centers began to close on March 13, 2020. By mid-April, all 462 test centers closed, significantly impairing the ability of counselors to take the exam. As of July 6, 2020, 60 percent of the test centers remained closed. While counselors can take the exam online, this may require purchasing additional equipment, which may not be possible for many housing counselors. HUD’s data demonstrate that 90 percent of certification candidates take the exam at a testing center. With the impending certification deadline ahead, the elimination of in-person preparation courses and the closing of testing centers has resulted in counselors losing the option for an in-person examination to become certified at a critical point. Given that the stay-at-home orders and the nature and scope of banned activities differs from state to state, it is difficult to say when in-person examination prep and full testing center capacity will be reestablished across the country. Further, testing centers will likely reopen on a state-by-state basis; this, too, makes it impossible to determine when there will be sufficient capacity to begin testing a large number of counselors.

At the same time, the housing counseling industry is experiencing an increase in the need for rental, foreclosure, and Home Equity Conversion Mortgage (HECM) counseling services during the crisis by families experiencing financial hardship due to the impacts of COVID-19. This increased demand for client services is causing counselors to shift away from preparing for and completing the exam. COVID-19 is also increasing the intensity and duration of services clients require. Agencies will need to accommodate more counseling requests, and counselors will spend more time counseling their clients, communicating with loan servicers, and maintaining proper documentation due to the services associated with loss mitigation counseling. Counselors and clients are experiencing long wait times when contacting servicers and state-wide foreclosure task forces are being reactivated—all to deal with the

significant increase in request for loss mitigation services.

In addition to the Housing Counseling Program, 25 other HUD programs are affected by the certification deadline since the requirements apply to any housing counseling required by or in connection with any program administered by HUD. HUD also estimates that over 2,500 Community Planning and Development program participants and public housing authorities will be affected by the certification requirement. Clients participating in housing counseling services provided by other HUD programs may lose access to counseling services, if implementation of the certification requirements reduces industry capacity.

A lack of certified counselors could also affect the recovery activities funded directly by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136). The CARES Act allocated more than \$2 billion to supplement the conventional Community Development Block Grant (CDBG) program. Housing counseling services is an eligible activity under CDBG, and grantees may use this funding to provide services to aid in the recovery.

A lack of certified counselors may also make a housing counseling agency ineligible for grant funds, further crippling the industry at a critical time. In addition, no direct statutory relief has been provided by Congress for this program. Therefore, rulemaking to extend the grace period during which counselors and counseling agencies can become certified is necessary.

II. This Interim Final Rule

This interim rule is intended to allow existing housing counselors and agencies to continue to operate during the period of the national emergency caused by the COVID–19 pandemic, and also to provide sufficient time for those counselors who have not become certified to take the necessary classes. Therefore, this interim rule will amend 24 CFR 214.103(n)(4) to provide that participating agencies and housing counselors must be in compliance with requirements of paragraph (n) of this section by August 1, 2021. Thereby giving an additional year for participating agencies and housing counselors to come into compliance with the certification requirement.

III. Justification for Interim Rulemaking and Effective Date

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own

regulations on rulemaking, 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest.”

Prior public procedure in this case is impracticable and contrary to the public interest. A majority of housing counselors operating in HUD’s programs, including programs in which housing counseling is a requirement, will become ineligible on August 1, 2020. Due to the COVID–19 emergency, these counselors are not able to become certified by that time. This will result in a loss of grant funding for HUD counseling agencies, and a curtailment of HUD programs dependent on housing counseling being available. On August 1, 2020, housing counseling agencies that are not staffed with certified counselors will become ineligible for HUD grant funding, resulting in possible penalties. Proposed and final rulemaking would extend this problem far beyond the August 1, 2020 deadline, which would cripple the counseling program that many HUD program participants rely on. Therefore, the Department finds that good cause exists to publish this interim rule without an opportunity for prior public comment. For the same reasons, the Department finds that there is good cause to waive the delay in effective date. While section 553(d) of the Administrative Procedure Act and HUD’s rule at 24 CFR 10.1 generally require publication in the **Federal Register** 30 days in advance of the effective date, these authorities contain exceptions for rules that (1) grant or recognize an exemption or relieve a restriction, and (2) for rules where there is otherwise good cause found and published with the rule. Because this rule provides relief from the impending August 1 deadline that would detrimentally limit the availability of housing counseling, this rule meets both criteria for immediate effectiveness.

Although HUD is issuing this rule to take effect immediately, HUD is inviting the interested public to submit comments for a 30-day period following publication. HUD will take any comments received into consideration and determine whether any further changes should be made.

IV. Justification for Shortened Comment Period

In accordance with HUD’s regulations on rulemaking at 24 CFR part 10, it is HUD’s policy that the public comment

period for proposed rules should be 60 days. In the past, HUD has generally provided for 60 days for public comment in the case of interim rules as well. However, HUD’s policy does not require 60 days for public comment in the case of interim rules.

In this case, the regulatory change being made is straightforward and addresses a single issue. Due to the COVID–19 national emergency, the certification deadline in the current rule simply cannot be met, for reasons stated in this preamble. The length of time the emergency will last is unknown. Therefore, the rule must be changed to conform to these facts.

HUD does not believe that 60 days is needed for public consideration of the straightforward and necessary change being made in this interim rule. On the other hand, if HUD determines to adopt any suggestions that may be made in the public comments in the final rule, HUD would like to be able to do so as quickly as possible so that housing counseling organizations and individual housing counselors will have certainty about their obligations at the earliest possible date.

For these reasons, HUD has determined that in this case a 30-day public comment period is appropriate.

V. Notification to Congress Under 42 U.S.C. 3535(o)(4)

Under 42 U.S.C. 3535(o)(1), HUD is generally required to transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an agenda of all rules or regulations which are under development or review by the Department. Under 42 U.S.C. 3535(o)(2)(B), any rule or regulation which does not appear on an agenda submitted under section 3535(o)(1) must be submitted to both such Committees at least 15 calendar days prior to its being published for comment, and under 42 U.S.C. 3535(o)(3), no rule or regulation may become effective until after the expiration of the 30-calendar day period beginning on the day after the day on which such rule or regulation is published as final. Pursuant to 42 U.S.C. 3535(o)(4), however, the requirements of sections 3535(o)(2) and (3) may be waived upon notification to and agreement with the Chairmen and Ranking Members of the committees designated under section 3535(o)(1). Accordingly, the Department has followed such steps.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome,” and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was not determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order.

This rule, by extending the grace period for counselors to become certified, will allow HUD’s housing counseling program and other programs to continue to operate during the COVID–19 emergency. It will not impose any additional requirements or burdens. It will relieve housing counselors of a difficult burden of compliance during the pandemic. Additionally, the testing centers themselves may be under a variety of shutdown or social distancing orders or recommendations depending on their location, making it fundamentally impossible for all counselors to be certified by the deadline.

The final rule estimated the nationwide cost of the examination and training would total approximately \$3,936,340 over 5 years with costs decreasing over time as more housing counselors were certified. 81 FR 90633. The final rule also estimated that if 140 loan modifications are made and 125 foreclosures are avoided over a period of 5 years the benefits of final rule would exceed the projected compliance costs. *Id.* HUD concluded that the benefits of the rule would be outweighed given the reduction of foreclosures and loan modifications as a result of trained housing counselors helping borrowers make an informed decision when obtaining an affordable purchase loan or an affordable loan modification.

Given the current conditions under COVID–19, HUD believes that extending the deadline of compliance is necessary

for housing counselors to become certified. HUD does not believe this extension will increase the costs, but instead, will spread the costs over a longer period of time. HUD also notes that the initial estimate was based on the cost of testing being \$100 for online testing and \$140 for proctored testing but those costs were subsequently reduced by HUD to \$60 for online testing and \$100 for proctored testing. 82 FR 24989. In addition, HUD notes that in both the proposed and final rule, grant funding could be used to assist with testing and training. In FY 2019, HUD provided over \$42 million in grant funding to HUD-approved Housing Counseling agencies.¹ HUD still believes that the benefits will outweigh the costs especially given the reduction in testing costs and total HUD funds going to HUD-approved Housing Counseling agencies.

Therefore, this interim rule is not expected to impose any burdens or costs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim final rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

This interim final rule does not (i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or (ii) Establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this interim final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. This interim final rule allows housing counseling agencies to continue to operate as they currently do during the COVID–19 emergency. Therefore, the undersigned certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s belief that this interim final rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this interim final rule that will meet HUD’s objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for the Housing Counseling Program is 14.169.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Loan program-housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 214 as follows:

PART 214—HOUSING COUNSELING PROGRAM

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d).

■ 2. Amend § 214.103(n)(4) to read as follows:

§ 214.103 Approval criteria.

* * * * *

(n) * * *

(4) Participating agencies and housing counselors must be in compliance with

¹ <https://www.hudexchange.info/programs/housing-counseling/nofa/#:-:text=On%20October%202%2C%202019%2C%20HUD,to%20help%20them%20avoid%20foreclosure.>

requirements of paragraph (n) of this section as of August 1, 2021.

Len Wolfson,

Acting FHA Commissioner—Assistant Secretary for Housing.

[FR Doc. 2020–17138 Filed 8–3–20; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140501394–5279–02; RTID 0648–XS034]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2020 Commercial Accountability Measure and Closure for South Atlantic Blueline Tilefish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings of blueline tilefish are projected to reach the commercial annual catch limit (ACL) by August 11, 2020. Therefore, NMFS is closing the commercial sector for blueline tilefish in the South Atlantic EEZ on August 11, 2020, and it will remain closed until the start of the next fishing year on January 1, 2021. This closure is necessary to protect the blueline tilefish resource.

DATES: This temporary rule is effective at 12:01 a.m., eastern time, on August 11, 2020, until 12:01 a.m., eastern time, on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305, email: frank.helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic

Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in round weight.

As specified at 50 CFR 622.193(z)(1)(i), the commercial ACL for blueline tilefish is 87,521 lb (39,699 kg). However, NMFS recently published a final rule that increases the commercial ACL for blueline tilefish to 117,148 lb (53,137 kg) (85 FR 43145, July 16, 2020). That final rule becomes effective on August 17, 2020.

The commercial AM for blueline tilefish requires NMFS to close the commercial sector when the its ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register (50 CFR 622.193(z)(1)(i)). NMFS has projected that for the 2020 fishing year, the current and pending new commercial ACLs for South Atlantic blueline tilefish will be reached by August 11, 2020. Accordingly, the commercial sector for South Atlantic blueline tilefish is closed effective at 12:01 a.m., eastern time, on August 11, 2020, until 12:01 a.m., eastern time, on January 1, 2021.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having blueline tilefish on board must have landed and bartered, traded, or sold such blueline tilefish prior to August 11, 2020. During the commercial closure, all sale or purchase of blueline tilefish is prohibited. The harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the recreational bag and possession limits specified in 50 CFR 622.187(b)(2) and 622.187(c)(1), respectively, while the recreational sector for blueline tilefish is open. These bag and possession limits apply in the South Atlantic on board a vessel with a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, and apply to the harvest of blueline tilefish in both state and Federal waters.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of blueline tilefish and the South Atlantic snapper-grouper fishery and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws.

This action is taken under 50 CFR 622.193(z)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for blueline tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.193(z)(1)(i) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect blueline tilefish, since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: July 31, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–17111 Filed 7–31–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 151

Wednesday, August 5, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AO-SC-20-J-0011; AMS-SC-19-0082; SC19-984-1]

Walnuts Grown in California; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes amendments to Marketing Order No. 984 (Order), which regulates the handling of walnuts grown in California. The proposed amendments are based on the record of a public hearing held via videoconference technology on April 20 and 21, 2020. The California Walnut Board (Board), which locally administers the Order, recommended proposed amendments that would add authority for the Board to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order and establish requirements to effectuate the new authority. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes as may be necessary to conform to any amendment that may result from the public hearing.

DATES: Written exceptions must be filed by September 4, 2020.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031-S, Washington, DC 20250-9200; Fax: (202) 720-9776 or via the internet at <https://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business

hours or can be viewed at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Andrew Hatch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Melissa.Schmaedick@usda.gov or Andrew.Hatch@usda.gov.

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on February 2, 2020, and published in the February 11, 2020, issue of the **Federal Register** (85 FR 7669) and a Correction to the Notice of Hearing issued on April 9, 2020, and published in the April 10, 2020, issue of the **Federal Register** (85 FR 20202).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget's (OMB) Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to

the proposed amendments to Marketing Order 984 regulating the handling of walnuts grown in California and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held via videoconference technology on April 20 and 21, 2020. Notice of this hearing was published in the **Federal Register** on February 11, 2020 (85 FR 7669) followed by a Correction to the Notice of Hearing issued on April 9, 2020, and published in the April 10, 2020, issue of the **Federal Register** (85 FR 20202). The notice of hearing contained one proposal submitted by the Board and one submitted by USDA.

The proposed amendments were recommended by the Board on September 13, 2019 and were submitted to USDA on September 16, 2019. After reviewing the proposals and other information submitted by the Board, USDA made a determination to schedule this matter for hearing. The Board's proposed amendments to the Order would add authority for the Board to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order and would establish requirements to effectuate the new authority.

USDA proposed to make any such changes as may be necessary to the Order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

Twelve witnesses testified at the hearing. Eleven witnesses represented walnut producers and handlers in the production area, as well as the Board, and one witness was from USDA. Ten industry witnesses supported the proposed amendments, while the eleventh had reservations about the program and its underlying assumptions. The USDA witness remained neutral. Four dissenting

opinions and one comment were received by AMS after the notice of hearing was published in the **Federal Register** and are therefore considered ex parte communications. In accordance with section 900.16 of the Rules of Practice governing this proceeding (7 CFR 900.16), the ex parte communications were entered into the record but do not constitute testimony and were not considered in the drafting of this recommended decision.

The authority to provide credit for certain market promotion expenses paid by handlers against their annual assessment obligations, also referred to as “credit-back authority,” does not currently exist under the Order. The Board’s proposed amendments would authorize credit-back authority and establish requirements to administer a credit-back program.

If implemented, the proposed amendments would allow the Board to set aside funds every year during its budget discussions to fund such a program. Under the program, certain market promotion expenses paid directly by handlers within a marketing year could be “credited-back” to the handler against their assessment obligation paid to the Board. The credit-back amount available to each handler would be determined by that handler’s percentage of the industry’s total volume of walnuts handled during the prior marketing year multiplied by the current marketing year’s credit-back program budget.

Witnesses at the hearing explained that the proposed amendments are necessary to encourage handlers to undertake market promotion activities, in addition to the Board’s generic marketing efforts, to increase market demand for the industry’s increasing supply of walnuts. Witnesses further explained that future increases in supply without additional increases in demand could result in weaker market returns. Therefore, proponents support the need to increase demand for walnuts to stabilize future market returns.

As an indicator of untapped growth potential, witnesses referred to a domestic walnut consumption analysis that revealed only 40 percent of U.S. households consume walnuts. Witnesses argued that the proposed credit-back authority could stimulate domestic demand through handler-led promotion and product innovation, and that doing so could stabilize future market prices.

One witness agreed that an increase in demand for walnuts was necessary to stabilize future market prices but expressed concerns with the proposed amendments.

The witness argued that handlers do not pay assessments under the Order in practice because they deduct the assessments from their payments to walnut producers; therefore, the producers actually pay the assessments.

At the conclusion of the hearing, the Administrative Law Judge established a deadline of May 6, 2020, for the submission of corrections to the transcript, and May 22, 2020, as a deadline for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. One brief in favor of the proposed amendments was received from the Board.

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Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether to amend § 984.46 to add authority to provide credit for certain market promotion expenses paid by handlers against their annual assessments due under the Order.

2. Whether to add a new § 984.546 to establish requirements effectuating Material Issue 1. Corresponding changes would also establish a new Subpart D with the heading “Research and Development Requirements,” under which § 984.546 would be listed and reserving § 984.547.

3. Whether any conforming changes need to be made as a result of the above proposed amendments. Conforming changes may also include correction of non-substantive, typographical errors.

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Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Credit-Back Authority

Section 984.46, “Research and Development,” should be amended to add credit-back authority. This authority would authorize the Board to credit the pro rata assessment obligations of a handler with such portion of his or her direct expenditure for marketing promotion, including paid advertising, under an annual credit-back program. The credit-back amount available to each handler would be determined by that handler’s percentage of the industry’s total volume of walnuts handled during the prior marketing year multiplied by the current marketing year’s credit-back program budget. The credit-back budget would be set

annually and would be subject to approval of the Secretary.

Credit-back would be limited such that no handler would receive credit-back for any creditable expenditures exceeding the total amount of calculated credit-back available to them for the applicable marketing year program. Further, no handler would receive credit-back in an amount that exceeds that handler’s assessments paid in the applicable marketing year at the time the credit-back application is made.

The proposed amendment also stipulates that marketing promotion expenses would be credited at a rate recommended by the Board and approved by the Secretary. That rate would reflect how much per dollar of marketing promotion expenses paid by each handler would be reimbursable under the proposed credit-back program during the applicable marketing year. In addition, the proposed amendment provides that a handler need not necessarily apply for reimbursement of their total calculated credit-back available to them; credit-back could be applied to all or any portion of a handler’s direct expenditures.

The proposed amendment further provides that credit could be paid directly to the handler as a reimbursement of assessments paid, and that different credit rates for different products or different marketing promotion activities could be established. Differing rates would require a recommendation by the Board, according to priorities determined by the Board and its marketing plan, and approval by the Secretary. The amendment would also allow the Board to adjust the credit-back program to provide for alternative methods of issuing credit if future advances in the industry warranted. All future proposed amendments would require approval by the Secretary.

Regarding the kind of expenditures eligible for reimbursement under the proposed authority, also referred to as “creditable expenditures,” the proposed amendment stipulates that such expenditures could include, but would not be limited to: Money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media, including the actual standard agency commission costs not to exceed 15 percent. According to the record, the proposed amendment specifies that creditable expenditures would be required to promote the sale of walnuts, walnut products or their uses, but not the production or farming of walnuts.

Currently, § 984.46 allows for production research, marketing research

and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of California walnuts. These activities are carried out directly by the Board, are generic in their promotion of all California walnuts, and are paid for by assessments as part of the Board's operating budget.

Witnesses explained that the current authority limits the Board to generic marketing and promotion activities for inshell and shelled walnuts. While the authority does allow the Board to conduct marketing research and development projects, the Board does not manufacture or otherwise sell walnuts. Therefore, it is incumbent upon handlers to further develop new product formulations and deliver products to the market. Because product innovation and marketing can be costly, the Board recommended credit-back authority that would incentivize handlers to support such initiatives.

If implemented, the proposal would encourage handlers to build upon the Board's generic marketing activities, providing additional visibility, awareness and sales for walnuts. Witnesses explained that the need for increased marketing, promotion and product innovation stems from the industry's growing production, increased competition in the export market and the need to stabilize fluctuating grower returns.

According to the hearing record, production has nearly doubled in the past decade from 328,000 tons in the 2007/2008 crop year to 690,000 tons estimated for the 2018/2019 crop year. Evidence suggests that the increase in production is a combination of both new plantings and higher yields per acre.

High market prices in 2013 and 2014 spurred grower investment in new plantings, resulting in a significant jump in total industry planted acreage over the 2013 to 2017 time period. As trees mature and transition from non-bearing to bearing acreage, a process that takes roughly five years, total industry production increases. The 2018–2019 crop year industry total of bearing acres is estimated at 350,000, up from 230,000 in the 2008–2009 crop year. Witnesses estimate that 15,000 more acres will come into production by the end of the 2019–2020 crop year for a new total of 365,000 bearing acres. Moreover, an additional 65,000 acres are due to come into production over the next five years. With each acre yielding roughly two tons, the Board is forecasting a 17-percent increase in production from

750,000 tons in 2020 to 875,000 tons in 2025.

Record evidence also indicated that production in Chile, China and Europe, all competitors of California walnuts in the international market, is another factor in assessing future market stabilization. While California walnuts accounted for 57 percent of world trade in 2017–2018, its production only accounted for 31 percent of the world total. Witnesses reported that while the domestic market is the largest consumer of California walnut production, exports currently account for roughly 66 percent of all industry trade. The industry's largest export markets are Germany, Turkey, the United Arab Emirates and Japan. As world production increases, witnesses expressed concern over maintaining market share and the potential downward impact on prices of increasing global supply.

Witnesses also expressed concern over the California walnut industry's reliance on the export market, stating that fluctuating global supply and demand has contributed to domestic price volatility. Citing fluctuations in grower returns over the previous eleven years, a witness correlated record low returns of \$1,280 per ton and record high returns of \$3,710 per ton with events impacting trade relationships and global demand.

Witnesses argued that less reliance on export markets and increasing domestic demand for California walnuts would lead to more stable grower returns. According to a recent study commissioned by the Board, only 40 percent of U.S. households purchase walnuts on a regular basis and domestic consumption has remained at roughly one-half pound of walnuts per person annually for the past twenty years. Based on this evidence, witnesses argued that increasing domestic demand would be a strategically sound approach to offsetting anticipated downward pressure of projected increases in domestic supply on domestic prices.

According to the record, strategic planning efforts for future market stabilization began in early 2019 with the formation of the Board's Marketing Order Revision Committee (MORC) and a review of section 7 U.S.C. 608c(6)(I) of the Act, which provides credit-back authority for walnuts. Further, a study of similar programs under the Federal marketing orders for almonds and dried prunes produced in California piqued the MORC's interest in developing a credit-back program for walnuts.

According to the record, MORC members concluded that adding credit-back authority for promotional activities would encourage handlers to build

upon the work the Board does to grow domestic consumption. The credit-back program would allow for the handlers to promote their brands through various activities, including but not limited to, money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media. Witnesses explained that while promotional activities of the Board and handlers would be similar, handlers' ability to market their branded products would spur both marketing innovation and consumer demand in a way that the Board is not able to accomplish on its own. A full list of qualified activities is listed in proposed § 984.546 of the proposed amendatory language of this recommended decision.

The proposed amendment further specifies that all promotional activities and related creditable expenditures eligible for credit-back would be required to promote the sale of walnuts, walnut products or their uses, but not the production or farming of walnuts. According to the record, activities supporting the production or farming of walnuts would not be eligible because such activities would not contribute to increasing demand for walnuts, which is the intended purpose of the proposed credit-back program.

Witnesses stated that the anticipated cost impact on the industry, and on individual stakeholders, as a result of this proposal would be minimal given that the credit-back program would be funded by allocating a portion of the Board's existing annual promotion and marketing fund to that purpose. Therefore, witnesses argued that overall assessments would not increase as a result of this proposal. Witnesses clarified that, if the Board were to consider changing the annual assessment rate, such recommendation would be based on an overall budget analysis related to the Order's operating expenses.

One witness raised concerns over the potential lack of transparency between handlers and growers, arguing that handlers would be able to deduct marketing expenses from payments to growers and then receive credit for those expenses without disclosing or passing on any benefit to the growers. Proponents of the proposed amendment countered this statement by explaining that increased demand for California walnuts, regardless of the brand under which they are sold, would benefit all stakeholders within the industry. Educating consumers to incorporate walnuts into their diets would lead to long-term increases in demand, which would in turn provide a stable market for growing domestic production.

Without increased marketing, product innovation and market penetration, proponents argued that the anticipated supply would lead to market prices below the cost of production.

The witness also argued that producers ultimately bear the assessment burden. USDA clarifies that California walnut handlers are required under both the Act and the regulation of the Order to pay assessments. Assessments are collected on a pro rata basis, with each handler's assessment due under the Order being equal to the volume of California walnuts handled multiplied by the assessment rate in effect at that time.

Regarding the assessment burden, witnesses further explained that each handler's access to credit-back reimbursements would be limited to the pro rata assessment obligations of that handler. This means that the credit-back amount available to each handler would be determined by that handler's percent of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget. For this reason, witnesses argued that the proposed credit-back program would equitably provide all California walnut handlers with access to marketing and promotion support commensurate to the size of their operation.

According to the record, the amount each handler could receive as reimbursement per creditable expenditure would be the value of the expenditure multiplied by the reimbursement rate. Total reimbursements for any given marketing year could not exceed a handler's total available credit-back calculated for that year; reimbursement per creditable expenditure at any given time would be limited to the amount a handler had paid in pro rata assessments at the time of the reimbursement request. The credit-back program budget and the reimbursement rate for creditable expenditures would be recommended annually by the Board and would be subject to approval of the Secretary.

If implemented, this authority would also allow the Board to recommend different credit rates for different products or different marketing promotion activities. Witnesses explained that having the flexibility to recommend different rates may be helpful in encouraging different types of handler activities to supplement the Board's marketing plan and priorities in the future.

Witnesses explained that different rates for different activities would not be used immediately, and that initially one rate would be applied to a broad

scope of activities. This approach would allow the industry and Board staff to become familiar with the credit-back concept. If successful, the Board would have the option of recommending differing rates for approval by the Secretary. Witnesses also noted that the proposed authority would not require that the Board offer a credit-back program annually and that the decision whether to forego the program in any given year would also be made during the annual Board budget process.

The proposed amendment would also allow the Board to recommend alternative methods to reimbursement for issuing credit in the future if warranted. Witnesses explained that, if implemented, credit-back would initially be issued as a reimbursement upon approval of handler-submitted documentation of creditable expenditures by Board staff. Reimbursement in the form of a check issued to the handler would provide a clear, traceable transaction, thereby facilitating recordkeeping and compliance during the program's implementation. The proposed rules regarding reimbursement are specifically addressed in Material Issue 2. Any changes to the reimbursement method for credit-back would require a recommendation by the Board and approval by the Secretary.

According to the record, the proposed amendment would benefit the entire industry. Given that the proposed credit-back would only offset a portion of handler activity costs, witnesses explained that the handler-paid portion would result in an overall industry increase in total marketing and promotion investment. If successful, the increased efforts would result in a growth of domestic consumer demand for walnuts and walnut products and could correlate into greater returns to both growers and handlers.

Regarding industry stakeholder awareness of the proposed amendments, representatives of the Board stated that the idea of a credit-back program was publicly discussed at a Board meeting in May 2019, before being presented and unanimously recommended by the Board as an amendment to the Order on September 13, 2019. Leading up to the Board's recommendation, the MORC held several meetings where members discussed and debated the merits of the proposed language, possible alternatives, potential benefits, potential costs to staff, and possible compliance issues.

USDA is recommending one clarifying change to the proposed language in § 984.46 paragraph (a), which would add credit-back authority.

USDA has determined that the language presented in the Notice of Hearing lacked a reference to the proposed, new paragraph (b) and only included a reference to proposed, new paragraph (c). This correction was discussed at the hearing and a witness clarified that proposed, new paragraphs (b) and (c) were both necessary references in the proposed revision to § 984.46 paragraph (a), and that the omission of the reference to paragraph (b) was an oversight. USDA has revised the proposed language so that both proposed new paragraphs are referenced. This new language is included in the proposed regulatory text of this recommended decision.

For the reasons stated above, it is recommended that § 984.46 be amended to add credit-back authority under the Order.

Material Issue Number 2—Credit-Back Program Requirements

A new § 984.546 should be added to establish requirements effectuating Material Issue 1. Corresponding changes should also establish a new Subpart D with the heading "Research and Development Requirements," under which § 984.546 would be listed. In addition, § 984.547 should be reserved.

If the authority recommended under Material Issue I were implemented, requirements would be needed to effectuate it. Witnesses at the hearing expressed the need to implement the proposed credit-back program as quickly as possible and requested that USDA conclude the amendment process in tandem with the beginning of the 2020–2021 marketing year, which begins September 1, 2020. By including proposed requirements alongside the proposal to add credit-back authority, witnesses aimed to expedite the full implementation of the program.

According to the record, the Board is recommending a credit-back rate of \$0.70 cents for each handler dollar spent on qualified activities eligible for credit-back reimbursement up to each handler's pro-rata share of assessments paid into the allocated credit-back fund. During its annual budget process, the Board would designate a credit-back fund based on forecasted production and anticipated assessment revenue. The per handler pro-rata share of the credit-back fund would be calculated by multiplying the budgeted credit-back fund by each handler's percentage of walnuts handled of the previous marketing year's total walnuts. The Board would then communicate to handlers the availability of the credit-back fund and their pro-rata portion of that fund.

The following is a sample calculation of a handler's pro-rata portion of a hypothetical credit-back fund based on an assumed total industry production of 625 million hundred weight assessed at \$0.04 per hundred weight, and where the credit-back fund is ten percent of the total Board budget for that year and the handler's share of the total industry's walnut production handled.

To calculate the total assessments collected for that year, multiply the total production by the assessment rate for a

result of \$25 million (625 million × \$0.04 = \$25 million). To calculate the credit-back budget, multiply the total Board budget by 10 percent for a result of \$2.5 million. To calculate the pro rata share of the credit-back fund allocated to that handler, multiply the total credit-back fund by the handler's pro rata share for a result of \$250,000.

If the reimbursement level is set at 70 percent, one can calculate the creditable expenditures the handler would have to spend on qualified activities promoting

products containing 100 percent walnuts in order to receive their full amount of pro rata share by dividing the pro rata share by the reimbursement rate. Two hundred and fifty thousand dollars divided by 70 percent results in a total necessary expenditure of \$357,143. At this rate, the handler would spend \$357,143 on qualified activities, of which \$250,000 would be reimbursed, and \$107,143 would be paid for by the handler's own investment (\$250,000/.70 = \$357,143).

TABLE 1—EXAMPLE OF BOARD CREDIT-BACK PROGRAM BUDGET AND HANDLER PRO RATA SHARE

	Calculation	Value
<i>Credit-Back Program Budget:</i>		
A. Total production (cwt) .....	.....	625,000,000
B. Assessment rate (\$ per cwt) .....	.....	\$0.04
C. Board Annual Budget	C = A * B	\$25,000,000
D. Share of Board budget allocated to Credit-Back program .....	.....	10%
E. Credit-back program annual budget	E = C * D	\$2,500,000
<i>Handler Pro Rata Share:</i>		
F. Handler share of acquisition .....	.....	10%
G. Maximum reimbursement to a handler with 10% of annual walnut acquisitions	G = E * F	\$250,000
H. Credit-Back percentage rate .....	.....	70%
I. Total creditable expenditures on qualified promotional activities of <i>walnut-only products</i> for handler to get full reimbursement (100% walnuts)	I = G/H	\$357,143

According to the record, the MORC discussed varying levels of reimbursement from 50 cents to 65 cents, and ultimately recommended 70 cents as a level of reimbursement. The 70-cent level was determined to attract handlers to participate and encourage use of the proposed program with the goal of spurring increased investment in walnut promotion and marketing.

Paragraph (a) of proposed § 984.546 addresses requirements regarding timeliness of the reimbursement claim and the credit-back rate. Witnesses explained that handlers would be able

to apply for credit-back on the expenses of qualified activities completed within the marketing year. Handlers would provide proof of payment and documentation of qualified activities to the Board for review. Once the Board has approved the claim, the handler would receive a reimbursement for 70 percent of the creditable expenditures of the qualified activity up to the handler's pro-rata share of the credit-back fund. If a credit-back claim for expenses is made prior to the end of the marketing year, the handler must also have paid

sufficient assessments into the credit-back fund to cover their reimbursement.

According to the record, a credit-back reimbursement for a creditable expenditure of \$10,000 promoting a product containing 100 percent walnut content, such as walnut butter, would be calculated by multiplying the cost of the activity by the percentage of walnut content and the reimbursement rate. This calculation results in a credit-back reimbursement of \$7,000 to the handler and is captured in the following table, Scenario One.

SCENARIO ONE

[100% Walnut product]

	Calculation	Value
J. Walnut product contains 100% walnuts .....	.....	100%
K. Total cost of qualified activity .....	.....	\$10,000
L. Credit-back reimbursement rate .....	.....	70%
M. Amount reimbursed (credit-back) to handler for walnut 100% product	M = K * J * L	\$7,000

The proposed language also states that claims for credit-back on expenses must be made within 15 days after the end of the marketing year. Witnesses explained that 15 days would be reasonable given that most handlers have annual marketing plans that would allow them to accurately accrue and submit documentation on a timely basis. Further, witnesses explained that most handlers would be likely to submit

credit-back claims directly after the conclusion of qualified activities. Therefore, handlers would most likely already have submitted claims prior to the end of the marketing year.

Paragraphs (b) and (c) of proposed § 984.546 address requirements regarding the importance of assessment payments and handler eligibility for reimbursement under the proposed credit-back program.

Proposed § 984.546(b), "Assessment payments," states that handlers are responsible for assessment payments under § 984.69 of the Order and that a handler must be current on all assessment payments prior to receiving credit-back for creditable expenditures. Witnesses explained that because the credit-back program would be funded by assessments, a handler must be current with his or her assessment

obligation prior to receiving a reimbursement.

To that end, proposed § 984.546(c), “Handler eligibility for reimbursement,” states that credit-back for qualified activities would only be issued to the handler who performed such activities. Witnesses explained that this requirement would prevent third parties or affiliates who might be partnered with a handler for a specific promotional activity from being eligible to claim or receive credit-back reimbursement.

If implemented, the credit-back program would run on an annual basis. As previously explained, the Board would recommend funding for the program as part of its annual marketing year budget process. The Board’s activities, including the administration of the Order, are paid for by assessments paid by handlers during the applicable marketing year. For this reason, proposed § 984.546(d), “Applicability to marketing year,” states that credit-back would only be granted for creditable expenditures for qualified activities that are conducted and completed during the marketing year for which credit-back is requested. Witnesses explained that if a handler’s activities extended beyond one marketing year, that handler could request reimbursement only for those creditable expenditures applicable to the marketing year in which they were completed.

Proposed § 984.546(e), “Qualified activities,” details requirements applicable to creditable expenditures resulting from qualified activities in paragraphs (e)(1) through (4). According to the record, the credit given for creditable expenditures resulting from qualified activities would be commensurate with accepted professional practices and rates for the type of activity conducted. Witnesses explained that this requirement would be necessary to ensure that reimbursements are not unfairly above or below standard market rates. In the case of claims for credit-back for

activities not covered by specific and established criteria, the Board would review the expenses claimed against rates for similar activities to ensure consistency in reimbursement practices.

Regarding the kinds of activities that would be considered qualified for credit-back reimbursement, witnesses stated that the clear and evident purpose of each qualified activity should be to promote the sale, consumption or use of California walnuts, both inshell and shelled, and their products. Witnesses were careful to explain that qualified activities should focus on increasing demand. For this reason, no credit would be given for any activity that targets the farming or grower trade.

Similarly, credit-back would not be allowed for travel expenses, or for any promotional activities that result in price discounting. Travel expenses are considered normal business activities that do not directly promote the sale or consumption of California walnuts. Witnesses explained that price discounting, or offering a price below market levels for promotional purposes, would also be excluded from reimbursement eligibility because the practice does not directly promote the sale or consumption of California walnuts at market prices.

Regarding activities qualified for credit-back, proposed §§ 984.546(e)(5)(i) and (ii) put forward the following list: Paid media directed to end-users, trade or industrial users, and paid advertising space or time, including, but not limited to, newspapers, magazines, radio, television, online, transit, and outdoor media (including standard agency commission costs not to exceed 15 percent of gross expense); market promotion, marketing research (except pre-testing and test-marketing of paid advertising), and trade and consumer product public relations (not including advertising or public relations agency fees); in-store demonstrations, production of promotional materials, sales and marketing presentation kits,

etc. (excluding couponing); and trade show booth rentals, services, and promotional materials.

According to the record, expenses for pre-testing and test-marketing of paid advertising, public relations agency fees and couponing would not be considered creditable expenditures as they also are considered a normal cost of business and do not directly meet the criteria of promoting sales or consumption.

Proposed § 984.546(e)(5) addresses promotional activities involving joint activities, handler-owned distribution of products, and promotional activities conducted under a State or Federal trade program.

For qualified credit-back activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, witnesses stated that the amount allowed for credit-back would reflect that portion of the activity represented by walnuts. Witnesses explained that when walnuts are marketed with other non-walnut items (other nuts, dried fruits, etc.) eligible credit-back would be limited to the walnut percentage of that product. Creditable expenditures to support walnuts used as an ingredient in such a manufactured food product would receive credit-back based on the proportionate share of walnuts included in the product.

According to the record, an example of the above would be a snack bar with multiple ingredients, including 30 percent of each walnuts, almonds and cashews and an additional 10 percent of non-nut ingredients. If the total cost to the handler for this activity was \$10,000, the handler could claim the percentage of the activity related to walnuts, or 30 percent, which would equal \$3,000 ($\$10,000 \times .3 = \$3,000$). At a reimbursement rate of 70 percent, the handler would receive \$2,100 in credit-back ($\$3,000 \times .7 = \$2,100$). This calculation is replicated in the table below, Scenario Two.

SCENARIO TWO
[30% Walnut product]

	Calculation	Value
N. Walnut product contains 30% walnuts .....	.....	30%
O. Total cost of qualified activity .....	.....	\$10,000
P. Credit-back reimbursement rate .....	.....	70%
Q. Total creditable expenditure on <i>partial walnut products</i> for handler to get partial reimbursement (for 30% walnuts).	$Q = O * N$	\$3,000
R. Amount reimbursed (credited-back) to handler for partial walnut product	$R = Q * P$	\$2,100

In addition, the handler's name or brand may be included on the product packaging, but the words "California Walnuts" must always be included on the product packaging. Witnesses stated that the inclusion of "California Walnuts" on packaging was important given that the intent of the credit-back program was to promote the consumption of all California walnuts, not just those under a singular brand. Witnesses further clarified that omission of this wording would disqualify an otherwise creditable expenditure from being reimbursable.

For products owned or distributed by the handler, witnesses stated that the walnut product being promoted must list the ownership or distributorship on the package and display the handler's name and the handler's brand. Similarly, the words "California Walnuts" must always be included on the primary face label.

Based on record evidence, USDA is recommending a clarifying change to the proposed regulatory text in § 984.546(e)(5)(iii). Current wording of this proposed paragraph does not adequately state that in all promotional activities, regardless of whether a handler is operating independently or in conjunction with a manufacturer, or whether promoting a product that is solely walnut content or walnuts are a partial ingredient, the words "California Walnuts" must be included in the labeling in order for that activity to qualify as a creditable expenditure. USDA is recommending this change in conformance with witness testimony clarifying the intent of the proposed language. The revised language is included in the proposed regulatory text of this recommended decision.

Regarding handler promotional activities pursuant to a contract with the Foreign Agricultural Service (FAS), USDA, and/or the California Department of Food and Agriculture (CDFA), proposed § 984.546(e)(5)(iv) states that these activities would not be eligible for credit-back unless the Board is administering the foreign marketing program, and the handler certifies that he or she would not be reimbursed by either FAS or CDFA for the amount claimed for credit-back. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA would not be eligible for credit-back.

Witnesses explained that FAS and CDFA offer various promotional programs to which handlers can apply. If a handler were to receive support from one of those programs and apply for credit-back reimbursement as well, that handler would effectively be receiving two forms of support for the

same activity. Witnesses reiterated that the intent of the credit-back program is to encourage handler-led promotion and marketing activities to increase demand for walnuts by offsetting a portion of those costs with a partial reimbursement of their assessment paid. Collecting double payments from two sources for the same activity defeats the purpose of extending promotional funds to increase the overall level of marketing activity within the industry.

Handlers would provide proof of payment and documentation of qualified activities to the Board for review. Once the Board has approved the claim, the handler would receive a reimbursement for 70 percent of the expense of the qualified activity up to the handler's pro-rata share of the credit-back fund. If a credit-back claim for expenses is made prior to the end of the marketing year, the handler must also have paid sufficient assessments into the credit-back fund to cover their reimbursement. The Board's proposal also states that claims for credit-back on expenses must be made within 15 days after the end of the marketing year.

According to the record, proposed § 984.546(e)(6), "Credit-back Reimbursement claims," to obtain credit-back for creditable expenditures, a handler's claim would need to include a description of the activity and when and where it was conducted and an actual sample, picture or other physical evidence of the qualified activity. In addition, copies of all invoices from suppliers or agencies, and all canceled checks or other proof of payment issued by the handler in payment of these invoices, must also be submitted to the Board for review.

If the claim is validated, the Board would issue a check to the recipient handler within 30 days of its receipt. If a claim is not sufficiently documented or does not reflect qualified credit-back activities, the Board would deny it. An appeal process would afford a handler with a denied claim the opportunity to appeal the denial.

Witnesses stated that the proposed credit-back program requirements were designed with an appeals process as a mechanism to address any unforeseen issues that may arise. If implemented, Board staff, Board members and walnut handlers will require time to adjust to a new business process. Proposed § 984.546(f), "Appeals," outlines this process and states that the appeal process would begin with the Executive Committee's (Committee) review of the Board staff's decision. To trigger this review, the affected handler would need to submit a written request that includes permission to share the specific

information relating to the claim in question with the Committee. Appeals could be personally presented by the affected handler or presented by Board staff. If the Board staff presents the appeal, the identity of the affected handler would be kept confidential.

The proposed paragraph further provides that if the affected handler disagrees with the decision of the Committee, the handler could request that the Board review the Committee's decision. If the handler disagrees with the decision of the Board, the handler, through the Board, could request that the Secretary review the Board's decision.

Finally, witnesses explained that the proposed regulations would provide for a mechanism to make future adjustments to the program's operation if needed. While the MORC and the Board attempted to capture all pertinent operational details, implementation, if approved, could bring to light necessary adjustments for more efficient and effective operation. If any such adjustments were necessary, the Board could make recommendations through the notice and comment process for ultimate approval by the Secretary.

In its recommendation, the Board stated that the proposed changes have the broadest possible support from the industry. The proposed amendments were presented and discussed at several meetings involving California walnut handlers and growers.

For the reasons stated above, it is recommended that a new § 984.546, including the clarifying change recommended by USDA to § 984.546(e)(5)(iii) discussed above, should be added to establish requirements effectuating Material Issue 1. Corresponding changes should also establish a new Subpart D with the heading "Research and Development Requirements," under which § 984.546 would be listed. In addition, § 984.547 should be reserved.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

During the hearing held on April 20 and 21, 2020, interested parties were invited to present evidence on the probable regulatory impact on small businesses of the proposed amendment to the Order. The evidence presented at the hearing shows that the proposed amendment would not have a significant negative economic impact on a substantial number of small agricultural producers or handlers.

Eight grower and handler witnesses testified at the hearing. All eight witnesses were growers and five were also handlers. Four testified that they were small walnut growers according to the Small Business Administration (SBA) definition and four were large. Of the five who were handlers, one was small, and four were large.

All five who were both handlers and growers expressed support for the proposed amendment. Of the three remaining grower witnesses, two stated their support. One grower reported that he had concerns but did not specifically oppose the amendment. Therefore, in their role as growers, 7 out of 8 witnesses supported the amendment, and stated that they expected to see significant benefits from the additional promotion expenditure that would be authorized by the amendment and would not incur additional costs. The benefits and impacts of the proposed amendment are explained in the following three sections: (a) Walnut Industry Background and Overview, (b) Domestic Market Demand for Walnuts, and (c) Estimated Economic Impact of the Proposed Credit-Back Program.

Walnut Industry Background and Overview

According to the hearing record there are approximately 4,400 producers and 92 handlers in the production area. Record evidence includes reference to a study showing that the walnut industry contributes 85,000 jobs to the economy, directly and indirectly.

A small handler as defined by the SBA (13 CFR 121.201) is one that grosses less than \$30,000,000 annually. A small grower is one that grosses less than \$1,000,000 annually.

Record evidence showed that approximately 82 percent of California's walnut handlers (75 out of 92) shipped merchantable walnuts valued under \$30 million during the 2018–2019 marketing year and would therefore be considered small handlers according to the SBA definition.

Data in the hearing record from the 2017 Agricultural Census, published by USDA's National Agricultural Statistics Service (NASS), showed that 86 percent

of California farms growing walnuts had walnut sales of less than \$1 million.

In an alternative computation using NASS data from the hearing record, the 3-year average crop value (2016–2017 to 2018–2019) was \$1.24 billion. Average bearing acres over that same 3-year period were 333,000. Dividing crop value by acres yields a revenue per acre estimate of \$3,733. Using these numbers, it would take approximately 268 acres (\$1,000,000/\$3,733) to yield \$1 million in annual walnut sales. The 2017 Agricultural Census data show that 80 percent of walnut farms in 2017 were below 260 acres. Therefore, well over three-fourths of California walnut farms would be considered small businesses according to the SBA definition.

Walnuts bloom in March and April, and the harvest of the earliest varieties begins in the first part of September. As later varieties mature, the harvest continues into November. The crop comes in from the field at about 25 percent moisture and the hulling and drying process typically takes place within 24 hours. The nuts are hulled (removal of the green husks) and dried to about 7 percent moisture before delivery to a handler. Some growers have their own hulling and drying equipment and others pay for this service. Drying to seven percent moisture keeps the nuts stable in storage and minimizes deterioration.

Once received by the handler, shelling varieties are shelled and have a shelf life of approximately 12 months. Unshelled varieties are cleaned, sized, and put into storage. Both shelled and unshelled nuts are shipped and distributed to customers throughout the marketing year. Approximately 75 percent of the California walnut crop is sold as kernels (shelled). Witnesses testified that advances in processing and packaging technologies continue to improve product quality, consistency, and shelf-life.

Weather is one of two main factors driving crop size variability, a significant feature of the walnut market. In some years, climatic conditions may contribute to fungus or other issues that damage the crop and cause nuts to fall prior to harvest. With walnuts grown over a large geographic area, some regions will have better weather than others in any particular year. Crops were larger in 2015 and 2018 and smaller in 2017 and 2019.

The other key variability factor is “alternate bearing” (a natural tendency of several types of tree nuts, in which a large crop is often followed by a small crop). As trees mature, alternate bearing can become more pronounced, and for many years this had a big impact on

crop size variability. With recent new plantings, the average age of producing trees in California has dropped. There is less of an alternate bearing tendency with younger trees. Crop sizes have become less variable as younger trees reach bearing age, which typically occurs in the fifth year. Older trees are replaced with varieties with improved quality characteristics to meet changing consumer demand. Newer varieties are generally more productive, contributing to higher yields per acre and greater production.

The hearing record shows that crop size variability, particularly the reduced availability of walnuts in short crop years, continues to contribute to loss of demand, as some buyers of kernels as ingredients in baked goods and other products shift to other tree nuts. These lost market opportunities are additional factors in the industry's interest in product diversification through a credit-back program.

Additional factors that affect current market conditions are the longer-term supply impacts of growers responding to market signals. If producers decide to plant more trees because of strong market prices, such as in the 2011–2014 time period, they receive those trees one or two years later, based on contracts that vary with the type of nursery stock. This time lag, and penalties associated with dropping a planting contract, contribute to continued planting even after market prices drop and growers might otherwise not want to plant. For these reasons, there is a delayed response in planting new trees, and a delayed response in reducing the level of planting when prices and revenue per acre decline, such as in 2015–2018. One witness estimated that the rate of tree planting in recent years is about three times greater than tree removal. Another key factor is that the time from tree planting to bearing nuts is typically five years.

Record evidence shows that walnut production exceeded 600,000 inshell tons every season starting in 2015–2016. Witnesses testified that a key factor in their support of new demand expansion initiatives is their expectation that walnut production is likely to be at or above 700,000 tons within one or two seasons and may exceed 800,000 tons a few years later.

The hearing record shows that farm management decisions made years ago will have a large impact on walnut supply for the coming years, contributing to grower and handler support for major initiatives to increase demand, including credit-back.

About two-thirds of the walnut crop is typically exported, and for many

years, increasing international demand facilitated expansion of the walnut market. China emerged as a major walnut buyer, but also began large scale planting of walnuts. Prices continued to improve for years, reaching \$1.86 per pound, (\$3,710 per ton) in 2013–2014. As China’s new plantings started coming into production, world walnut prices began to decline. By 2017–2018, walnut prices rebounded as Turkey and other Middle eastern countries took up some of the slack in world market demand, according to the hearing record.

Hearing evidence provided various reasons for the decline in walnut crop

value since the peak level of \$1.9 billion in 2014–2015. One was reduced export market opportunities. With increased trade barriers from China and India, significant volumes were shifted into other export markets, driving prices downward. Walnut production was also growing in Chile and Europe. The 2018–2019 price fell to \$0.65 per pound (\$1,300 per ton). With the reduced reliability of the international market, the industry is increasingly looking for ways to increase demand in the U.S. domestic market.

The hearing record shows that most of the grower and handler witnesses stated that a key reason for seeking credit-back

authority was the need to increase demand after years of unfavorable marketing conditions. Witnesses stated that a key factor in their support of seeking new ways to increase market demand was several years of deteriorating profitability.

Hearing evidence included data that facilitated comparing farm revenue per acre to cost of production, a key measure of walnut farm profitability. Tables 2 and 3 illustrate the decline in profitability by comparing two four-year periods with very different financial outcomes, 2011 to 2014 and 2015 to 2018.

TABLE 2—CALIFORNIA WALNUTS: COST OF PRODUCTION DATA FROM UNIVERSITY OF CALIFORNIA EXTENSION

Year	Average yield: tons per acre ¹	Average yield: pounds per acre	Sample yield (from Table 5 of UC study) that is closest to NASS yield in column (b) ²	Sample costs per acre associated with yield shown in column (c) ²
	(a)	(b)	(c)	(d)
2011	1.74	3,480	.....	.....
2012	1.84	3,680	3,400	\$3,318
2013	1.76	3,520	4,000	4,015
2014	1.97	3,940	.....	.....
2011–2014 avg	1.83	.....	.....	3,667
2015	2.02	4,040	4,500	4,509
2016	2.19	4,380	.....	.....
2017	1.88	3,760	4,500	5,574
2018	1.93	3,860	4,500	5,283
2015–2018 avg	2.01	.....	.....	5,122

¹ Source: NASS, USDA.

² Source: “Table 5. Ranging Analysis—Walnuts—Costs per Acre and Per Pound at Varying Yields to Produce Walnuts.” Table 5 appears in each of the following five UC Cooperative Extension studies: “Walnuts Cost and Returns Study, Sacramento Valley,” UC Coop. Extension—2012, 2015, 2018. “Walnuts Cost and Returns Study, San Joaquin Valley North”, UC Coop. Extension—2013, 2017. Sample yields appear in column 2 of Table 5 in each publication.

Table 2 displays cost of production numbers that represent both time periods. University of California Extension conducted two cost of production studies in the 2011–2014 time period, and three studies between 2015 and 2019. Each of the five studies had ranges of production cost figures

associated with different yields. To be representative of a typical or average walnut producer, the costs selected to present in column (d) were associated with University of California study yields (column c) closest to the NASS average annual yields for that year (column b).

The average production cost per acre figures for 2011–2014 and 2015–2018 were \$3,667 and \$5,122, respectively. Those figures were transferred to column (d) of Table 3, and the associated average yields (1.83 and 2.10 tons per acre) appear in column (b) of Table 3.

TABLE 3—CALIFORNIA WALNUTS: PRODUCER GROSS RETURN, COST OF PRODUCTION, NET RETURN

Range of years	Season average producer price, \$/ton ¹	Average yield: tons per acre ²	Producer gross return per acre	Total cost of production per acre ³	Producer net return per acre (gross return minus cost)
	(a)	(b)	(c) (a) * (b)	(d)	(e) (c) – (d)
2011–2014	\$3,245	1.83	\$5,930	\$3,667	\$2,264
2015–2018	1,828	2.01	3,664	5,122	–1,458

¹ Source: NASS, USDA.

² Four-year averages computed in Table 1, based on annual NASS yield data.

³ Computed in Table 1, based on U. of California Extension cost of production studies. For 2011–2014, the cost of production per acre is a two-year average (2012, 2013). For 2015–2018, the cost per acre is a 3-year average (2015, 2017, 2018).

Table 3 uses the data from Table 2 to show how the walnut farm profitability declined between the two time periods. Producer gross returns per acre for each of the two four-year time periods (column (c)) were computed by multiplying average yield by average price. Subtracting cost of production in column (d) yields the producer net return in column (e).

The two producer net return numbers in column(e) of Table 3 are the key results of this cost and return analysis. Four years of walnut farm profitability, represented by producer net return per acre of \$2,264 for 2011–2014, were followed by four years of difficult market conditions (2015–2018), with a negative average net return figure (–\$1,458). This analysis provides a numerical estimate that bears out the witness testimony that emphasized that a dramatic downward shift in their economic fortunes in recent years was a major factor in their support for a credit-back program that would leverage additional financial resources for handler-based promotional expenditures oriented toward increasing domestic demand for walnut products.

Domestic Market Demand for Walnuts

With reduced export market opportunities, the industry focused in recent years on ways to expand the domestic market. Record evidence showed that domestic per capita consumption has been approximately one-half pound for many years.

The Board commissioned a large consumer survey (with 1,000 respondents) showing that walnut products were reaching 40 percent of U.S. households, indicating significant

expansion potential. The study pointed out significant differences among age groups, with 22 percent of those aged 18 to 24 being walnut consumers. Certain age groups are therefore the targets for demand expansion.

The majority of walnuts going into the domestic market are kernels (shelled). One key segment is retail sales, with the main product being bags of raw kernels. Another major segment is industrial—use as an ingredient by food manufacturers in making pastries and other products. Record evidence shows that walnut industry participants consider these two segments to be a narrow group of uses which needs to be expanded.

Witnesses reported that among the Board’s strategic objectives, the top priority is retail sector growth, and the snack category in particular. However, current Board marketing programs are generic in nature and focus largely on the traditional forms of walnuts: Raw. Raw walnuts as a snack product are important components but expanding retail market development beyond the raw product is considered critical by industry participants, according to the hearing record. New consumption growth will mainly be achieved through new products and forms that appeal to a larger consumer audience, witnesses stated.

According to the hearing record, opportunities for significant walnut demand expansion include snack products such as roasted, salted, glazed, and trail mixes, and other new products such as beverages, spreads and meat alternatives. Witnesses stated that these demand expansion opportunities are

best achieved through brand advertising and other handler-based promotional approaches, rather than the generic promotion currently authorized through the Order. Witnesses reported that this is a key reason why adding credit-back authority would be helpful for demand expansion—by providing incentives for handler-based product development and promotion.

A small handler stated that if credit-back authority is added to the marketing order, his firm was likely to partner with another company to create a snack product, providing evidence that credit-back authority would help small handlers as well as large ones.

Estimated Economic Impact of the Proposed Credit-Back Program

The hearing record included evidence of the estimated impact of the credit-back program on walnut grower total revenue and net return. Table 4 presents an illustrative example of the impact of handlers taking advantage of the credit-back incentive by increasing their promotional spending. Based on the assumptions shown in the table, walnut growers would see increased total revenue of \$21.1 million (row K) and increased net return of \$16.8 million (row L). The table shows that there are four computational steps that lead up to the final computations in rows K and L.

The first step is to estimate a typical annual budget of the Board (\$25 million in row C) by multiplying the current assessment rate paid to the board (\$0.04) by a number representing an annual walnut production level representative of recent years (625 million hundredweight [cwt]).

TABLE 4—CALCULATING THE IMPACT OF THE WALNUT CREDIT-BACK PROGRAM ON PRODUCER TOTAL REVENUE AND NET RETURN

	Calculation	Value
A. Total production (cwt)		625,000,000
B. Assessment rate (\$/cwt)		\$0.04
C. Total Board budget	$C = A * B$	\$25,000,000
D. Share of budget allocated to Credit-Back program (%)		10%
E. Credit-Back program budget	$E = C * D$	\$2,500,000
F. Credit-Back rate (%)		70%
G. Total advertising and promotion expenditures with Credit-Back program	$G = E/F$	\$3,571,429
H. Increase in advertising and promotion expenditure	$H = G - E$	\$1,071,429
I. Increase in TOTAL revenue per dollar of advertising/promotion ¹		\$19.75
J. Increase in NET return per dollar of advertising/promotion ¹		\$15.67
K. Increase in TOTAL revenue	$K = H * I$	\$21,160,714
L. Increase in NET return	$L = H * J$	\$16,789,286

¹ Estimates of total revenue and net return per dollar spent on promotion are from a report prepared for the Board by Dr. Harry M. Kaiser of Cornell University entitled “Economic Evaluation of the California Walnut Board’s Advertising and Promotion Programs: An Analysis of the Direct and Indirect Impacts”, July 5, 2018.

If the Board allocated 10 percent of a \$25 million annual budget to the credit-back program, the funds available to allocate to pay handlers for eligible promotional spending would be \$2.5 million (row E). According to the hearing record, this is a level of credit-back funding supported by growers and handlers.

Handlers would receive 70 percent of the amount they expended on creditable expenditures. If the Board expended its full annual credit-back budget of \$2.5 million, the total promotional expenditure would rise to \$3.57 million (\$2.5/0.70) as shown in row G. The Credit-Back expenditure would create the incentive for handlers to spend the \$2.5 million plus an additional \$1.07 million (row H).

The final step is the overall economic impact on the walnut market of the increased spending on advertising and promotion. A 2018 economic analysis of walnut promotion impacts by Dr. Harry Kaiser (cited in the footnote of Table 4) showed that each dollar of walnut advertising and promotional expenditure yielded \$19.75 in total revenue and \$15.67 in net return to walnut growers (rows I and J). Multiplying \$1.07 million by those two promotional impact-per-dollar figures yields the estimated increase in total revenue per year and net return per year of \$21.16 million and \$16.79 million, respectively, shown in rows K and L. Net return is what is returned to walnut growers after accounting for the cost of the promotion program.

Record evidence indicates that all industry members, growers and handlers, would benefit proportionally from an increase in demand brought about due to the credit-back program. The credit-back program would be funded by allocating to the credit-back program a portion of the total Board promotional budget, funded at the current assessment rate. With no increase in the Board's assessment rate, there would be no increased costs to growers or handlers.

All handlers, large and small, would benefit proportionally by participating in the credit-back program. Handlers will participate only if they decide that they will benefit, and would incur no costs if they choose not to participate. No handler can benefit disproportionately from the program, since a handler's maximum credit-back payment from the Board is based on that handler's share of total industry acquisitions from the prior year, according to the hearing record. As cited above, a small handler testified that their smaller size would not be a hindrance to using the credit-back

program, because his walnut processing operation could develop a new product in partnership with another firm.

Consumers would benefit from product diversification of the walnut market. They could choose to buy any of the new products that become available, thereby adding new foods to their diet, at prices that fit within their food budget.

The record shows that the proposal to add authority to establish the credit-back program would, in itself, have no significant economic impact on producers or handlers of any size. If the proposed authority and the accompanying requirements were implemented, both benefits and costs could be anticipated. Costs of complying with the new program could include handler maintenance and delivery of receipts and documentation for reimbursement of creditable expenditures, but these would be minimal and are considered standard business practices. For the reasons described above, it is determined that the benefits of adding authority for a credit-back program would outweigh the potential costs of future implementation.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the Order and to assist in the marketing of California walnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

Current information collection requirements that are part of the Federal marketing order for California walnuts (7 CFR part 984) are approved under OMB No. 0581-0178 Vegetables and Specialty Crops. No changes in these requirements are anticipated as a result

of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to the Order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict

with the findings and determinations set forth herein.

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of walnuts grown in the production area (California) in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of walnuts grown in the production area; and

(5) All handling of walnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written exceptions received within the comment period will be considered, and a producer referendum will be conducted before any of these proposals are implemented.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 984.46:

■ a. Designate and revise the existing paragraph as paragraph (a); and
 ■ b. Add paragraphs (b) and (c).

The revision and additions read as follows:

§ 984.46 Research and development.

(a) *Research and development authorities.* The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69 and § 984.70 and may be credited back pursuant to paragraphs (b) and (c) of this section.

(b) *Credit-back for promotion expenses.* The Board may provide for crediting the pro rata expense assessment obligations of a handler with such portion of his or her direct expenditure for marketing promotion, including paid advertising, as may be authorized. The credit-back amount available to each handler shall be determined by that handler's percent of the industry's total volume of walnuts handled during the prior marketing year multiplied by the current marketing year's credit-back program budget. No handler shall receive credit-back for any creditable expenditures that would exceed the total amount of credit-back available to him or her for the applicable marketing year. Further, no handler shall receive credit-back in an amount that exceeds that handler's assessments paid in the applicable marketing year at the time the credit-back application is made. Marketing promotion expenses shall be credited at a rate recommended by the Board and approved by the Secretary, where the credit rate is based on the amount per dollar of marketing promotion expenses for creditable expenditures paid by a handler during the applicable marketing year. Credit may be paid directly to the handler as a reimbursement of assessments paid or may be issued as recommended by the Board and approved by the Secretary. The Board may also establish, subject to the approval of the Secretary, different credit rates for different products or different marketing promotion activities according to priorities determined by the Board and its marketing plan.

(c) *Creditable expenditures.* The Board, with the approval of the Secretary, may credit-back all or any portion of a handler's direct

expenditures for marketing promotion including paid advertising that promotes the sale of walnuts, walnut products or their uses. Such expenditures may include, but are not limited to, money spent for advertising space or time in newspapers, magazines, radio, television, transit, and outdoor media, including the actual standard agency commission costs not to exceed 15 percent, or as otherwise recommended by the Board and approved by the Secretary.

■ 3. Add subpart D to read as follows:

Subpart D—Research and Development Requirements

Sec.

984.546 Credit for marketing promotion activities, including paid advertising.
 984.547 [Reserved]

Subpart D—Research and Development Requirements

§ 984.546 Credit for marketing promotion activities, including paid advertising.

(a) *Timeliness of reimbursement claim and credit-back rate.* For a handler to receive credit-back for his or her own marketing promotional activities pursuant to § 984.46, the Board shall determine that such expenditures meet the applicable requirements of this section. Credit-back may be granted in the form of reimbursement for all creditable expenditures paid within the applicable marketing year subject to the effective credit-back rate; *Provided*, that such creditable expenditures are documented to the satisfaction of the Board within 15 days after the end of that marketing year. Credit may be granted for a handler's creditable expenditures in an amount not to exceed that handler's pro-rata share of the credit-back fund. No more than 70 cents (\$0.70) shall be credited back to a handler for every dollar spent on qualified activities.

(b) *Assessment payments.* The handler assessment is due as defined in § 984.69. A handler shall be current on all assessment payments prior to receiving credit-back for creditable expenditures.

(c) *Handler eligibility for reimbursement.* The Board shall grant credit-back for qualified activities only to the handler who performed such activities and who filed a claim for credit-back in accordance with this section.

(d) *Applicability to marketing year.* Credit-back shall be granted only for creditable expenditures for qualified activities that are conducted and completed during the marketing year for which credit-back is requested.

(e) *Qualified activities.* The following requirements shall apply to all creditable expenditures resulting from qualified activities:

(1) Credit-back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for credit-back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities.

(2) The clear and evident purpose of each qualified activity shall be to promote the sale, consumption or use of California walnuts.

(3) No credit-back will be given for any activity that targets the farming or grower trade.

(4) Credit-back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

(5) Credit-back shall be granted for those qualified activities specified (e)(5)(i) through (iv) of this section:

(i) Credit-back shall be granted for paid media directed to end-users, trade or industrial users, and for money spent on paid advertising space or time, including, but not limited to, newspapers, magazines, radio, television, online, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) Credit-back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product public relations (provided that no credit-back shall be given for related fees charged by an advertising or public relations agency);

(C) Sales Promotion (in-store demonstrations, production of promotional materials, sales and marketing presentation kits, etc., excluding couponing);

(D) Trade shows (booth rental, services, and promotional materials).

(iii) For any qualified activity involving a handler promoting branded products, a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or joint participation by a handler and a manufacturer or seller of a complementary product(s), the amount allowed for credit-back shall reflect that portion of the activity represented by walnuts. If the product is owned or distributed by the handler, in order to

receive any amount of credit-back, the product must list the ownership or distributorship on the package and display the handler's name and the handler's brand. The words "California Walnuts" must be included on the primary, face label. Such activities must also meet the requirements of paragraphs (e)(1) through (5) of this section.

(iv) If the handler is engaged in marketing promotion activities pursuant to a contract with the Foreign Agricultural Service (FAS), USDA, and/or the California Department of Food and Agriculture (CDFA), unless the Board is administering the foreign marketing program, such activities shall not be eligible for credit-back unless the handler certifies that he or she was not and will not be reimbursed by either FAS or CDFA for the amount claimed for credit-back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA shall not be eligible for credit-back.

(6) *Credit-back Reimbursement claims.* A handler must file claims with the Board to obtain credit-back for creditable expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks or other proof of payment issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the qualified activity.

(ii) Handlers may receive reimbursement of their paid assessments up to their pro-rata share of available dollars to be based on their percentage of the prior marketing year crop total. In all instances, handlers must remit the assessment to the Board when billed, and reimbursement will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved credit-back claims will be mailed to handlers within 30 days of receipt of eligible claims.

(iv) Final claims for the marketing year pertaining to such qualified activities must be submitted with all required elements within 15 days after the close of the Board's marketing year.

(f) *Appeals.* If a determination is made by the Board staff that a particular marketing promotional activity is not eligible for credit-back because it does

not meet the criteria specified in this section, the affected handler may request the Executive Committee review the Board staff's decision. If the affected handler disagrees with the decision of the Executive Committee, the handler may request that the Board review the Executive Committee's decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his or her discretion.

§ 984.547 [Reserved]

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020-15135 Filed 8-4-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2020-0667; Airspace Docket No. 20-AGL-24]

RIN 2120-AA66

Proposed Amendment of Multiple Air Traffic Service (ATS) Routes in the Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend nine VHF Omnidirectional Range (VOR) Federal airways, V-15, V-26, V-55, V-78, V-100, V-159, V-175, V-219, and V-307, and two Area Navigation (RNAV) routes, T-285 and T-354, in the Northcentral United States. The modifications are necessary due to the planned decommissioning of the VOR portion of the Park Rapids, MN, VOR/Distance Measuring Equipment (VOR/DME); Sioux City, IA, VOR/Tactical Air Navigation (VORTAC); and Huron, SD, VORTAC navigation aids (NAVAIDs). The NAVAIDs provide navigation guidance for segments of the affected air traffic service (ATS) routes. The VORs are being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before September 21, 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: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2020-0667; Airspace Docket No. 20-AGL-24 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 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: Colby Abbott, 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 would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

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 (FAA Docket No. FAA-2020-0667; Airspace Docket No. 20-AGL-24) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2020-0667; Airspace Docket No. 20-AGL-24." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 **ADDRESSES** section for 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 office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

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.

Background

The FAA is planning decommissioning activities for the VOR portion of the Park Rapids, MN, VOR/DME; Sioux City, IA, VORTAC; and Huron, SD, VORTAC in February, 2021. The VOR portion of the Park Rapids, MN; Sioux City, IA; and Huron, SD, NAVAIDs are candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, "Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network)," published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA-2011-1082.

Although the VOR portion of the Park Rapids, MN; Sioux City, IA; and Huron, SD, NAVAIDs are planned for decommissioning, the co-located DME portion of the NAVAIDs are being retained to support NextGen PBN flight procedure requirements.

The ATS route dependencies to the Park Rapids VOR/DME are VOR Federal airways V-55, V-175, and RNAV route T-354. Similarly, the ATS route dependencies to the Sioux City VORTAC are VOR Federal airways V-15, V-100, V-159, V-175, V-219, and V-307. Lastly, the ATS route dependencies to the Huron VORTAC are VOR Federal airways V-15, V-26, V-78, V-159, and RNAV route T-285.

With the planned decommissioning of the VOR portion of the Park City, MN; Sioux City, IA; and Huron, SD, NAVAIDs, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected VOR Federal airways. As such, proposed modifications to the affected airways would result in gaps in those airways or the airways being shortened. To overcome the airway gaps or lost airway segments at the end of an airway, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V-24, V-80, V-120, V-129,

V-148, V-170, V-171, V-181, V-218, V-263, V-398, V-410, V-430, T-330, T-354, and T-383, or receive air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. Additionally, IFR pilots equipped with RNAV PBN capabilities could also navigate point to point using the existing fixes that will remain in place to support continued operations through the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the adjacent VOR Federal airways or ATC services listed previously.

Further, the FAA proposes to retain RNAV routes T-285 and T-354 as they are charted today, with a route segment added to extend T-354 northwestward between the BYZIN, ND, waypoint and the Park Rapids, MN, VOR/DME facility to join T-330 at the BYZIN waypoint. The added route segment would provide enroute structure between the Park Rapids VOR/DME and the Grand Forks VOR/DME, as well as support ongoing FAA NextGen efforts to transition the NAS to performance-based navigation. Minor editorial amendments to the existing T-285 and T-354 descriptions would reflect the Park Rapids, MN (PKD), and Huron, SD (HON), route points as "DME" facilities due to the VOR portion of the NAVAIDs being decommissioned.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V-15, V-26, V-55, V-78, V-100, V-159, V-175, V-219, and V-307, and RNAV routes T-285 and T-354. The planned decommissioning of the VOR portion of the Park Rapids, MN, VOR/DME; Sioux City, IA, VORTAC; and Huron, SD, VORTAC NAVAIDs has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V-15: V-15 currently extends between the Navasota, TX, VOR/DME and the Bonham, TX, VORTAC; between the Okmulgee, OK, VOR/DME and the Neosho, MO, VOR/DME; and between the Sioux City, IA, VORTAC and the Minot, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the Sioux City, IA, and Huron, SD, VORTACs between the Sioux City, IA, VORTAC and the Aberdeen, SD, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V-26: V-26 currently extends between the Blue Mesa, CO, VOR/DME and the White Cloud, MI, VOR/DME. The FAA proposes to remove the airway

segment overlying the Huron, SD, VORTAC between the Pierre, SD, VORTAC and the Redwood Falls, MN, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V-55: V-55 currently extends between the Dayton, OH, VOR/DME and the intersection of the Green Bay, WI, VORTAC 270° and Oshkosh, WI, VORTAC 339° radials (BIPID fix); and between the Park Rapids, MN, VOR/DME and the Bismarck, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the Park Rapids, MN, VOR/DME and the Grand Forks, ND, VOR/DME. Additional changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V-78: V-78 currently extends between the Huron, SD, VORTAC and the Escanaba, MI, VOR/DME; and between the Pellston, MI, VORTAC and the Saginaw, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Huron, SD, VORTAC between the Huron, SD, VORTAC and the Watertown, SD, VORTAC. The unaffected portions of the existing airway would remain as charted.

V-100: V-100 currently extends between the Medicine Bow, WY, VOR/DME and the Litchfield, MI, VOR/DME. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the O'Neill, NE, VORTAC and the Fort Dodge, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V-159: V-159 currently extends between the Virginia Key, FL, VOR/DME and the Vulcan, AL, VORTAC; and between the Holly Springs, MS, VORTAC and the Huron, SD, VORTAC. The FAA proposes to remove the airway segment overlying the Sioux City, IA, and Huron, SD, VORTACs between the Omaha, IA, VORTAC and the Huron, SD, VORTAC. The unaffected portions of the existing airway would remain as charted.

V-175: V-175 currently extends between the Malden, MO, VORTAC and the Winnipeg, MB, Canada, VORTAC. The airspace within Canada is excluded. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Des Moines, IA, VORTAC and the Worthington, MN, VOR/DME; and remove the airway segment overlying the Park Rapids, MN, VOR/DME between the Alexandria, MN, VOR/DME and the Winnipeg, MB, Canada, VORTAC. The exclusion statement for the airspace within

Canada would also be removed. The unaffected portions of the existing airway would remain as charted.

V-219: V-219 currently extends between the Hayes Center, NE, VORTAC and the Sioux City, IA, VORTAC. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Norfolk, NE, VOR/DME and the Sioux City, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V-307: V-307 currently extends between the Harrison, AR, VOR/DME and the Sioux City, IA, VORTAC. The FAA proposes to remove the airway segment overlying the Sioux City, IA, VORTAC between the Omaha, IA, VORTAC and the Sioux City, IA, VORTAC. The unaffected portions of the existing airway would remain as charted.

The proposed RNAV route changes are outlined below.

T-285: T-285 currently extends between the North Platte, NE, VOR/DME and the Huron, SD, VORTAC. The FAA proposes to change the Huron, SD (HON) route point from being listed as "VORTAC" to "DME". The existing RNAV route would remain as charted.

T-354: T-354 currently extends between the Park Rapids, MN, VOR/DME and the Siren, WI, DME. The FAA proposes to change the Park Rapids, MN (PKD), route point from being listed as "VOR/DME" to "DME" and add a route segment between the BYZIN, ND, waypoint and the Park Rapids, MN, DME facility. The added segment would extend T-354 northwestward to join T-330 at the BYZIN waypoint and provide enroute structure between the Park Rapids VOR/DME and the Grand Forks VOR/DME that would be removed by the proposed V-55 amendment above. Additional changes to the route have been proposed in a separate NPRM. The existing RNAV route would remain as charted with the addition of the route segment proposed between the BYZIN, ND, waypoint and the Park Rapids, MN, DME.

All NAVAID radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) and RNAV T-routes are published in paragraph 6011 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 ATS routes listed in this document would be subsequently published 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 proposed 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 will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

In consideration of the foregoing, 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 part 71 continues to read as follows:

Table with 3 columns: Location, Type, and Coordinates. Includes entries for North Platte, NE (LBF), Thedford, NE (TDD), MARSS, NE, Valentine, NE (VTN), LKOTA, SD, LESNR, SD, and Huron, SD (HON).

T-354 BYZIN, MN to Siren, WI (RZN) [Amended]

Table with 3 columns: Location, Type, and Coordinates. Includes entries for BYZIN, MN, Park Rapids, MN (PKD), BRNRD, MN, and Siren, WI (RZN).

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 6010(a) Domestic VOR Federal Airways.

* * * * *

V-15 [Amended]

From Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; to Bonham, TX. From Okmulgee, OK; to Neosho, MO. From Aberdeen, SD; Bismarck, ND; to Minot, ND.

* * * * *

V-26 [Amended]

From Blue Mesa, CO; Montrose, CO; 13 miles 112 MSL, 131 MSL, Grand Junction, CO; Meeker, CO; Cherokee, WY; Muddy Mountain, WY; 14 miles, 37 miles 75 MSL, 84 miles 90 MSL, Rapid City, SD; Philip, SD; to Pierre, SD. From Redwood Falls, MN; Farmington, MN; Eau Claire, WI; Wausau, WI; Green Bay, WI; INT Green Bay 116° and White Cloud, MI, 302° radials; to White Cloud.

* * * * *

V-55 [Amended]

From Dayton, OH; Fort Wayne, IN; Goshen, IN; Gipper, MI; Keeler, MI; Pullman, MI; Muskegon, MI; INT Muskegon 327° and Green Bay, WI, 116° radials; Green Bay; to INT Green Bay 270° and Oshkosh, WI, 339° radials. From Grand Forks, ND; INT Grand Forks 239° and Bismarck, ND, 067° radials; to Bismarck.

* * * * *

V-78 [Amended]

From Watertown, SD; Darwin, MN; Gopher, MN; INT Gopher 091° and Eau Claire, WI, 290° radials; Eau Claire; Rhinelander, WI; Iron Mountain, MI; to Escanaba, MI. From Pellston, MI; Alpena, MI; INT Alpena 232° and Saginaw, MI, 353° radials; to Saginaw.

* * * * *

V-100 [Amended]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; to O'Neill, NE. From Fort Dodge, IA; Waterloo, IA; Dubuque, IA; Rockford, IL; INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 095° and Keeler, MI, 271° radials; Keeler; to Litchfield, MI.

* * * * *

V-159 [Amended]

From Virginia Key, FL; INT Virginia Key 344° and Treasure, FL, 178° radials; Treasure; INT Treasure 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; to Vulcan, AL. From Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 005° and St. Joseph, MO, 122° radials; St. Joseph; to Omaha, IA.

* * * * *

V-175 [Amended]

From Malden, MO; Vichy, MO; Hallsville, MO; Macon, MO; Kirksville, MO; to Des Moines, IA. From Worthington, MN; Redwood Falls, MN; to Alexandria, MN.

* * * * *

V-219 [Amended]

From Hayes Center, NE; INT Hayes Center 059° and Wolbach, NE, 251° radials; Wolbach; to Norfolk, NE.

* * * * *

V-307 [Amended]

From Harrison, AR; Neosho, MO; Oswego, KS; Chanute, KS; Emporia, KS; INT Emporia 336° and Pawnee City, NE, 194° radials; Pawnee City; to Omaha, IA.

* * * * *

6011 United States Area Navigation Routes.

* * * * *

T-285 North Platte, NE (LBF) to Huron, SD (HON) [Amended]

* * * * *

Issued in Washington, DC, on July 29, 2020.

Scott M. Rosenbloom,
Acting Manager, Rules and Regulations
Group.

[FR Doc. 2020-16920 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2020-0660; Airspace
Docket No. 20-AEA-12]

RIN 2120-AA66

Proposed Amendment of Class E Airspace; Petersburg, WV

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Grant County Airport, Petersburg, WV, due to the decommissioning of the Kessel VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and cancellation of associated approaches. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area. This action also would update the airport's geographic coordinates.

DATES: Comments must be received on or before September 21, 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 20590-0001; Telephone: (800) 647-5527, or (202) 366-9826. You must identify the Docket No. FAA-2020-0660; Airspace Docket No. 20-AEA-12, 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (770) 883-5664.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA-2020-0660 and Airspace Docket No. 20-AEA-12) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2020-0660 Airspace Docket No. 20-AEA-12." 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 document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 <http://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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

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 proposes an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Grant County Airport, Petersburg, WV, by eliminating two extensions, and increasing the radius from 6.3 miles to 14.2 miles. In addition, the FAA proposes to update the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Class E 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 proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

In consideration of the foregoing, 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 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 Federal Aviation Administration 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.

* * * * *

AEA WV E5 Petersburg, WV [Amended]

Grant County Airport, WV
(Lat. 38°59'42" N, long. 79°08'45" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 14.2-mile radius of Grant County Airport.

Issued in College Park, Georgia, on July 30, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–16921 Filed 8–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0669; Airspace Docket No. 20–ANE–2]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Norway, ME

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 for Norway Heliport, Norway, ME, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before September 21, 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 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2020–0669; Airspace Docket No. 20–ANE–2, 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 on line 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (770) 883–5664.

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 in Norway, ME, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on 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 (Docket No. FAA–2020–0669 and Airspace Docket No. 20–ANE–2) and be submitted in triplicate to

DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2020-0669; Airspace Docket No. 20-ANE-2." 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 document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. 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 <http://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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

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 proposes an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface in Norway, ME, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at Norway Heliport.

Class E 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 proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

In consideration of the foregoing, 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 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 Federal Aviation Administration 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 From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Norway, ME [New]

Norway Heliport, ME
(lat. 44°12'34"N., long. 70°31'54"W.)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6-mile radius of Norway Heliport.

Issued in College Park, Georgia, on July 30, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020-16919 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113295-18]

RIN 1545-BO87

Effect of Section 67(g) on Trusts and Estates; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that proposed regulations clarifying that certain deductions allowed to an estate or nongrantor trust are not miscellaneous itemized deductions and thus are not affected by the suspension of the deductibility of miscellaneous itemized deductions for taxable years beginning after December 31, 2017 and before January 1, 2026. The proposed regulations also provide guidance on

determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or non-grantor trust.

DATES: The teleconference public hearing, originally scheduled for Wednesday, August 12, 2020 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Regina Johnson of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317-5177 (not a toll-free number) or at publichearings@irs.gov.

SUPPLEMENTARY INFORMATION: A proposed rule; notice of public hearing that appeared in the **Federal Register** on July 17, 2020 (85 FR 43512) announced that a public hearing was scheduled for Wednesday, August 12 at 10 a.m. as a teleconference public hearing, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. The subject of the public hearing is under section 67(g) of the Internal Revenue Code.

The public comment period for these regulations expired June 25, 2020. The notice of proposed rulemaking and notice of hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be discussed. The outline of topics to be discussed was due by July 29, 2020. As of July 29, 2020, no one has requested to speak. Therefore, the public hearing scheduled for August 12, 2020 at 10:00 a.m. is cancelled.

Martin V. Franks,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2020-17126 Filed 8-4-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 26

[Docket Number OAG 171; AG Order No. 4749-2020]

RIN 1105-AB63

Manner of Federal Executions

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing to amend regulations to authorize implementation of a sentence

in a Federal capital case in any manner consistent with Federal law and to make other amendments.

DATES: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before September 4, 2020. The electronic Federal Docket Management System at www.regulations.gov will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and referencing Docket No. OAG 171, by one of the two methods below.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the website instructions for submitting comments.

- **Mail:** Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Laurence E. Rothenberg, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington, DC 20530. To ensure proper handling, please reference the agency name and Docket No. OAG 171 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Laurence E. Rothenberg, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, (202) 514-3116.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department of Justice (“Department” or “DOJ”) also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the

public record and made available for public inspection at www.regulations.gov. Such information includes personally identifiable information (“PII”) (such as your name, address, etc.). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible www.regulations.gov site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

II. Background and Purpose

The Federal Death Penalty Act provides generally that a capital sentence in a Federal case is to be implemented “in the manner prescribed by the law of the State in which the sentence is imposed.” 18 U.S.C. 3596(a). However, if the “law of the State in which the sentence is imposed” “does not provide for implementation of a sentence of death,” then the statute directs the court to designate another State whose law does “provide for the implementation of a sentence of death,” “and the sentence shall be implemented in the latter State in the manner prescribed by such law.” *Id.*

The current execution regulations of the Department direct the attorney for the government to “file with the sentencing court a proposed Judgment and Order” stating that “[t]he sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death.” 28 CFR 26.2(a). The regulations further state that, except to the extent a court orders otherwise, a sentence of death shall be executed on a date and at a time and at a “federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons . . . [b]y intravenous injection of a lethal substance or substances in a quantity sufficient to cause death.” *Id.* § 26.3(a). Furthermore, the Federal Bureau of Prisons facility for carrying out executions, located at the

Terre Haute correctional complex in Indiana, is equipped for carrying out executions only by lethal injection.

This proposed rule would provide the Federal Government with greater flexibility to conduct executions in any manner allowed by federal law and implement the statutory authorization in the Federal Death Penalty Act, at 18 U.S.C. 3597, that provides that State and local facilities and personnel may be used in carrying out Federal executions.

The proposed regulation would also clarify that the Attorney General has the authority to make all determinations of issues with regard to execution procedures, including designating other DOJ officials to make such determinations, in line with the Attorney General's well-established authority to manage the Department. Federal law vests all powers of components of the Department in the Attorney General and permits the Attorney General to reassign powers among the components. *See* 28 U.S.C. 509 ("All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General[.]"); 28 U.S.C. 510 (granting the Attorney General authority to delegate powers to "any other officer, employee, or agency of the Department of Justice"). When sections 3596 and 3597 of title 18 assign certain duties to a component of DOJ, those assignments are initial, default assignments. However, those duties are legally vested in the Attorney General, and because of this, the Attorney General may also assign those duties to other DOJ components, as is expressly permitted by long-standing Federal law. Sections 3596 and 3597 contain no language expressly prohibiting the Attorney General from deciding or delegating matters relating to executions.

The issues addressed in the proposed rule are manner of execution, use of State and local facilities and personnel, and other amendments.

A. Manner of Execution

Section 3596 of title 18 provides that Federal executions are to be carried out in the manner prescribed by the law of the relevant State, and the Federal execution regulations provide that Federal executions are to be carried out by lethal injection except to the extent a court orders otherwise, 28 CFR 26.2(a)(2), 26.3(a). Execution by lethal injection is now universally authorized in States that have capital punishment, *see In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F.3d 106, 114 (D.C. Cir. 2020) (Katsas, J., concurring) ("Every state that authorizes

capital punishment uses lethal injection 'as the exclusive or primary means of implementing the death penalty.'" (quoting *Baze v. Rees*, 553 U.S. 35, 42 (2008) (plurality opinion))), but some States currently authorize execution by other means in certain circumstances, and more States may authorize execution by other means in the future. *See, e.g.*, Ala. Code 15–18–82.1(a) (by lethal injection but electrocution or nitrogen hypoxia may be elected); Miss. Code Ann. 99–19–51(1)–(4) (by lethal injection but by nitrogen hypoxia, electrocution, or firing squad if other methods are held unconstitutional or otherwise unavailable); Okla. Stat. tit. 22, sec. 1014 (same); Ark. Code Ann. 5–4–617(I) (by electrocution if execution by lethal injection is invalidated); Fla. Stat. 922.105 (by lethal injection but electrocution may be elected); *see also Bucklew v. Precythe*, 139 S. Ct. 1112, 1142 (2019) (Breyer, J., dissenting) (noting States permitting use of nitrogen hypoxia); *Glossip v. Gross*, 135 S. Ct. 2726, 2796 (2015) (Sotomayor, J., dissenting) (noting State using firing squad). One State has recently used electrocution. *See Media Advisory*, Tenn. Dep't of Corr. (Dec. 5, 2019, 7:27 p.m.), <https://www.tn.gov/correction/news/2019/12/5/media-advisory.html>. Some States also provide by law that a prisoner may choose the manner of execution from among several options in at least some circumstances. *See* Ala. Code 15–18–82.1(b); Ariz. Rev. Stat. Ann. 13–757(B); Cal. Penal Code 3604; Fla. Stat. 922.105; Ky. Rev. Stat. Ann. 431.220(1)(b); S.C. Code Ann. 24–3–530(A); Tenn. Code Ann. 40–23–114(b); Va. Code Ann. 53.1–234.

In recent U.S. Supreme Court litigation involving Eighth Amendment challenges to execution by lethal injection, nitrogen hypoxia and firing squad have been identified as potential alternative methods of execution, including by prisoners themselves, that might—or even must—be used instead of lethal injection, in particular because those methods allegedly carry a lesser risk of pain. The Supreme Court has rejected such arguments in the case of nitrogen hypoxia, in part because it has not been shown that the proffered alternative can be readily implemented by the relevant State and is less likely to cause pain. *See Bucklew*, 139 S. Ct. at 1129–33 (regarding nitrogen hypoxia); *id.* at 1142–43 (Breyer, J., dissenting) (same); *see also id.* at 1136 (Kavanaugh, J., concurring) (regarding firing squad); *Glossip*, 135 S. Ct. at 2739 (same); *id.* at 2796–97 (Sotomayor, J., dissenting) (same); *Arthur v. Dunn*, 137 S. Ct. 725, 733–34 (2017) (Sotomayor, J., dissenting

from denial of certiorari) (discussing a prisoner's claim that the firing squad should be imposed as an alternative method in Alabama).

Nonetheless, in these cases, litigants have argued, and some jurists have noted, that there is evidence that certain alternative means of execution may be humane methods of execution if they were made available. *See Bucklew*, 139 S. Ct. at 1142–43 (Breyer, J., dissenting) ("[The petitioner] introduced into the record reports from Oklahoma and Louisiana indicating that nitrogen hypoxia would be simple and painless."); *Glossip*, 135 S. Ct. at 2797 (Sotomayor, J., dissenting) ("At least from a condemned inmate's perspective, . . . [death by shooting's] visible yet relatively painless violence may be vastly preferable[.]"); *Arthur*, 137 S. Ct. at 734 (Sotomayor, J., dissenting from denial of certiorari) ("In addition to being near instant, death by shooting may also be comparatively painless."). The Supreme Court has long held that death by firing squad and death by electrocution do not violate the Eighth Amendment's prohibition on cruel and unusual punishment. *See Wilkerson v. Utah*, 99 U.S. 130, 130–31, 134–35 (1878) (firing squad); *In re Kemmler*, 136 U.S. 436 (1890) (electrocution); *see also Bucklew*, 139 S. Ct. at 1125.

Furthermore, it is possible that a State in the future will provide that a manner other than lethal injection is the only authorized means of execution. Section 3596(a) would then require execution in that manner for a Federal offender sentenced in the State. The proposed rule would therefore forestall potential future arguments by prisoners in litigation that they cannot be executed under the existing regulation because the regulation does not expressly authorize execution by means other than lethal injection.

Accordingly, the proposed rule would amend the regulations to provide, in 28 CFR 26.3(a)(4), that Federal executions are to be carried out by lethal injection "or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court in accordance with 18 U.S.C. 3596(a)." (There is no similar change to § 26.2(a)(2) as the proposed rule proposes to rescind that section entirely, as discussed below.) The proposed rule thus ensures that the Department is authorized to use the widest range of humane manners of execution permitted by law.

B. Use of State Facilities

The current regulations provide that a Federal execution shall occur "[a]t a

federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons.” 28 CFR 26.3(a)(2). Under the proposed amendments to the regulation, the Government will have the authority to carry out an execution in any appropriate Federal, State, or local facility. For example, as discussed above, future situations may arise in which it is necessary to carry out an execution by some means other than lethal injection, which could be beyond the current capacities of Federal facilities.

If cases of this nature arise, the most expedient means of carrying out the execution may be to arrange for State assistance. This is expressly authorized by section 3597(a), which provides that State and local facilities and personnel may be used in carrying out Federal executions. The proposed rule provides for such use by amending the regulations through striking “federal” before “penal or correctional institution” in § 26.3(a)(2) and replacing “[b]y” with “[u]nder the supervision of” a United States Marshal in § 26.3(a)(3).

C. Additional Amendments

The proposed rule also proposes a number of other changes to the regulations, as follows:

First, it proposes to amend § 26.1 to clarify application of the regulations in certain circumstances. It designates existing language in that section as paragraph (a), and creates new § 26.1(b) that would provide the Attorney General the flexibility to vary from the regulation in the event that applicable law (such as controlling State law) requires different procedures, stating that where applicable law conflicts with any provision of part 26, the Attorney General may vary from that provision to the extent necessary to comply with the applicable law. It also adds new § 26.1(c) to reiterate the Attorney General’s authority to manage the Department’s execution process, by stating that any task or duty assigned to any officer or employee of the Department of Justice under part 26 may be delegated by the Attorney General to any other officer or employee of the Department of Justice.

Second, the proposed rule would eliminate unnecessary and redundant language in the regulations by striking the entirety of § 26.2 and reserving that section for future use.

Third, the proposed rule would amend the heading of § 26.3 to replace “method” with “manner,” in accordance with the language used in the statute.

Fourth, the proposed rule would clarify responsibilities for decisions

about execution procedures by replacing the term “Warden” (or “Warden of the designated institution”) with “Director of the Federal Bureau of Prisons or his designee” in §§ 26.3(a)(3), 26.4(a), 26.4(c)(1), 26.4(c)(4), 26.4(e), and 26.4(g), and deleting “Warden” in § 26.4(b) and in the first line of § 26.4(c).

Fifth, the proposed rule would amend § 26.3(a)(3) to authorize the Director of the Federal Bureau of Prisons to choose the personnel to carry out the sentence. To do so, the proposed rule strikes, in § 26.3(a)(3), “the Marshal and”.

Sixth, the proposed rule would in § 26.3(a)(3) clarify that qualified personnel must be used for any manner of execution.

Seventh, the proposed rule makes an edit to § 26.4(b) to clarify that “the institution” refers to the correctional institution that has been designated in § 26.3(a)(2).

Eighth, an additional edit to § 26.4(b) clarifies that the Director has the discretion to grant a prisoner’s request to visit with additional persons as the Director deems proper.

Ninth, to clarify the responsibility of the Marshal regarding notification to the sentencing court that the execution has been carried out, in § 26.4(g), the proposed rule states that the Marshal “shall ensure that appropriate notice of the sentence’s implementation is filed with the sentencing court,” replacing the existing requirement that the Marshal sign a return referenced in § 26.2(b).

Tenth, the proposed rule would extend to non-DOJ employees (including contractors) existing protections that currently apply to DOJ employees, allowing them not to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the DOJ employee. The new language is almost the exact language on this matter from 18 U.S.C. 3597(b).

III. Regulatory Review

A. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed regulation and by approving it certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities because it concerns the manner of implementing Federal capital sentences.

B. Executive Orders 12866, 13563, and 13771—Regulatory Planning and Review

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), “The Principles of Regulation,” and Executive Order 13563, “Improving Regulation and Regulatory Review.” The Office of Information and Regulatory Affairs has determined that this proposed rule is a “significant regulatory action” under Executive Order 12866, section 3(f).

This proposed rule, if made final, may entail financial costs if, at some point in the future, a prisoner is to be executed by a manner other than lethal injection. The Department would then either have to provide its own system for an execution by a manner other than lethal injection or pay for the use of State or local facilities and personnel to perform the execution. In such a circumstance, the cost would likely be the development of Federal capabilities to implement such a sentence or payment for the use of State or local facilities and personnel.

This proposed rule is not expected to be a regulatory action for purposes of Executive Order 13771.

C. Executive Order 13132—Federalism

This proposed regulation 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. Section 3597 of title 18 provides that the Federal Government “may use appropriate State or local facilities for the purpose [of implementing a sentence of death], may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof.” The statutory authorization and the proposed rule to implement it are directed at the Federal Government. Neither the statute nor the proposed rule imposes any requirements for action or costs on States. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

E. Executive Order 12988—Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This proposed rule is not expected to be a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 26

Law enforcement officers, Prisoners.

Accordingly, for the reasons stated in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 26—DEATH SENTENCES PROCEDURES

■ 1. The authority citation for part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002, 3596, 3597; 28 U.S.C. 509, 510, 2261, 2265.

■ 2. Amend § 26.1 by:

- a. Designating the existing language as paragraph (a); and
- b. Adding paragraphs (b) and (c) to read as follows:

§ 26.1 Applicability.

* * * * *

(b) Where applicable law conflicts with any provision of this part, the Attorney General may vary from that provision to the extent necessary to comply with the applicable law.

(c) Any task or duty assigned to any officer or employee of the Department of Justice by this part may be delegated by the Attorney General to any other officer or employee of the Department of Justice.

§ 26.2 [Removed and Reserved]

■ 3. Remove and reserve § 26.2.

■ 4. Amend § 26.3 by revising the section heading and paragraphs (a)(2), (3), and (4) to read as follows:

§ 26.3 Date, time, place, and manner of execution.

(a) * * *

(2) At a penal or correctional institution designated by the Director of the Federal Bureau of Prisons;

(3) Under the supervision of a United States Marshal designated by the Director of the United States Marshals Service, assisted by additional qualified personnel selected by the Director of the Federal Bureau of Prisons or his designee and acting at the direction of the Marshal; and

(4) By intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director of the Federal Bureau of Prisons, or by any other manner prescribed by the law of the State in which the sentence was imposed or which has been designated by a court in accordance with 18 U.S.C. 3596(a).

* * * * *

■ 5. Amend § 26.4 by revising paragraphs (a), (b), (c), (e), and (g) to read as follows:

§ 26.4 Other execution procedures.

(a) The Director of the Federal Bureau of Prisons or his designee shall notify the prisoner under sentence of death of the date designated for execution at least 20 days in advance, except when the date follows a postponement of fewer than 20 days of a previously scheduled and noticed date of execution, in which case the Director of the Federal Bureau of Prisons or his designee shall notify the prisoner as soon as possible.

(b) Beginning seven days before the designated date of execution, the prisoner shall have access only to his spiritual advisers (not to exceed two), his defense attorneys, members of his family, and the officers and employees of the institution designated in § 26.3(a)(2). Upon approval of the Director of the Federal Bureau of Prisons, the prisoner may be granted access to such other persons as the prisoner may request.

(c) In addition to the Marshal, the following persons shall be present at the execution:

(1) Necessary personnel selected by the Marshal and the Director of the Federal Bureau of Prisons or his designee;

(2) Those attorneys of the Department of Justice whom the Deputy Attorney General determines are necessary;

(3) Not more than the following numbers of persons selected by the prisoner:

- (i) One spiritual adviser;
- (ii) Two defense attorneys; and

(iii) Three adult friends or relatives; and

(4) Not more than the following numbers of persons selected by the Director of the Federal Bureau of Prisons or his designee:

(i) Eight citizens; and

(ii) Ten representatives of the press.

* * * * *

(e) The Director of the Federal Bureau of Prisons or his designee should notify those individuals described in paragraph (c) of this section as soon as practicable before the designated time of execution.

* * * * *

(g) After the execution has been carried out, qualified personnel selected by the Director of the Federal Bureau of Prisons or his designee shall conduct an examination of the body of the prisoner to determine that death has occurred and shall inform the Marshal and Director of the Federal Bureau of Prisons or his designee of his determination. Upon notification of the prisoner's death, the Marshal shall ensure that appropriate notice of the sentence's implementation is filed with the sentencing court.

* * * * *

■ 6. Amend § 26.5 by revising the first sentence to read as follows:

§ 26.5 Attendance at or participation in executions by Department of Justice personnel.

No officer or employee of the Department of Justice or a State department of corrections, or any employee providing services to those departments under contract, shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the officer or employee, or, if the employee is a medical professional, if the employee considers such participation or attendance contrary to medical ethics.

* * *

Dated: July 7, 2020.

William P. Barr,
Attorney General.

[FR Doc. 2020-15039 Filed 8-4-20; 8:45 am]

BILLING CODE 4410-19-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2020–0235]

RIN 1625–AA09

Drawbridge Operation Regulation; Indiana Harbor Canal, East Chicago, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Elgin, Joliet, and Eastern Railroad Bridge, mile 0.68, and the Elgin, Joliet, and Eastern Railroad Bridge, mile 1.89, both over the Indiana Harbor Canal near the town of East Chicago, IN. Canadian National, the owner and operator of these bridges has requested to stop continual drawtender service to both bridges and operate the bridges only while trains are crossing the bridge.

DATES: Comments and related material must reach the Coast Guard on or before October 5, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0235 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR Federal Register
 IGLD85 International Great Lakes Datum of 1985
 LWD Low Water Datum based on IGLD85
 OMB Office of Management and Budget
 NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
 § Section
 U.S.C. United States Code

II. Background, Purpose and Legal Basis

All drawbridges over the Indiana Harbor Canal are required to open on signal and there are no previous rulemakings to discuss. The Elgin, Joliet, and Eastern Railroad Bridge, mile

0.68, and the Elgin, Joliet, and Eastern Railroad Bridge, mile 1.89, both over the Indiana Harbor Canal, currently open on signal and are manned by a drawtender at each bridge. The rail traffic at both bridges has decreased to approximately three trains a week and the bridge owner has requested to discontinue continuous drawtender service. The operation of the bridges should remain transparent to the vessels navigating the waterway.

The Indiana Harbor Canal is a commercial waterway that serves several industries near the city of East Chicago, IN. The U.S. Army Corps of Engineers in cooperation with the U.S. Environmental Protection Agency are currently improving the width and depth of the waterway to allow larger vessels to use the waterway. Currently the waterway is used by commercial tug and barge traffic; however, larger international oil tankers and bulk transfer vessels have shown interest in establishing docks above the Indianapolis Boulevard Bridge, mile 2.59. We have no reports of recreational vessel traffic in this waterway.

The Elgin, Joliet, and Eastern Railroad Bridge, mile 0.68, Indiana Harbor Canal is a single leaf bascule bridge that provides a vertical clearance of 7 feet above LWD in the closed position and the Elgin, Joliet, and Eastern Railroad Bridge, mile 1.89, over the Indiana Harbor Canal is a single leaf bascule bridge that provides a vertical clearance of 5 feet above LWD in the closed position. Both bridges provide an unlimited clearance in the open position.

III. Discussion of Proposed Rule

The proposed rule will establish the procedures to move the bridge to allow rail traffic to cross the bridge while giving notice to the vessels transiting the waterway that the bridge will be lowering. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute, warning one last SECURITE will be made that the bridge will be lowering for rail traffic five minutes before lowering. Once the draw tender is satisfied that it is safe the bridge will be lowered for rail traffic. Once the rail

traffic has cleared the bridge, the bridge will be raised and locked in the fully open to navigation position.

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 these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge and the only change is the drawtender will only be in attendance to lower the bridge to allow rail traffic to cross and to raise the bridge after rail traffic has cleared the bridge.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge 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 contact 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 call for no 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 contact 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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION**

CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in this 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Add § 117.400 to part 117 to read as follows:

§ 117.400 Indiana Harbor Canal.

(a) Elgin, Joliet, and Eastern Railroad Bridge, 0.68, over the Indiana Harbor Canal need not have a drawtender in continued attendance at the bridge. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF–FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF–FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE shall be made on VHF–FM Marine Channel 16 that the bridge will be lowering for rail traffic, five minutes before lowering. Once the draw tender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(b) Elgin, Joliet, and Eastern Railroad Bridge, mile 1.89, over the Indiana

Harbor Canal need not have a drawtender in continued attendance at the bridge. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF-FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF-FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE shall be made on VHF-FM Marine Channel 16 that the bridge will be lowering for rail traffic, five minutes before lowering. Once the draw tender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

Dated: July 17, 2020.

D.L. Cottrell,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 2020-15887 Filed 8-4-20; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2020-0053; FRL-10012-32]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Filing of petition and request for comment.

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

DATES: Comments must be received on or before September 4, 2020.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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), main telephone number: (703) 305-7090, email address:

RDFRNotices@epa.gov; or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: BPPDFRNotices@epa.gov.

The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

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

II. What action is the Agency taking?

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

needed before EPA can make a final determination on this pesticide petition.

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

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

Amended Tolerances for Non-Inerts

PP 0E8828. (EPA-HQ-OPP-2020-0235). The Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes upon establishment of tolerances referenced in this document under “New Tolerances” for PP# 0E8828, to remove the existing tolerance in 40 CFR 180.511 for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one in or on the raw agricultural commodities in or on Bean, snap, succulent at 0.02 parts per million (ppm). Contact: RD.

New Tolerances for Non-Inerts

1. PP 0E8821. (EPA-HQ-OPP-2020-0113). Interregional Research Project #4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances with regional registrations in 40 CFR part 180.633(c) for residues of the herbicide, florasulam, N-(2, 6-difluorophenyl)-8-fluoro-5-methoxy (1, 2, 4) triazole (1, 5-c)pyrimidine-2-sulfonamide, including its metabolites and degradates, in or on grass, forage at 0.01 parts per million (ppm) and grass, hay at 0.02 ppm. Compliance with the tolerance levels is to be determined by measuring only florasulam in or on the commodities. The High Performance Liquid Chromatography with Tandem Mass Spectrometry is used to measure and evaluate the chemical. Contact: RD.

2. PP 0E8828. (EPA-HQ-OPP-2020-0235). The Interregional Research Project Number 4 (IR-4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part

180.511 for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one in or on the raw agricultural commodities: Asparagus bean, edible podded at 0.02 parts per million (ppm); Bushberry subgroup 13-07B at 0.08 ppm, Catjang bean, edible podded at 0.02 ppm; Chinese longbean, edible podded at 0.02 ppm; Cowpea, edible podded at 0.02 ppm; French bean, edible podded at 0.02 ppm; Garden bean, edible podded at 0.02 ppm; Green bean, edible podded at 0.02 ppm; Goa bean, edible podded at 0.02 ppm; Guar bean, edible podded at 0.02 ppm; Jackbean, edible podded at 0.02 ppm; Kidney bean, edible podded at 0.02 ppm; Lablab bean, edible podded at 0.02 ppm; Navy bean, edible podded at 0.02 ppm; Moth bean, edible podded at 0.02 ppm; Mung bean, edible podded at 0.02 ppm; Rice bean, edible podded at 0.02 ppm; Scarlet runner bean, edible podded at 0.02 ppm; Snap bean, edible podded at 0.02 ppm; Sword bean, edible podded at 0.02 ppm; Urd bean, edible podded at 0.02 ppm;; Vegetable soybean, edible podded at 0.02 ppm; Velvet bean, edible podded at 0.02 ppm; Wax bean, edible podded; Winged pea, edible podded at 0.02 ppm; and Yardlong bean, edible podded at 0.02 ppm.

In addition to the proposed tolerances, the IR-4 Project requests that EPA permit the buprofezin label instructions currently stated as “For greenhouse tomatoes and peppers”, be revised to “For Fruiting Vegetables (Crop Group 8-10)”, thus allowing buprofezin applications to all greenhouse-grown fruiting vegetables.

The enforcement analytical methods are available in PAM I and PAM II for the enforcement of buprofezin tolerances, which include gas chromatography methods with nitrogen phosphorus detection (GC/NPD), and a gas chromatography/mass spectrometry (GC/MS) method for confirmation of buprofezin residues in plant commodities to measure and evaluate buprofezin. Contact: RD.

3. PP 9F8808. EPA-HQ-OPP-2020-0335. ISK BIOSCIENCES Corporation, 7470 Auburn Road, Suite A, Concord, OH, 44077, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide, pyriofenone in or on grape at 0.8 parts per million (ppm); raisin at 2.5 ppm; and fruit, small vine climbing subgroup 13-07E, except grape at 1.5 ppm. The liquid chromatography-MS/MS is used to measure and evaluate the chemical pyriofenone. Contact: RD.

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

Dated: July 10, 2020.

Delores Barber,

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

[FR Doc. 2020-16459 Filed 8-4-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1989-0011; FRL-10011-88-Region 6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Cimarron Mining Corporation Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete Cimarron Mining Corporation Superfund Site (Site) located in Carrizozo, New Mexico, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Mexico, through the New Mexico Environment Department, have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 4, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-1989-0011, by one of the following methods:

- <https://www.regulations.gov>.

Follow on-line 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

- Email: purcell.mark@epa.gov.
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via <https://www.regulations.gov>.

Instructions: Direct your comments to Docket ID No. EPA-HQ-SFUND-1989-0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The <https://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, 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. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in <https://www.regulations.gov>.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID-19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. 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 (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Mark Purcell, Remedial Project Manager, U.S. Environmental Protection Agency, Region 6, SEMD-RB-LNOS, 1201 Elm Street, Suite 500, Dallas, TX 75270, (214) 665-6707, email purcell.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion

I. Introduction

EPA Region 6 announces its intent to delete the Cimarron Mining Corporation Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met at the Cimarron Mining Corporation Superfund Site.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State of New Mexico, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of New Mexico before developing this Notice of Intent to Delete.

(2) EPA has provided the State of New Mexico 30 working days for review of this action prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of New Mexico, through the New Mexico Environment Department, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, Ruidoso News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this action, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

EPA placed copies of documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*

Dated: July 22, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–16274 Filed 8–4–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–HQ–ES–2020–0047, FF09E23000 FXES1111090FEDR 201; Docket No. 200720–0197]

RIN 1018–BE69; 0648–BJ44

Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the “Services” or “we”), propose to add a definition of “habitat” to our regulations that implement section 4 of the Endangered Species Act of 1973, as amended (Act).

DATES: We will accept comments from all interested parties until September 4, 2020. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–HQ–ES–2020–0047, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2020–0047; U.S. Fish & Wildlife Service, MS: PRB(3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments below for more information).

FOR FURTHER INFORMATION CONTACT: Gary Frazer, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone 202/208–4646; or Samuel D. Rauch III, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Secretaries of the Interior and Commerce (the “Secretaries”) share responsibilities for implementing most of the provisions of the Endangered Species Act of 1973, as amended (“Act”; 16 U.S.C. 1531 *et seq.*). Generally, marine and anadromous species are under the jurisdiction of the Secretary of Commerce, and all other species are under the jurisdiction of the Secretary of the Interior. (For ease of reading, we refer to “the Secretary” in this rule, which could be either the Secretary of the Interior or the Secretary of Commerce.) Authority to administer the Act has been delegated by the Secretary of the Interior to the Director of FWS and by the Secretary of Commerce to the Assistant Administrator for NMFS.

The purposes of the Act are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. 16 U.S.C. 1531(b). Moreover, the Act states that it is the policy of Congress that the Federal Government will seek to conserve threatened and endangered species and use its authorities to further the purposes of the Act. 16 U.S.C. 1531(c)(1).

One of the tools under the Act to conserve species is the designation of critical habitat. The purpose of critical habitat is to identify the areas that are essential to the species' recovery. In section 3(5)(A) of the Act, Congress defined “critical habitat” as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species. 16 U.S.C. 1532(5)(A).

Our existing implementing regulations at 50 CFR 424.02 set forth relevant definitions pertaining to listing species under the Act and designating critical habitat.

Proposed Regulatory Revisions

We are proposing a regulatory definition of “habitat,” as that term is used in the context of critical habitat designations under the Act. The Act defines “critical habitat” in Section 3(5)(A), establishing separate criteria depending on whether the relevant area is within or outside of the geographical area occupied by the species at the time of listing, but does not define the broader term “habitat.” See 16 U.S.C. 1532(5)(A). Nor have the Services previously adopted a definition of the term “habitat” through regulations or policy; rather, we have traditionally applied the criteria from the definition of “critical habitat” based on the implicit premise that any specific area satisfying that definition was habitat.

However, the Supreme Court recently held that an area must logically be “habitat” in order for that area to meet the narrower category of “critical habitat” as defined in the Act, regardless of whether that area is occupied or unoccupied. *Weyerhaeuser Co. v. U.S. FWS*, 139 S. Ct. 361 (2018). The Court stated: “Section 4(a)(3)(A)(i) does not authorize the Secretary to designate [an] area as critical habitat unless it is also habitat for the species.” 139 S. Ct. at 368. Given this holding in the Supreme Court’s opinion in *Weyerhaeuser*, we are proposing to add a regulatory definition of “habitat.” We took an initial step to address the Supreme Court’s decision in *Weyerhaeuser* in our recent revisions to the implementing regulations governing designation of critical habitat (at 50 CFR 424.12). In those revisions, the Services made some modifications to the regulatory requirements that must be met for areas outside the geographical

area occupied at the time of listing to be considered “essential for the conservation of the species” (which is the standard that an unoccupied area must meet to be considered “critical habitat”). Because the factual situation at issue before the Supreme Court involved unoccupied areas, it made sense to address that aspect of our regulations first. However, we noted that we were not attempting to define “habitat” in those revisions, but instead were considering developing such a definition through separate rulemaking. We now undertake that task in order to provide transparency, clarity, and consistency for stakeholders.

Under the text and logic of the statute, the definition of “habitat” must inherently be broader than the statutory definition of “critical habitat.” To give effect to all of section 3(5)(A), the definition of “habitat” we propose is broad enough to include both occupied critical habitat and unoccupied critical habitat, because the statute defines “critical habitat” to include both occupied and unoccupied areas.

Definition of Habitat

We propose to add the following definition of the term “habitat” to § 424.02.

The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species.

In addition, we have provided, and solicit comment on, an alternative definition of “habitat” as follows:

The physical places that individuals of a species use to carry out one or more life processes. Habitat includes areas where individuals of the species do not presently exist but have the capacity to support such individuals, only where the necessary attributes to support the species presently exist.

We solicit comment on these definitions, in particular on whether “depend upon” in the proposed definition sufficiently differentiates areas that could be considered habitat, or whether “use” better describes the relationship between a species and its habitat. We also solicit comment on the second sentence of the alternative definition. Though it is similar to the second sentence of the proposed definition, it expressly limits unoccupied habitat for a species to areas “where the necessary attributes to support the species *presently* exist,” and explicitly excludes areas that have no present capacity to support individuals of the species. We invite comment on whether either definition is too broad or

too narrow or is otherwise proper or improper, and on whether other formulations of a definition of “habitat” would be preferable to either of the two definitions, including formulations that incorporate various aspects of these two definitions.

The proposed definition¹ reflects the principle that a species’ habitat is based on its particular ecology. In developing this particular definition of habitat, we reviewed many definitions of habitat from the ecological literature; however, no pre-existing definition was adequate to address the particular regulatory framework that we are implementing. Therefore, we incorporated useful concepts from the literature to the extent appropriate and added concepts based on our decades of expertise so as to define the term “habitat” in a manner that would be sufficiently broad to fully encompass both the occupied and unoccupied prongs of the definition of “critical habitat” in the Act. In particular, the proposed definition is written so as to include unoccupied habitat, whereas many of the definitions in the ecological literature that we reviewed did not appear to consider unoccupied areas. While we have intentionally refrained from using within this proposed regulatory definition of “habitat” terms of art from other definitions in the Act to avoid potential confusion, including the phrase “physical or biological features” from the definition of “critical habitat,” we propose “existing attributes” to include, but not be limited to, such “physical or biological features.” We invite comment on this issue, including whether the words “existing attributes” are appropriate to include and whether they warrant further clarification or change or should be differently or further defined or explained.

The Services are responsible for a vast array of species, including freshwater vertebrates and invertebrates; terrestrial plants and animals; and marine fish, marine mammals, turtles, and corals. Because of this diversity, the definition of the term “habitat” must be somewhat generic to accommodate the wide variety of abiotic or biotic attributes species need to carry out their life processes. Habitat contains food, water, cover, or space that individuals of a species depend upon to carry out one or more of their life processes.

¹ We believe that the following discussion of the proposed definition applies generally to both the main definition and the alternative definition described above. Nonetheless, we invite comment on whether any aspects of this discussion apply more to one definition than to the other definition. We also invite comment on the significance of any such differences.

Seasonally or intermittently used areas also constitute habitat for various species and may include reproductive habitat, nursery habitat, dispersal habitat, migration habitat, and overwintering habitat. For example, a terrestrial mammal may need a particular space for denning at a certain time of the year separate from areas needed for feeding. We would consider both the seasonally used breeding areas and the feeding areas to be habitat for this species. In other instances, species' habitat may be variable, both temporally and spatially, such as beach overwash areas, early-successional riparian communities, or riverine sandbars. For example, the sand bars that interior least terns use in a river may develop during particular times of the year correlating to changes in flow rates of a stream or river system. Although we are not able to predict exactly where within the river sand bars will form, we know they will form within that general setting and their precise location will likely change from year to year. In this case, the particular stream reach in which the sand bars are known to periodically form constitutes "habitat" for the tern.

In proposing to establish this definition, we do not intend to create a new procedural step that would need to be undertaken prior to designating critical habitat in every case. We expect that in the vast majority of cases that would be unnecessary, in light of the specific criteria of the statutory definition of "critical habitat" coupled with the changes recently finalized at 50 CFR 424.12. Specifically, we interpret the statutory definition of "critical habitat," as it applies to occupied habitat, to inherently verify that an area meeting that definition is "habitat." By application of the statutory definition, such an area is by definition part of the species' occupied range at the time of listing and contains one or more of the essential physical or biological features. In those fewer cases where unoccupied habitat is at issue, we would consider any questions raised as to whether the area is "habitat" in the context of the new regulatory requirements at § 424.12(b)(2) and document the determination whether the area is habitat. In this way, the proposed regulatory definition of "habitat" would not impose any additional procedural steps or change in how we designate critical habitat, but would instead serve as a regulatory standard to help ensure that unoccupied areas that we designate as critical habitat are "habitat" for the species and are defensible as such. With the addition of the regulatory definition of "habitat," the process of designating

critical habitat will remain efficient by limiting the need to evaluate whether an area is "habitat" to only those cases where genuine questions exist.

In proposing the specific definition in this rule and setting out the accompanying clarifying discussion in this preamble, the Services are proposing prospective standards only. Nothing in this proposed regulation is intended to require that any previously finalized critical habitat designations (*i.e.*, designations that were made final on or before the date on which this rule becomes effective) be reevaluated on the basis of any final revisions to this proposed rule.

Public Comments

We solicit comment on all aspects of this proposal, including whether any other language should be included in or excluded from the final definition to be set forth in our regulations and whether the main and alternative definitions have (or do not have) implications for the use of the term "habitat" as it appears in other provisions of the Act.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty,

and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed "to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

Executive Order 13771

This proposed rule is an Executive Order 13771 "other" action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

This rulemaking implements applicable Supreme Court case law and revises and clarifies procedures for NMFS and FWS regarding designating critical habitat under the Endangered Species Act to reflect agency experience and, with minor changes, codifies current agency practices. The proposed

changes to these regulations do not alter the reach of designations of critical habitat.

NMFS and FWS are the only entities that are directly affected by this rule because we are the only entities that designate critical habitat under the Endangered Species Act. No external entities, including any small businesses, small organizations, or small governments, will experience any economic impacts from this rule.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) On the basis of information contained in the Regulatory Flexibility Act section above, this proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not directly affect private property, nor would it cause a physical or regulatory taking. It would not result in a physical taking because it would not effectively compel a property owner to suffer a physical invasion of property. Further, the proposed rule would not result in a regulatory taking because it would not deny all economically beneficial or productive use of the land or aquatic resources and it would substantially advance a legitimate government interest (conservation and recovery of endangered species and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to designation of critical habitat under the Endangered Species Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule pertains only to designation of critical habitat under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” the Department of the Interior’s manual at 512 DM 2, and the Department of Commerce (DOC) Tribal Consultation and Coordination Policy (May 21, 2013), DOC Departmental Administrative Order (DAO) 218–8 (April 2012), and NOAA Administrative Order (NAO) 218–8 (April 2012), we are considering possible effects of this proposed rule on federally recognized Indian Tribes. The Services have reached a preliminary conclusion that the changes to these implementing regulations are general in nature and do not directly affect specific species or Tribal lands. These regulations clarify the processes for designating critical habitat and directly affect only the Services. With or without these regulatory revisions, the Services would be obligated to continue to designate critical habitat based on the best available data. Therefore, we conclude that these regulations do not have “tribal implications” under Section 1(a) of E.O. 13175, and therefore formal government-to-government consultation is not required by E.O. 13175 and related policies of the Departments of Commerce and Interior. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. See Joint Secretarial Order 3206 (“American Indian Tribal Rights, Federal-Tribal

Trust Responsibilities, and the Endangered Species Act”, June 5, 1997).

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State, local, or Tribal governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 8), the NOAA Administrative Order 216–6A, and the NOAA Companion Manual (CM), “Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities” (effective January 13, 2017). This rulemaking responds to recent Supreme Court case law.

As a result, we anticipate that the categorical exclusion found at 43 CFR 46.210(i) applies to the proposed regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following category of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.”

NOAA’s NEPA procedures include a similar categorical exclusion for “preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature.” (Categorical Exclusion G7, at CM Appendix E).

We are continuing to consider the extent to which this proposed regulation may have a significant impact on the human environment or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We invite the public to

comment on these or any other aspects of NEPA analyses needed for these revisions. We will complete our analysis in accordance with applicable NEPA regulations before finalizing this regulation.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The proposed revised regulations are not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible.

Authority

We issue this proposed rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Chris Oliver,

Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we hereby propose to amend

part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

- 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

- 2. Amend § 424.02 by adding a definition for “Habitat” in alphabetical order to read as follows:

§ 424.02 Definitions.

* * * * *

Habitat. The physical places that individuals of a species depend upon to carry out one or more life processes. Habitat includes areas with existing attributes that have the capacity to support individuals of the species.

* * * * *

[FR Doc. 2020–17002 Filed 8–4–20; 8:45 am]

BILLING CODE 4333–15–P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2020-0021]

Notice of Request for Renewal of an Approved Information Collection (Marking, Labeling and Packaging)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request renewal of the approved information collection regarding the regulatory requirements for marking, labeling, and packaging of meat, poultry, and egg products. This collection covers the labeling approval process whereby establishments are to submit their labels to FSIS for approval and maintain related files. There are no changes to the information collection. The approval for this information collection will expire on May 31, 2021.

DATES: Submit comments on or before October 5, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2020-0021. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250-3700; (202) 720-5627.

SUPPLEMENTARY INFORMATION:

Title: Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

OMB Number: 0583-0092.

Expiration Date of Approval: 5/31/2021.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting renewal of the approved information collection regarding the regulatory requirements for marking, labeling, and packaging of meat, poultry, and egg products. There are no changes to the existing information collection. The approval for this information collection will expire on May 31, 2021.

To control the manufacture of marking devices bearing official marks, FSIS requires official meat and poultry establishments and the manufacturers of

such devices to submit an Authorization Certificate to the Agency (FSIS Form 5200-7). Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection (9 CFR 312.1, 317.3, 381.96, and 381.131).

Meat and poultry establishments and egg products plants must develop labels in accordance with FSIS regulations (9 CFR 317.1, 381.115, 590.410, and 412.2). Unless its labels are generically approved (meaning, they do not need to be submitted to FSIS prior to use on product in commerce), establishments must complete an application for approval ("Application for Approval of Labels, Marking or Device," FSIS Form 7234-1)(9 CFR 412.1). Respondents must submit duplicate copies of the labels when submitting the applications by paper. Establishments may also submit labels through the Label Submission and Approval System (LSAS), which is an internet-based application that allows respondents to gain label approval through a secure website. The establishment must maintain a copy of all the labeling used, along with product formulation and processing procedures and any additional documentation needed to support that the labels are consistent with FSIS regulations and policies on labeling (9 CFR 320.1(b)(11) and 381.175(b)(6)). Additionally, establishments requesting reconsideration of a label application that the Agency has modified or rejected under 9 CFR 500.8 would submit their request using the "Request for Label Reconsideration," FSIS Form 8822-4.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 4 minutes per response related to marking; 75 minutes per response related to labeling applications and recordkeeping; 120 minutes per response related to labeling reconsideration requests; 15 minutes per response related to generically approved labeling recordkeeping; and 2 minutes per response related to packaging materials recordkeeping.

Respondents: Official meat and poultry establishments, official egg plants, and foreign establishments.

Estimated No. of Respondents: 5,736 related to marking; 3,682 related to labeling applications and

recordkeeping; 74 related to labeling reconsideration requests; 6,333 related to generically approved labeling recordkeeping; and 5,735 related to packaging materials recordkeeping.

Estimated No. of Annual Responses per Respondent: 1 related to marking; 20 related to labeling applications and recordkeeping; 2 related to labeling reconsideration requests; 20 related to generically approved labeling recordkeeping; and 2 related to packaging materials recordkeeping.

Estimated Total Annual Burden on Respondents: 128,267 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250-3700; (202) 720-5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest

to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:
Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410.

Fax: (202) 690-7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Paul Kiecker,
Administrator.

[FR Doc. 2020-17047 Filed 8-4-20; 8:45 am]

BILLING CODE 3410-DM-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i 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 a teleconference meeting of the Hawai'i Advisory Committee (Committee) to the Commission will be held at 10:00 a.m. on Friday, August 28, 2020 (Hawai'i Time). The purpose of the meeting will to review a project proposal focused on barriers impacting individuals based on national origin.

DATES: The meeting will be held on Friday, August 28, 2020 at 10:00 a.m. HST.

Public Call Information: Dial: 800-367-3403; Conference ID: 8930601.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at afortes@usccr.gov or (202) 681-0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800-367-3403, conference ID number: 8930601. 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 you can email Ana Victoria Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 681-0857.

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/FACA_PublicViewCommitteeDetails?id=a10t0000001gzl0AAA.

Please click on "Committee Meetings" tab. 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
- II. Review and Discuss Project Proposal
- III. Public Comment
- IV. Vote on Project Proposal (tentative)
- V. Adjournment

Dated: July 31, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-17082 Filed 8-4-20; 8:45 am]

BILLING CODE 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 a teleconference meeting of the Texas Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Central) Friday, September 4, 2020. The purpose of the meeting is for the Committee to discuss project proposal Hurricane Harvey Response and Recovery.

DATES: The meeting will be held on Friday, September 4, 2020 at 12:00 p.m. CDT.

Public Call Information: Dial: 800-367-2403; Conference ID: 6572850.

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: 5260316. 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 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=a10t000001gzkoAAA>.

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 Introductions
- II. Approval of Minutes
- III. Discussion of Preliminary Panel
- IV. Discussion of Project Proposal
- V. Public Comment
- VI. Adjournment

Dated: July 31, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-17083 Filed 8-4-20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington 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 that

the Washington Advisory Committee (Committee) will hold a series of meetings via teleconference on Wednesday, August 26 and Tuesday, September 15, 2020 at 1:00 p.m. Pacific Time. The purpose of the meeting is to discuss the post-report stage of the Committee's project on Voting Rights and Felony Convictions and begin to discuss topics for future study.

DATES: The meetings will be held on:

- Wednesday, August 26, 2020, at 1:00 p.m. Pacific Time.
- Tuesday, September 15, 2020, at 1:00 p.m. Pacific Time.

Public Call Information: Dial: 800-367-2403, Conference ID: 3258844.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO), at bpeery@usccr.gov or (202) 701-1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 N Los Angeles St, Suite 2010, Los Angeles, CA 90012 or you can email Brooke Peery at bpeery@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: <https://www.facadatabase.gov/FACA/FACA/PublicViewCommitteeDetails?id=a10t000001gzkZAAQ>.

Please click on the "Meeting Details" and "Documents" links. Persons

interested in the work of this Committee are also directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit office at the above email or street address.

Agenda

- I. Welcome & Introductions
- II. Approval of Minutes
- III. Discussion of Post-Report Activities
- IV. Discussion of Potential Project Topics
- V. Public Comment
- VI. Adjournment

Dated: July 31, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020-17084 Filed 8-4-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Improving Customer Experience (OMB Circular A-11, Section 280 Implementation)

AGENCY: Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Department of Commerce (DOC) will have under OMB review the following proposed Information Collection Request "Improving Customer Experience (OMB Circular A-11, Section 280 Implementation)" for approval under the Paperwork Reduction Act (PRA), 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 for this proposed collection were previously requested via the **Federal Register** on June 1, 2020 (85 FR 33085) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Department of Commerce (DOC).

Title: Improving Customer Experience (OMB Circular A-11, Section 280 Implementation).

OMB Control Number: 0690-NEW.

Form Number(s): None.

Type of Request: Regular submission. New collection.

Estimated Number of Respondents: 752,925.

Estimated Time per Response: Varied, dependent upon the activity or the data collection method used. The possible response time to complete a

questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview or focus group.

Estimated Total Annual Burden Hours: 55,471.

Needs and Uses: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A-11 at <https://www.performance.gov/cx/a11-280.pdf>. As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on www.performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

DOC will only submit collections if they meet the following criteria.

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are non-controversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.

• Personally Identifiable Information (PII) is collected only to the extent necessary and is not retained.

• Information gathered is intended to be used for general service improvement and program management purposes

• Upon agreement between OMB and the agency all or a subset of information may be released as part of A-11, Section 280 requirements only on performance.gov. Summaries of customer research and user testing activities may be included in public-facing customer journey maps or summaries.

• Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative, and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Affected Public: Individuals or households; State, Local, or Tribal government.

Frequency: On Occasion; Annually.

Respondent's Obligation: Voluntary.

Average Number of Respondents per Activity: 1 response per respondent per activity.

Average Expected Annual Number of Activities: Approximately five types of customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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.

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 either the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-16984 Filed 8-4-20; 8:45 am]

BILLING CODE 3510-BP-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-849]

Emulsion Styrene-Butadiene Rubber From Brazil: Amended Final Results of Antidumping Duty Administrative Review; 2017-2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on emulsion styrene-butadiene rubber (ESB rubber) from Brazil to correct two ministerial errors.

DATES: Applicable August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Drew Jackson, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4406.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 2020, Commerce published its *Final Results* of the 2017-2018 administrative review of the AD order on ESB rubber from Brazil.¹ On June 30, 2020, ARLANXEO Brasil S.A. (ARLANXEO Brasil), the sole respondent in this administrative review, timely submitted ministerial error comments regarding Commerce's *Final Results*.² On July 6, 2020, the petitioner³ filed timely ministerial error rebuttal comments.⁴ Commerce is amending its *Final Results* to correct two ministerial errors raised by ARLANXEO Brasil.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial."⁵ With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce "will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . ."

Ministerial Error

Commerce committed two errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f). First, Commerce committed a clerical error with respect to setting the window period established by 19 CFR 351.414 for the matching of sales, which impacted the matching of U.S. sales to home-market sales by the month in which the sale occurred. Specifically, contrary to our intent, in the margin calculation program we set the beginning of the window period at February 1, 2017 rather than November 1, 2016. Second, Commerce committed a calculation error in analyzing the data related to an alleged sample sale. Specifically, Commerce made an arithmetical error, and as a result, incorrectly concluded that the sale was

¹ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020) (*Final Results*).

² See ARLANXEO Brasil's Letter, "Emulsion Styrene-Butadiene Rubber from Brazil: Ministerial Error Comments on the Final Results Margin Calculation for ARLANXEO," dated June 30, 2020.

³ The petitioner is Lion Elastomers, LLC.

⁴ See Petitioner's Letter, "Antidumping Review of Emulsion Styrene-Butadiene Rubber (E-SBR) from Brazil: Reply to ARLANXEO's Ministerial Error Comments," dated July 6, 2020.

⁵ See 19 CFR 351.224(f).

made for consideration such that it should be included in the margin calculation. As clerical and arithmetic errors, these constitute ministerial errors within the meaning of 19 CFR 351.224(f). Accordingly, Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), it made ministerial errors in the *Final Results*. Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of these ministerial errors in the calculation of the final weighted-average dumping margin assigned to ARLANXEO Brasil, which changes from 21.22 percent to 18.38 percent.⁶

Amended Final Results of the Review

As a result of correcting these ministerial errors described above, Commerce determines that, for the period of review (POR) February 24, 2017 through August 31, 2018, the following weighted-average dumping margin exists:

Producer and/or exporter	Weighted-average dumping margin (percent)
ARLANXEO Brasil S.A	18.38

Disclosure

We intend to disclose the calculation performed for these amended final results in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

Commerce's "automatic assessment" will apply to entries of subject merchandise during the POR produced by companies included in these amended final results of review for which the reviewed companies did not know that the merchandise they sold to

⁶ See Memorandum, "Ministerial Error Memorandum for the Final Results of the 2017-2018 Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Brazil," dated concurrently with, and hereby adopted by, this notice.

the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁷

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or withdrawn from warehouse, for consumption on or after June 29, 2020, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for ARLANXEO Brasil will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 19.61 percent established in the less-than-fair-value investigation.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of 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

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: July 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020-17030 Filed 8-4-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-133]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Barton at (202) 482-0012 or Laurel LaCivita at (202) 482-4243; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On July 9, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China) filed in proper form on behalf of List Industries, Inc., Lyon LLC, Penco Products, Inc., and Tennsco LLC

(collectively, the petitioners), domestic producers of metal lockers.¹ The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of metal lockers from China.²

On July 13, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition in separate supplemental questionnaires.³ Further, on July 22, 2020, Commerce held a conversation via telephone with counsel to the petitioners requesting further clarification regarding certain issues.⁴ As part of these requests, Commerce asked that the petitioners provide further information regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁵ On July 16, 17, and 23, 2020, the petitioners filed responses to Commerce's supplemental questionnaires, which included revisions to the scope.⁶

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of metal lockers from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the domestic metal locker industry in the United States.

¹ See Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Metal Lockers and Parts Thereof from the People's Republic of China," dated July 9, 2020 (the Petition).

² *Id.*

³ See Commerce's Letters, "Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petitions for the Imposition of Antidumping and Countervailing Duties: Supplemental Questions," (Volume I Supplemental Questionnaire); and "Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petition for the Imposition of Antidumping Duties: Supplemental Questions," (Volume II Supplemental Questionnaire) both dated July 13, 2020.

⁴ See Memorandum, "Telephone Conversation with the Petitioners regarding Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from the People's Republic of China," dated July 22, 2020.

⁵ *Id.*

⁶ See Petitioners' Letters, "Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petitioners' Response to Supplemental Questionnaire Regarding Volume I: General Issues" (First General Issues Supplement); "Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petitioners' Response to Supplemental Questionnaire Regarding Volume II: Antidumping Duty Petition" (China AD Supplement), both dated July 16, 2020; and "Certain Metal Lockers and Parts Thereof from the People's Republic of China—Petitioners' Petitioners' Second Amendment to Volume I Relating to General Issues," dated July 23, 2020 (Second General Issues Supplement).

⁷ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁸ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 33048 (July 19, 2019).

Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioners supporting the allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are interested parties, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigation.⁷

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is January 1, 2020 through June 30, 2020.

Scope of the Investigation

The merchandise covered by this investigation is metal lockers from China. For a full description of the scope of this investigation, see the appendix to this notice.

Comments on the Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁸ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.⁹ To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on August 18, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 28, 2020, which is ten calendar days from the initial comment deadline.¹⁰

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the

investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must also be filed on the record of the concurrent CVD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹¹ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of metal lockers to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on August 18, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on August 28, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25

percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of

⁷ See the Petition at Volume I, section I.C., "Information Related to Industry Support."

⁸ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁰ See 19 CFR 351.303(b).

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Federal Circuit 1989)).

¹⁴ See Volume I of the Petition at 17–19; see also First General Issues Supplement at 6–9; and Second General Issues Supplement at 2–5.

the information submitted on the record, we have determined that metal lockers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the domestic like product, as well as the 2019 production of DeBourgh Manufacturing, a supporter of the Petition.¹⁶ The petitioners compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.¹⁷ We relied on data provided by the petitioners for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have met the

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Antidumping Duty Investigation Initiation Checklist: Certain Metal Lockers and Parts Thereof from the People’s Republic of China (China AD Initiation Checklist) at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from China” (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

¹⁶ See Volume I of the Petition at 3, 5 and Exhibit GEN–2; see also Second General Issues Supplement at 5–6 and Exhibit GEN–SUPP2–2.

¹⁷ See Volume I of the Petition at 3, 5 and Exhibits GEN–1 and GEN–2; see also First General Issues Supplement at 10 and Exhibit GEN–SUPP–1; and Second General Issues Supplement at 5–6 and Exhibit GEN–SUPP2–2.

¹⁸ See Volume I of the Petition at 3, 5 and Exhibits GEN–1 and GEN–2; see also First General Issues Supplement at 10 and Exhibit GEN–SUPP–1; and Second General Issues Supplement at 5–6 and Exhibit GEN–SUPP2–2. For further discussion, see China AD Initiation Checklist at Attachment II.

¹⁹ See China AD Initiation Checklist at Attachment II.

²⁰ *Id.*; see also section 732(c)(4)(D) of the Act.

statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²³

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioners contend that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declines in production, capacity utilization, and shipments; and declines in operating income.²⁵ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁶

²¹ See China AD Initiation Checklist at Attachment II.

²² *Id.*

²³ *Id.*

²⁴ See Volume I of the Petition at 19–20 and Exhibit GEN–1.

²⁵ See Volume I of the Petition at 16–17, 19–29 and Exhibits GEN–1, GEN–5, and GEN–8 through GEN–11; see also First General Issues Supplement at 11 and Exhibit GEN–SUPP–5.

²⁶ See China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from the People’s Republic of China (Attachment III).

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate the AD investigation of imports of metal lockers from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the China AD Investigation Initiation Checklist.

U.S. Price

The petitioners based export price (EP) on pricing information for metal lockers produced in and exported from China and sold or offered for sale in the United States. The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price.²⁷

Normal Value

Commerce considers China to be an NME country.²⁸ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NVs in China are appropriately based on FOPs valued in surrogate market economy countries, in accordance with section 773(c) of the Act.

The petitioners argue that Mexico is an appropriate surrogate country for China because Mexico is a market economy country that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.²⁹ The petitioners submitted publicly available information from Mexico to value all FOPs.³⁰ Based on the information provided by the petitioners, we determine that it is appropriate to use Mexico as a surrogate country for China for initiation purposes.

Interested parties will have the opportunity to submit comments regarding the surrogate country selection and, pursuant to 19 CFR

²⁷ See China AD Initiation Checklist.

²⁸ See, *e.g.*, *Certain Collated Steel Staples From the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 882 (January 8, 2020), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Collated Steel Staples from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 85 FR 33623 (June 2, 2020), and accompanying Issues and Decision Memorandum.

²⁹ See Volume II of the Petition at 4–6 and Exhibit AD–3, “Costs in the Surrogate Country.”

³⁰ *Id.* at Exhibit AD–3.

351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

The petitioners used their own product-specific consumption rates as a surrogate to value Chinese manufacturers' FOPs.³¹ Additionally, the petitioners calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of a Mexican producer of comparable merchandise.³²

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of metal lockers from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for metal lockers from China are 245.96 and 322.25 percent.³³

Initiation of LTFV Investigation

We find that the Petition and petition supplements meet the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of metal lockers from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The Petition named 76 companies in China as producers/exporters of metal lockers.³⁴ In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for

selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Since there are 76 producers and exporters for China identified in the Petition, Commerce has determined to limit the number of Q&V questionnaires that it will send out to exporters and producers based on U.S. Customs and Border Protection (CBP) data for certain metal lockers from China during the POI under the appropriate Harmonized Tariff Schedule of the United States number listed in the "Scope of the Investigation," in the appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of metal lockers from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on August 12, 2020, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

On July 27, 2020, Commerce released CBP data on imports of metal lockers from China under administrative protective order (APO) to all parties with access to information protected by APO, and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.³⁵ We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Enforcement and Compliance's website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.³⁶ The specific requirements for submitting a separate-rate application in a China investigation are outlined in detail in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.³⁷ Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the {Commerce} will now

Release of Customs Data from U.S. Customs and Border Protection," dated July 27, 2020.

³⁶ See Policy Bulletin 05.1: "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving NME Countries," (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

³⁷ Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

³¹ See China AD Supplement at Exhibit AD-S2, "U.S. Consumption Quantities."

³² See China AD Supplement at Exhibit AD-S4, "Normal Value."

³³ See China AD Supplement at Exhibit AD-S5, "Margins of Dumping."

³⁴ See Volume I of the Petition at 27 and Exhibit GEN-6, "List of Chinese Producers/Exporters."

³⁵ See Memorandum, "Certain Metal Lockers and Parts Thereof from the People's Republic of China:

assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.³⁸

Distribution of Copies of the AD Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petition has been provided to the government of China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petition to each exporter named in the AD Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of metal lockers from China are materially injuring, or threatening material injury to, a U.S. industry.³⁹ A negative ITC determination will result in the investigation being terminated.⁴⁰ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any

party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴¹ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴² Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴³ Parties must use the certification formats provided in 19 CFR

351.303(g).⁴⁴ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.⁴⁵

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The scope of this investigation covers certain metal lockers, with or without doors, and parts thereof (certain metal lockers). The subject certain metal lockers are metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors. The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination

⁴⁴ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁵ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363. (July 10, 2020).

³⁸ See Policy Bulletin 05.1 at 6 (emphasis added).

³⁹ See section 733(a) of the Act.

⁴⁰ *Id.*

⁴¹ See 19 CFR 351.301(b).

⁴² See 19 CFR 351.301(b)(2).

⁴³ See section 782(b) of the Act.

thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings. The doors are configured with or for a handle or other device that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock, lever or knob lock, and a wireless lock. The subject locker may also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.*, all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.*, doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. Slope tops: Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. Bases: Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. Expansion filler panel: Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or

other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. Dividers: Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. Recess trim: Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. Decorative end panels: End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. End caps: End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced or sold with the imported locker or locker system.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to bulk imported rivets, nuts, bolts, hinges, door handles, locks, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading

9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2020–17064 Filed 8–4–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–038]

Amorphous Silica Fabric From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the antidumping duty order on certain amorphous silica fabric (silica fabric) from the People's Republic of China (China) for the period of review (POR) March 1, 2019 through February 29, 2020.

DATES: Applicable August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Marc Castillo, 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) 482–0519.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order¹ on amorphous silica fabric from China for the POR.² On March 31, 2020, Commerce received a timely request from Auburn Manufacturing, Inc. (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of the *Order* for 89 companies.³ On May 6, 2020, Commerce published in the **Federal Register** a notice of initiation with

¹ See *Certain Amorphous Silica Fabric from the People's Republic of China: Antidumping Duty Order*, 82 FR 14314 (March 17, 2017) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 85 FR 12267 (March 2, 2020).

³ See Petitioner's Letter, "Certain Amorphous Silica Fabric from the People's Republic of China," dated March 31, 2020.

respect to the 89 companies in the petitioner's administrative review request.⁴ On July 7, 2020, the petitioner timely withdrew its request for an administrative review for all 89 companies.⁵

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party which requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The party which requested an administrative review withdrew its request for review for all companies by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping duty order on silica fabric from China covering the period March 1, 2019, through February 29, 2020, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 24, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020-17032 Filed 8-4-20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-968]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind, in Part; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies have been provided to producers and exporters of aluminum extrusions from the People's Republic of China (China) for the period of review (POR) January 1, 2018 through December 31, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 5, 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

Commerce published the notice of initiation of this administrative review on July 15, 2019, covering 257 companies, based on requests from the Aluminum Extrusions Fair Trade Committee (petitioner) and Endura Products Inc. (Endura).¹ On October 15,

2019, the petitioner and Endura withdrew their requests for review for all but the following nine companies: (1) Activa International Inc. (Activa); (2) Changzhou Tenglong Auto Parts Co. Ltd. (Changzhou Tenglong); (3) CRRC Changzhou Auto Parts Co. Ltd. (CRRC); (4) Dongguan Aoda Aluminum Co. Ltd. (Dongguan Aoda); (5) Guangdong Xingfa Aluminum Co., Ltd. (Guangdong Xingfa); (6) Precision Metal Works Ltd. (Precision Metal); (7) Shenyang Yuanda Aluminum Industry Engineering Co. Ltd. (Shenyang Yuanda); (8) Summit Heat Sinks Metal Co, Ltd. (Summit); and (9) Wenzhou Yongtai Electric Co. Ltd. (Wenzhou Yongtai).² Between January 27, 2020 and February 6, 2020, Commerce extended the deadline for the preliminary results.³ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 20, 2020.⁴

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum, which is dated concurrently with, and hereby adopted by, this notice.⁵ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public

33739 (July 15, 2019) (*Notice of Initiation*); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019), which contains corrections to certain company names published in the July 15, 2019 *Notice of Initiation* (collectively, *Initiation Notice*).

² See Petitioner and Endura's Letter, "Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review," dated October 15, 2019 (Petitioner and Endura Withdrawal Request).

³ See Memoranda, "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated January 27, 2020; and "Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2018," dated February 6, 2020.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Because the 50-day extension would result in the signature date being on a weekend, the deadline moves to the next business day, Monday, July 20, 2020.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind, in Part; 2018," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 26931 (May 6, 2020).

⁵ See Petitioner's Letter, "Amorphous Silica Fabric from the People's Republic of China," dated July 7, 2020.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR

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>; this memorandum is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). For a complete description of the scope of the order see the Preliminary Decision Memorandum.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS):

7604.21.0010, 7604.21.0090, 7604.29.1010, 7604.29.1090, 7606.12.3091, 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00,

8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.⁶

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For purposes of this review, Commerce preliminarily finds that all programs previously countervailed in prior segments of this proceeding, remain countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the

⁶ See Preliminary Decision Memorandum for a complete description of the scope of the order.

Act, and are specific within the meaning of 771(5A) of the Act.

For a full description of the methodology underlying our preliminary conclusions, including our reliance on adverse facts available pursuant to sections 776(a) and (b) of the Act, see the Preliminary Decision Memorandum. As explained in the Preliminary Decision Memorandum, Commerce relied on adverse facts available because the Government of China (GOC) and seven of the nine companies that remain under review (*i.e.*, Activa, CRRC, Guangdong Xingfa, Precision Metal, Shenyang Yuanda, Summit, Wenzhou Yongtai) did not act to the best of their ability in responding to Commerce's requests for information, and consequently, we have drawn an adverse inference, where appropriate, in selecting from among the facts otherwise available.⁷ For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

For the other two companies (*i.e.*, Changzhou Tenglong and Dongguan Aoda), we preliminarily assigned a rate based on the average of the most recently determined rates in a prior segment of this proceeding that are not zero, *de minimis*, or based entirely on facts available.⁸ For further information, see "Non-Selected Company Rates" in the Preliminary Decision Memorandum.

Intent to Rescind Review, In Part

For those companies named in the *Initiation Notice* for which all review requests have been timely withdrawn,⁹ we intend to rescind this administrative review in accordance with 19 CFR 351.213(d)(1). These companies are listed at Appendix II to this notice. For these companies, Commerce intends to assess duties at rates equal to the cash deposits of estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(2).

Preliminary Results

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:¹⁰

⁷ See sections 776(a) and (b) of the Act.

⁸ See *Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 81 FR 92778 (December 20, 2016).

⁹ See Petitioner and Endura Withdrawal Request.

¹⁰ See Preliminary Decision Memorandum at "Use of Adverse Facts Available" and "Ad Valorem Rate for Non-Cooperative Companies Under Review."

Company	Subsidy rate <i>ad valorem</i> (percent)
Activa International Inc	242.15
Changzhou Tenglong Auto Parts Co. Ltd	16.08
CRRC Changzhou Auto Parts Co. Ltd	242.15
Dongguan Aoda Aluminum Co. Ltd	16.08
Guangdong Xingfa Aluminum Co., Ltd	242.15
Precision Metal Works Ltd ...	242.15
Shenyang Yuanda Aluminum Industry Engineering Co. Ltd	242.15
Summit Heat Sinks Metal Co. Ltd	242.15
Wenzhou Yongtai Electric Co. Ltd	242.15

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends upon publication of the final results to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we intend to instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results of review within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, we

have assigned a net subsidy rate based on total adverse facts available to the seven companies for which requests for review were not withdrawn (each failed to submit a response to Commerce's quantity and value (Q&V) questionnaire), in accordance with section 776 of the Act. For information detailing the derivation of the adverse facts available (AFA) rate applied, see AFA Calculation Memorandum.¹¹

Public Comment

Interested parties may submit written case briefs no later than 30 days after the date of publication of the preliminary results. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹² Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹³ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Issues addressed at the hearing will be limited to those raised in the briefs.¹⁵ All case and rebuttal briefs and hearing requests must be filed electronically and

received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Intent to Rescind the Review, In Part
- V. Non-Selected Company Rates
- VI. Use of Adverse Facts Available
- VII. Subsidy Programs Subject to Countervailing Duties
- VIII. *Ad Valorem* Rate for Non-Cooperative Companies Under Review
- IX. Recommendation

Appendix II—List of Companies for Which We Intend to Rescind this Administrative Review

1. Acro Import and Export Co.
2. Activa Leisure Inc.
3. Agilent Technologies Co. Ltd (China)
4. Allied Maker Limited
5. Alnan Aluminum Co., Ltd.
6. Alnan Aluminum Ltd.
7. Aluminicaste Fundicion de Mexico
8. AMC Ltd.
9. AMC Limited
10. Anji Chang Hong Chain Manufacturing
11. Anshan Zhongda Industry Co., Ltd
12. Aoda Aluminium (Hong Kong) Co., Limited
13. Atlas Integrated Manufacturing Ltd.
14. Bath Fitter
15. Behr-Hella Thermocontrol (Shanghai) Co. Ltd.
16. Belton (Asia) Development Ltd.
17. Belton (Asia) Development Limited
18. Birchwoods (Lin'an) Leisure Products Co., Ltd.
19. Bolnar Hong Kong Ltd.
20. Bracalente Metal Products (Suzhou) Co., Ltd.
21. Brilliance General Equipment Co., Ltd.
22. AsiaAlum Group
23. Changshu Changshen Aluminum Products Co., Ltd.
24. Changshu Changsheng Aluminum Products Co., Ltd.
25. Changzhou Changzhen Evaporator Co., Ltd.
26. Changzhou Changzheng Evaporator Co., Ltd.

¹¹ See Memorandum, "Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the 2018 Preliminary Results of Review," dated February 11, 2020.

¹² See 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁵ See 19 CFR 351.310(c).

27. Changzhou Tenglong Auto Accessories Manufacturing Co. Ltd
28. Changzhou Tenglong Auto Parts Co Ltd
29. China Square
30. China Square Industrial Co.
31. China Square Industrial Ltd
32. China Zhongwang Holdings, Ltd.
33. Chiping One Stop Industrial & Trade Co., Ltd.
34. Classic & Contemporary Inc.
35. Clear Sky Inc.
36. Coclisa S.A. de C.V.
37. Cosco (J.M.) Aluminum Co., Ltd.
38. Cosco (JM) Aluminum Development Co. Ltd
39. Dalian Huacheng Aquatic Products
40. Dalian Liwang Trade Co., Ltd.
41. Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.
42. Daya Hardware Co Ltd
43. Dongguan Dazhan Metal Co., Ltd.
44. Dongguan Golden Tiger Hardware Industrial Co., Ltd.
45. Dongguang Aoda Aluminum Co., Ltd.
46. Dragonluxe Limited
47. Dynabright International Group (HK) Ltd.
48. Dynamic Technologies China
49. ETLA Technology (Wuxi) Co. Ltd
50. Ever Extend Ent. Ltd.
51. Fenghua Metal Product Factory
52. First Union Property Limited
53. FookShing Metal & Plastic Co. Ltd.
54. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
55. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
56. Foshan Golden Source Aluminum Products Co., Ltd.
57. Foshan Guangcheng Aluminium Co., Ltd
58. Foshan Jinlan Aluminum Co. Ltd.
59. Foshan JinLan Aluminum Co., Ltd.
60. Foshan JMA Aluminum Company Limited
61. Foshan Nanhai Niu Yuan Hardware Product Co., Ltd.
62. Foshan Shanshui Fenglu Aluminum Co., Ltd.
63. Foshan Shunde Aoneng Electrical Appliances Co., Ltd
64. Foshan Yong Li Jian Aluminum Co., Ltd.
65. Fujian Sanchuan Aluminum Co., Ltd.
66. Fukang Aluminum & Plastic Import and Export Co., Ltd.
67. Fuzhou Sunmodo New Energy Equipment
68. Gaotang Xinhai Economy & Trade Co., Ltd.
69. Genimex Shanghai, Ltd.
70. Global Hi-Tek Precision Co. Ltd
71. Global PMX Dongguan Co., Ltd.
72. Global Point Technology (Far East) Limited
73. Gold Mountain International Development, Ltd.
74. Golden Dragon Precise Copper Tube Group, Inc.
75. Gran Cabrio Capital Pte. Ltd.
76. Gree Electric Appliances
77. Green Line Hose & Fittings
78. GT88 Capital Pte. Ltd.
79. Guang Ya Aluminium Industries (HK) Ltd.
80. Guang Ya Aluminium Industries Co. Ltd.
81. Guang Ya Aluminum Industries Company Ltd
82. Guangcheng Aluminum Co., Ltd
83. Guangdong Hao Mei Aluminum Co., Ltd.
84. Guangdong Jianmei Aluminum Profile Company Limited
85. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
86. Guangdong Midea
87. Guangdong Midea Microwave and Electrical Appliances
88. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
89. Guangdong Weiye Aluminum Factory Co., Ltd.
90. Guangdong Whirlpool Electrical Appliances Co., Ltd.
91. Guangdong Xin Wei Aluminum Products Co., Ltd.
92. Guangdong Yonglijian Aluminum Co., Ltd.
93. Guangdong Zhongya Aluminum Company Ltd.
94. Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
95. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
96. Hangzhou Xingyi Metal Products Co., Ltd.
97. Hanwood Enterprises Limited
98. Hanyung Alcoba Co., Ltd.
99. Hanyung Alcobis Co., Ltd.
100. Hanyung Metal (Suzhou) Co., Ltd.
101. Hao Mei Aluminum Co., Ltd.
102. Hao Mei Aluminum International Co., Ltd.
103. Hebei Xusen Wire Mesh Products Co., Ltd.
104. Henan New Kelong Electrical Appliances Co., Ltd.
105. Henan Zhongduo Aluminum Magnesium New Material Co, Ltd.
106. Hitachi High-Technologies (Shanghai) Co., Ltd.
107. Hong Kong Gree Electric Appliances Sales Limited
108. Hong Kong Modern Non-Ferrous Metal
109. Honsense Development Company
110. Hui Mei Gao Aluminum Foshan Co., Ltd.
111. Huixin Aluminum
112. IDEX Dinglee Technology (Tianjin) Co., Ltd.
113. IDEX Health
114. IDEX Technology Suzhou Co., Ltd.
115. Innovative Aluminum (Hong Kong) Limited
116. iSource Asia
117. Jackson Travel Products Co., Ltd.
118. Jangho Curtain Wall Hong Kong Ltd.
119. Jiangmen Jianghai Foreign Ent. Gen.
120. Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.
121. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
122. Jianguo Changfa Refrigeration Co.
123. Jianguyin Suncitygaylin
124. Jianguyin Trust International Inc.
125. Jianguyin Xinhong Doors and Windows Co., Ltd.
126. Jiaxing Jackson Travel Products Co., Ltd.
127. Jiaxing Taixin Metal Products Co., Ltd.
128. Jiuyan Co., Ltd.
129. JMA (HK) Company Limited
130. Johnson Precision Engineering (Suzhou) Co., Ltd.
131. Justhere Co., Ltd.
132. Kam Kiu Aluminum Products Sdn Bhd
133. Kanal Precision Aluminum Product Co., Ltd
134. Karlton Aluminum Company Ltd.
135. Kong Ah International Company Limited
136. Kromet International Inc.
137. Kromet Intl Inc
138. Kromet International
139. Kunshan Giant Light Metal Technology Co., Ltd.
140. Liaoning Zhong Da Industrial Aluminum Co., Ltd.
141. Liaoning Zhongwang Group Co., Ltd.
142. Liaoyang Zhongwang Aluminum Profile Co. Ltd.
143. Longkou Donghai Trade Co., Ltd.
144. MAAX Bath Inc.
145. MAHLE Holding (China) Co., Ltd
146. Metal Tech Co Ltd
147. Metaltek Group Co., Ltd.
148. Metaltek Metal Industry Co., Ltd.
149. Midea Air Conditioning Equipment Co., Ltd.
150. Midea Electric Trading Co., Pte Ltd
151. Midea International Training Co., Ltd.
152. Midea International Trading Co., Ltd.
153. Miland Luck Limited
154. Nanhai Textiles Import & Export Co., Ltd.
155. New Asia Aluminum & Stainless Steel Product Co., Ltd.
156. New Zhongya Aluminum Factory
157. Nidec Sankyo (Zhejiang) Corporation
158. Nidec Sankyo Zhejiang Corporation
159. Nidec Sankyo Singapore Pte. Ltd.
160. Ningbo Coaster International Co., Ltd.
161. Ningbo Hi Tech Reliable Manufacturing Company
162. Ningbo Innopower Tengda Machinery
163. Ningbo Ivy Daily Commodity Co., Ltd.
164. Ningbo Yili Import and Export Co., Ltd.
165. North China Aluminum Co., Ltd.
166. North Fenghua Aluminum Ltd.
167. Northern States Metals
168. PanAsia Aluminum (China) Limited
169. PENCOM Dongguan China
170. Pengcheng Aluminum Enterprise Inc.
171. Permasteelisa Hong Kong Limited
172. Permasteelisa South China Factory
173. Pingguo Aluminum Company Limited
174. Pingguo Asia Aluminum Co., Ltd.
175. Popular Plastics Company Limited
176. Press Metal International Ltd.
177. Qingdao Sea Nova Building
178. Samuel, Son & Co., Ltd.
179. Sanchuan Aluminum Co., Ltd.
180. Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd
181. Shandong Fukang Aluminum & Plastic Co. LTD
182. Shandong Huajian Aluminum Group
183. Shangdong Huasheng Pesticide Machinery Co.
184. Shangdong Nanshan Aluminum Co., Ltd.
185. Shanghai Automobile Air Conditioner Accessories Ltd.
186. Shanghai Automobile Air-Conditioner Accessories Co Ltd
187. Shanghai Canghai Aluminum Tube Packaging Co., Ltd
188. Shanghai Dofiberone Composites Co. Ltd.
189. Shanghai Dongsheng Metal
190. Shanghai Shen Hang Imp & Exp Co., Ltd.
191. Shanghai Tongtai Precise Aluminum

- Alloy Manufacturing Co. Ltd.
 192. Shanghai Top-Ranking Aluminum Products Co., LTD
 193. Shanghai Top-Ranking New Materials Co., Ltd.
 194. Shenzhen Hudson Technology Development Co.
 195. Shenzhen Jiuyuan Co., Ltd.
 196. Sihui Shi Guo Yao Aluminum Co., Ltd.
 197. Sincere Profit Limited
 198. Skyline Exhibit Systems (Shanghai) Co. Ltd.
 199. Southwest Aluminum (Group) Co., Ltd.
 200. Springs Window Fashions De Victoria
 201. Summit Plastics Nanjing Co. Ltd
 202. Suzhou JRP Import & Export Co., Ltd.
 203. Suzhou New Hongji Precision Part Co.
 204. Tai-Ao Aluminum (Taishan) Co. Ltd.
 205. Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.
 206. Taitoh Machinery Shanghai Co Ltd
 207. Taizhou United Imp. & Exp. Co., Ltd.
 208. tenKsolar (Shanghai) Co., Ltd.
 209. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
 210. Tianjin Jinmao Import & Export Corp., Ltd.
 211. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
 212. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
 213. Tiazhou Lifeng Manufacturing Corporation
 214. Taizhou Lifeng Manufacturing Co., Ltd.
 215. Top-Wok Metal Co., Ltd.
 216. Traffic Brick Network, LLC
 217. Union Aluminum (SIP) Co.
 218. Union Industry (Asia) Co., Ltd.
 219. USA Worldwide Door Components (Pinghu) Co., Ltd.
 220. Wenzhou Shengbo Decoration & Hardware
 221. Whirlpool (Guangdong)
 222. Whirlpool Canada L.P.
 223. Whirlpool Microwave Products Development Ltd.
 224. Wonjin Autoparts
 225. Worldwide Door Components, Inc.
 226. WTI Building Products, Ltd.
 227. Wuxi Lutong Fiberglass Doors Co., Ltd.
 228. Xin Wei Aluminum Co.
 229. Xin Wei Aluminum Company Limited
 230. Xinchang Yongqiang Air Conditioning Accessories Co., Ltd.
 231. Xinya Aluminum & Stainless Steel Product Co., Ltd.
 232. Yuyao Haoshen Import & Export
 233. Yuyao Fanshun Import & Export Co., Ltd.
 234. Zhaqing China Square Industry Limited
 235. Zhaqing China Square Industry Limited
 236. Zhaqing Asia Aluminum Factory Company Ltd.
 237. Zhaqing China Square Industrial Ltd.
 238. Zhaqing New Zhongya Aluminum Co., Ltd.
 239. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
 240. Zhejiang Lilies Industrial and Commercial Co
 241. Zhejiang Yili Automobile Air Condition Co., Ltd
 242. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.

243. Zhejiang Zhengte Group Co., Ltd.
 244. Zhenjiang Xinlong Group Co., Ltd.
 245. Zhongshan Daya Hardware Co., Ltd.
 246. Zhongshan Gold Mountain Aluminum Factory Ltd.
 247. Zhongya Shaped Aluminum (HK) Holding Limited
 248. Zhuhai Runxingtai Electrical Equipment Co., Ltd

[FR Doc. 2020–17071 Filed 8–4–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–134]

Certain Metal Lockers and Parts Thereof From the People’s Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 29, 2020.

FOR FURTHER INFORMATION CONTACT: Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

The Petition

On July 9, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain metal lockers and parts thereof (metal lockers) from the People’s Republic of China (China) filed in proper form on behalf of List Industries, Inc., Lyon LLC, Penco Products, Inc., and Tennsco LLC (collectively, the petitioners), domestic producers of metal lockers.¹ The Petition was accompanied by an antidumping duty (AD) petition concerning imports of metal lockers from China.²

On July 13, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition in separate supplemental questionnaires.³ Further, on July 22,

¹ See Petitioners’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties Against Imports of Certain Metal Lockers and Parts Thereof from the People’s Republic of China,” dated July 9, 2020 (the Petition).

² *Id.*

³ See Commerce’s Letters, “Certain Metal Lockers and Parts Thereof from the People’s Republic of China—Petitions for the Imposition of Antidumping and Countervailing Duties: Supplemental Questions,” and “Certain Metal Lockers and Parts Thereof from the People’s Republic of China—Petitioners’ Response to Supplemental

2020, Commerce held a conversation via telephone with counsel to the petitioners requesting further clarification regarding certain outstanding issues.⁴ As part of these requests, Commerce asked that the petitioners provide further information regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief. On July 16, 17, and 23, 2020, the petitioners filed responses to Commerce’s supplemental questionnaires, which included revisions to the scope.⁵

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of metal lockers in China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing metal lockers in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁶

Period of Investigation

Because the Petition was filed on July 9, 2020, the period of investigation (POI)

Questionnaire Regarding Volume III: Countervailing Duty Petition,” both dated July 13, 2020.

⁴ See Memorandum, “Telephone Conversation with the Petitioners regarding Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from the People’s Republic of China,” dated July 22, 2020.

⁵ See Petitioners’ Letters, “Certain Metal Lockers and Parts Thereof from the People’s Republic of China—Petitioners’ Response to Supplemental Questionnaire Regarding Volume I: General Issues,” dated July 16, 2020 (First General Issues Supplement), “Certain Metal Lockers and Parts Thereof from the People’s Republic of China—Petitioners’ Response to Supplemental Questionnaire Regarding Volume III: Countervailing Duty Petition,” dated July 17, 2020, and Petitioners’ Letter, “Certain Metal Lockers and Parts Thereof from the People’s Republic of China—Petitioners’ Second Amendment to Volume I Relating to General Issues,” dated July 23, 2020 (Second General Issues Supplement).

⁶ See “Determination of Industry Support for the Petition” section, *infra*.

is January 1, 2019, through December 31, 2019.⁷

Scope of the Investigation

The merchandise covered by this investigation is metal lockers from China. For a full description of the scope of this investigation, see the Appendix to this notice.

Comments on Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁸ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁹ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on August 18, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 28, 2020, which is 10 calendar days from the initial comment deadline.¹⁰

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's (E&C) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹¹ An electronically filed

document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.¹² On July 21, 2020, the GOC informed Commerce that it did not intend to hold consultations, but would instead provide written comments on the Petition¹³ and, thus, we did not hold consultations with the GOC. On July 27, 2020, the GOC provided comments on the Petition.¹⁴

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible

for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁵ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁶

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁷ Based on our analysis of the information submitted on the record, we have determined that metal lockers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁸

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the Appendix to this notice. To establish industry support, the petitioners provided their 2019 production of the

¹⁵ See section 771(10) of the Act.

¹⁶ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989)).

¹⁷ See Volume I of the Petition at 17–19; see also First General Issues Supplement at 8–9; and Second General Issues Supplement at 2–5.

¹⁸ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Certain Metal Lockers and Parts Thereof from the People's Republic of China (China CVD Initiation Checklist) at Attachment II, "Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from the People's Republic of China" (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

⁷ See 19 CFR 351.204(b)(2).

⁸ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁰ See 19 CFR 351.303(b).

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements,

effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹² See Commerce's Letter, "Countervailing Duty Petition on Certain Metal Lockers and Parts Thereof from the People's Republic of China," dated July 14, 2020.

¹³ See Memorandum, "Consultation Invitation Response," dated July 22, 2020.

¹⁴ See Memorandum, "Consultation Comments from the Government of the People's Republic of China," dated July 28, 2020.

domestic like product, as well as the 2019 production of DeBourgh Manufacturing, a supporter of the Petition.¹⁹ The petitioners compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.²⁰ We relied on data provided by the petitioners for purposes of measuring industry support.²¹

Our review of the data provided in the Petition, the First General Issues Supplement, Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.²² First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²³ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²⁴ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²⁵ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²⁶

¹⁹ See Second General Issues Supplement at 6 and Exhibit GEN-SUPP2-2.

²⁰ See Volume I of the Petition at 3, 5 and Exhibits GEN-1 and GEN-2; *see also* First General Issues Supplement at 10 and Exhibit GEN-SUPP-1; and Second General Issues Supplement at 5-6 and Exhibit GEN-SUPP2-2.

²¹ See Volume I of the Petition at 3, 5 and Exhibits GEN-1 and GEN-2; *see also* First General Issues Supplement at 10 and Exhibit GEN-SUPP-1; and Second General Issues Supplement at 5-6 and Exhibit GEN-SUPP2-2. For further discussion, *see* China CVD Initiation Checklist at Attachment II.

²² See China CVD Initiation Checklist at Attachment II.

²³ *Id.*; *see also* section 702(c)(4)(D) of the Act.

²⁴ See China CVD Initiation Checklist at Attachment II.

²⁵ *Id.*

²⁶ *Id.*

Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁷

The petitioners contend that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declines in production, capacity utilization, and shipments; and declines in operating income.²⁸ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁹

Initiation of CVD Investigation

Based upon our examination of the Petition and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of metal lockers from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist

²⁷ See Volume I of the Petition at 19-20 and Exhibit GEN-1.

²⁸ See Volume I of the Petitions at 16-17, 19-29 and Exhibits GEN-1, GEN-5, and GEN-8 through GEN-11; *see also* First General Issues Supplement at 11 and Exhibit GEN-SUPP-5.

²⁹ See China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Metal Lockers and Parts Thereof from the People’s Republic of China.

for this investigation is available on ACCESS In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The Petition named 76 companies in China as producers/exporters of metal lockers.³⁰ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigation. However, for this investigation, the HTSUS number under which the subject merchandise would enter (*i.e.*, 9403.20.0078) is a basket category under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents; however, since there are 76 producers and exporters identified in the Petition, Commerce has determined to limit the number of Q&V questionnaires that it will send out to exporters and producers based on CBP data for certain metal lockers from China during the POI under the appropriate Harmonized Tariff Schedule of the United States number listed in the “Scope of the Investigation,” in the Appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance’s website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of metal lockers from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C’s website. Responses to the Q&V questionnaire

³⁰ See Volume I of the Petition at Exhibit Gen-6.

must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on August 12, 2020, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Concurrent with this notice, Commerce released CBP data on imports of metal lockers from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.³¹ We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of metal lockers from China are materially injuring, or threatening material injury to, a U.S. industry.³² A negative ITC determination will result in the

investigation being terminated.³³ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.³⁶ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate,

stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁷ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁸ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.³⁹

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary Enforcement and Compliance.

Appendix—Scope of the Investigation

The scope of this investigation covers certain metal lockers, with or without doors, and parts thereof (certain metal lockers). The subject certain metal lockers are metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-

³⁷ See section 782(b) of the Act.

³⁸ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

³⁹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

³¹ See Memorandum, "Release of Customs Data from U.S. Customs and Border Protection," dated concurrently with this notice.

³² See section 703(a)(1) of the Act.

³³ *Id.*

³⁴ See 19 CFR 351.301(b).

³⁵ See 19 CFR 351.301(b)(2).

³⁶ See 19 CFR 351.302.

mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors. The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallicity coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings. The doors are configured with or for a handle or other device that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock, lever or knob lock, and a wireless lock. The subject locker may also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.*, all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.*, doors, frames, shelves, tops, bottoms, backs, side panels, *etc.*) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops*: Slope tops are slanted metal panels or units that fit on the tops of the

lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases*: Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel*: Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers*: Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim*: Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels*: End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps*: End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced or sold with the imported locker or locker system.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage.

Also excluded are metal lockers that are imported with an installed electronic,

internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to bulk imported rivets, nuts, bolts, hinges, door handles, locks, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2020-17031 Filed 8-4-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-124]

Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 5, 2020.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon at (202) 482-6274 and Ben Luberdia at (202) 482-2185, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2020, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China).¹

¹ See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 20670 (April 14, 2020) (*Initiation Notice*).

Currently, the preliminary determination is due no later than August 25, 2020.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner² makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On July 15, 2020, the petitioner submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.³ The petitioner stated that its requested postponement “is warranted to provide {Commerce} sufficient time to develop the record in this investigation. As it stands, the record is limited, and additional time is needed for {Commerce} to analyze fully the questionnaire responses, issue any supplemental questionnaires, and prepare an accurate preliminary dumping margin calculation. Extending the deadline will enable {Commerce} to properly conduct the investigation and allow all parties adequate time to examine and comment on the record.”⁴

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than

October 14, 2020. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–17033 Filed 8–4–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2018

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2018.

SUMMARY: The National Oceanic and Atmospheric Administration’s (NOAA’s) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2018. The indirect cost rates for this fiscal year and date of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP website at www.darrp.noaa.gov.

FOR FURTHER INFORMATION: For further information, contact LaTonya Burgess by phone at 240–533–0428 or email at LaTonya.Burgess@noaa.gov.

SUPPLEMENTARY INFORMATION: The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and to support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component

organizations: The Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel Natural Resources Section (GCNRS). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP’s Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M’s effort, their assessment of the DARRP’s cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611).

R&M continued its assessment of DARRP’s indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with federal accounting requirements. Consistent with R&M’s previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost

² The petitioner is Briggs & Stratton Corporation.

³ See Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Request for Postponement of the Preliminary Determination,” dated July 15, 2020.

⁴ *Id.*

Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from ERT, Inc. (ERT), Freestone Environmental Services, Inc. (Freestone), and Genwest Systems, Inc. (Genwest) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ERT, Freestone, and Genwest provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. Subsequent federal notices have been published in the **Federal Register** as follows:

- FY 2002, published on October 6, 2003 (68 FR 57672)
- FY 2003, published on May 20, 2005 (70 FR 29280)
- FY 2004, published on March 16, 2006 (71 Fed Reg. 13356)
- FY 2005, published on February 9, 2007 (72 FR 6221)
- FY 2006, published on June 3, 2008 (73 FR 31679)
- FY 2007 and FY 2008, published on November 16, 2009 (74 FR 58948)
- FY 2009 and FY 2010, published on October 20, 2011 (76 FR 65182)
- FY 2011, published on September 17, 2012 (77 FR 57074)
- FY 2012, published on August 29, 2013 (78 FR 53425)
- FY 2013, published on October 14, 2014 (79 FR 61617)
- FY 2014, published on December 17, 2015 (80 FR 78718)
- FY 2015, published on August 22, 2016 (81 FR 56580)

Empirical Concepts developed the DARRP indirect rates for FY 2016 and 2017. Empirical reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2016 and 2017 indirect cost rates. The federal notice for these rates can be found at the following:

- FY 2016 and FY 2017, published on October 16, 2019 (84 FR 55283)

Empirical Concepts developed the DARRP indirect rates for FY 18 and reaffirmed the Direct Labor Cost Base as the most appropriate indirect allocation for the development of the FY 2018 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2018 as recommended

by Empirical for each of the DARRP component organizations as provided in the following table:

DARRP component organization	FY 2018 indirect rate (%)
Office of Response and Restoration (ORR)	148.84
Restoration Center (RC)	71.94
General Counsel Natural Resources Section (GCNRS)	79.21

The FY 2018 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2017 and September 30, 2018 effective October 1, 2020. DARRP will use the FY 2018 indirect cost rates for future fiscal years, beginning with FY 2019, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020-17100 Filed 8-4-20; 8:45 am]

BILLING CODE 3510-JE-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection 3038-0005, Adoption of Revised Notice of Exemption Under Regulation 4.13(b)(1)

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the recent revision to the collection of certain information by the Commission. Under the Paperwork Reduction Act (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. The Commission revised its regulation requiring the filing of a notice of exemption by persons seeking to claim relief from registration as a commodity pool operator (CPO). This **Federal Register** notice solicits comments on the PRA implications of the revision to that required notice of exemption, including comments addressing adjustments in burden to the relevant information collection requirement of the revised exemption notice.

DATES: Comments must be submitted on or before October 5, 2020.

ADDRESSES: You may submit comments, identified by "OMB control number 3038-0005; Adoption of Revised Notice of Exemption under 17 CFR 4.13(b)(1)," by any of the following methods:

- **CFTC Comments Portal:** <https://comments.cftc.gov>. Select the "Submit Comments" link for this notice and follow the instructions on the Public Comment Form.
- **Mail:** Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Follow the same instructions as for Mail, above. Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English or, if not, be accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission regulation 145.9.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as

¹ 17 CFR 145.9.

required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6700, jsterling@cftc.gov; Amanda Olear, Deputy Director, (202) 418–5283, aolear@cftc.gov; or Elizabeth Groover, Special Counsel, (202) 418–5985, egroover@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 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. 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 number. The Commission believes that its revision of the notice of exemption required by Regulation 4.13(b)(1), as discussed further below, results in a collection of information within the meaning of the PRA. As such, the Commission is publishing for notice and comment the following revisions to the information collection associated with that notice.

Title: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB control number 3038–0005). This is a request for extension and revision of this currently approved information collection.

Abstract: The Commission recently revised the notice of exemption required by Regulation 4.13(b)(1) of any person who desires to claim the relief from CPO registration.² The various collections of information required by part 4 of the Commission’s regulations, including the notice required by Regulation 4.13(b)(1), were previously approved by OMB in accordance with the PRA and assigned OMB control number 3038–0005. The

Commission offers the following summary of the revision to the notice and the resulting estimated impact on existing burden hour estimates associated with this information collection.

Revision to the Notice of Exemption

On June 4, 2020, the Commission adopted an amendment to Regulation 4.13(b)(1) that added a representation to the notice already required to be electronically filed with the Commission by persons claiming an exemption from CPO registration thereunder.³ With that amendment, the Commission is requiring persons filing a notice of exemption thereunder to also represent that neither the person nor any of its principals has in its background a statutory disqualification listed in section 8a(2) of the Commodity Exchange Act (CEA or Act) that would require disclosure, if the person sought registration. Subject to one limited exception, the amended regulation provides that a person who has, or whose principals have, in their backgrounds a statutory disqualification under CEA section 8a(2) will generally be prohibited from claiming an exemption from CPO registration under Regulation 4.13. The Commission intended this amendment to eliminate the inconsistent treatment of exempt CPOs as compared to registered CPOs (and the principals thereof), whereby certain persons could avoid the CEA’s basic conduct requirements established for all persons registering as intermediaries with the Commission by claiming an exemption from CPO registration instead. Ultimately, the Commission’s stated purpose in adopting this amendment was to improve the customer protection and general investor confidence experienced by exempt pool participants.

The Commission noted in the Statutory Disqualifications Final Rule that the amendment in its proposed form had not implicated an additional or existing collection of information, and thus, the proposed regulation was not considered in the PRA context.⁴ Because the Statutory Disqualifications Final Rule resulted in a representation being added to the existing notice filing in Regulation 4.13(b), the Commission determined that this amendment

³ Amendments to Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions under Regulation 4.13 on Behalf of Persons Subject to Certain Statutory Disqualifications, 85 FR 40877 (July 8, 2020) (Statutory Disqualifications Final Rule).

⁴ Statutory Disqualifications Final Rule, 85 FR 40887.

constitutes the modification of an existing information collection; as such, its PRA implications are being considered in this separately published notice.

By adding this representation to the notice of exemption, the Commission recognizes that the existing information collection burden for that notice, currently 0.1 hours, is expected to increase. The Commission estimates that the representation would add a total of 0.2 burden hours to the information collection burdens currently estimated for the notice of exemption under Regulation 4.13(b)(1), for an aggregate total of 0.3 burden hours. Additionally, the Commission estimates that currently, approximately 8,600 respondents would claim an exemption via the Regulation 4.13(b)(1) notice filing.

Invitation to Comment

Regarding the information collection discussed above, the CFTC invites comments on:

- Whether the proposed revision to the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the further use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Burden Statement: As explained above, the Commission believes that the addition of a representation to the notice of exemption required by Regulation 4.13(b)(1) increases the information collection burden associated with that notice under OMB control numbers 3038–0005.

OMB Control Number 3038–0005:

The Commission estimates that as a result of revising the notice of exemption under Regulation 4.13(b)(1), the burden of the collection of information under OMB control number 3038–0005⁵ would be as follows:

⁵ OMB control number 3038–0005 currently covers two separate Information Collections (“IC”): (1) Part 4 Commodity Pool Operators and

² 17 CFR 4.13(b)(1).

Respondents/affected entities: (1) All persons filing a notice of exemption as required by Regulation 4.13(b)(1) for the purpose of claiming relief from CPO registration, and (2) all principals of such persons.

Estimated number of respondents: 8,600.

Estimated number of exempt pools/reports per respondent: 3.

Estimated total annual burden on respondents: 8,600 hours.⁶

Frequency of collection: Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: July 31, 2020.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2020-17046 Filed 8-4-20; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During June 2020

	FE Docket Nos.
FUEL MARKET LP	20-53-NG
BP CANADA ENERGY MARKETING CORP.	20-55-NG
SABINE PASS LIQUEFACTION, LLC.	20-28-LNG
CHEVRON U.S.A. INC	20-54-LNG
SEMPRA MARKETING LNG, LLC	20-52-LNG
ARM ENERGY MANAGEMENT LLC.	20-56-NG
SOUTHWEST ENERGY, L.P	20-51-NG
JUPITER RESOURCES INC	20-57-NG
TRAFIGURA TRADING LLC	20-61-NG; 18-110-NG
EQUINOR NATURAL GAS LLC ..	20-65-NG
ENERGY SOURCE NATURAL GAS INC.	20-58-NG
NEW BRUNSWICK ENERGY MARKETING CORP.	20-60-NG
ETC MARKETING, LTD	20-63-NG
PRODUCCIÓN DE ENERGÍA MEXICANA, S. DE R.L. DE C.V.	20-62-NG
J. ARON & COMPANY LLC	20-64-NG; 18-77-NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2020, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and vacating prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at <https://www.energy.gov/fe/listing-doe-fe-authorizations-orders-issued-2020>. They are also available for inspection and copying in the U.S. Department of Energy (FE-34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9387. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on July 31, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

APPENDIX

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date	Docket No.	Entity	Description
4543	06/05/20	20-53-NG	Fuel Market LP	Order 4543 granting blanket authority to export natural gas to Mexico, and to export LNG to Mexico by truck.
4544	06/05/20	20-55-NG	BP Canada Energy Marketing Corp.	Order 4544 granting blanket authority to import/export natural gas from/to Canada.
4545	06/04/20	20-28-LNG	Sabine Pass Liquefaction, LLC.	Order 4545 granting blanket authority to export previously imported LNG by vessel to Free Trade Agreement Nations and Non-Free Trade Agreement Nations.
4546	06/05/20	20-54-LNG	Chevron U.S.A. Inc	Order 4546 granting blanket authority to import LNG from various international sources by vessel.
4547	06/05/20	20-52-LNG	Sempra LNG Marketing, LLC	Order 4547 granting blanket authority to import LNG from various international sources by vessel.
4548	06/16/20	20-56-NG	ARM Energy Management LLC.	Order 4548 granting blanket authority to export natural gas to Canada/Mexico.
4549	06/16/20	20-51-NG	Southwest Energy, L.P	Order 4549 granting blanket authority to import/export natural gas from/to Canada/Mexico.
4550	06/16/20	20-57-NG	Jupiter Resources Inc	Order 4550 granting blanket authority to import natural gas from Canada.
4551; 4238-A	06/16/20	20-61-NG; 18-110-NG	Trafigura Trading LLC	Order 4551 granting blanket authority to import/export natural gas from/to Canada/Mexico, and vacating prior authority (Order 4238).
4552	06/16/20	20-65-NG	Equinor Natural Gas LLC	Order 4552 granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel.
4553	06/22/20	20-58-NG	Energy Source Natural Gas, Inc.	Order 4553 granting blanket authority to import/export natural gas from/to Canada.
4554	06/22/20	20-60-NG	New Brunswick Energy Marketing Corporation.	Order 4554 granting blanket authority to import/export natural gas from/to Canada.
4555	06/22/20	20-63-NG	ETC Marketing, Ltd	Order 4555 granting blanket authority to import/export natural gas from/to Mexico.

Commodity Trading Advisors IC, and (2) Commodity Pool Operator Annual Report IC. The estimates in this notice reflect changes specifically made by the Statutory Disqualifications Final Rule to the Part 4 Commodity Pool Operators and Commodity Trading Advisors IC, for which the current active information collection estimates of 43,397 respondents and 354,333 burden hours were

approved by OMB on March 6, 2020 (ICR Reference No. 201912-3038-001). The aggregate burden for OMB control number 3038-0005 may be further impacted by a separate rulemaking. Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, published in the **Federal Register**, 85 FR 26378 (May 4, 2020). Neither the Statutory Disqualification Final Rule

nor the Form CPO-PQR rulemaking impact the estimates of the Commodity Pool Operator Annual Report IC, which remain the same.

⁶ The burden hour per response is 0.3 burden hour for an aggregate total of 0.9 burden hour for all three responses per respondent. This estimate has been rounded up to 1 burden hour for all three responses per respondent.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

4556	06/22/20	20–62–NG	Producción de Energía Mexicana, S. de R.L. de C.V.	Order 4556 granting blanket authority to export natural gas to Mexico.
4557; 4211–A	06/24/20	20–64–NG; 18–77–NG	J. Aron & Company LLC	Order 4557 granting blanket authority to import/export natural gas from/to Canada/Mexico, and vacating prior authority (Order 4211).

[FR Doc. 2020–17068 Filed 8–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare a Site-Wide Environmental Impact Statement for Continued Operation of the Lawrence Livermore National Laboratory

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces its intent to prepare a Site-Wide Environmental Impact Statement (SWEIS) for the Lawrence Livermore National Laboratory (LLNL or Laboratory) in Livermore, California (LLNL SWEIS). The LLNL SWEIS will be prepared by NNSA’s Livermore Field Office (LFO) and analyze the potential environmental impacts of the Proposed Action, other reasonable alternatives that may be identified, and the No Action Alternative for continuing operations of LLNL for approximately the next 15 years. The continued operation of LLNL is critical to NNSA’s Stockpile Stewardship Program, to preventing the spread and use of nuclear weapons worldwide, and to many other areas that may impact national security and global stability. The Proposed Action Alternative will include continued operations and foreseeable new and/or modified operations/facilities to address aging infrastructure concerns at LLNL. The purpose of this Notice is to invite public participation in the process and to encourage public involvement on the scope and alternatives that should be considered.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register** and continues until September 21, 2020. Comments received after this date will be considered to the extent practicable. NNSA will hold one public scoping meeting for the proposed LLNL SWEIS as follows:

In light of recent public health concerns, NNSA will be hosting an internet-based, virtual public scoping meeting in place of an in-person meeting. The date of the meeting will be provided in a future notice posted on the following website: <https://www.energy.gov/nnsa/nnsa-nepa-reading-room>. NNSA will hold the meeting no earlier than 15 days from the posting of the notice. Public scoping meeting details will also be announced in local media outlets.

ADDRESSES: NNSA invites other Federal and state agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public to submit comments to assist in identifying environmental issues and in determining the appropriate scope of the LLNL SWEIS. Written and oral comments will be given equal weight and NNSA will consider all comments received or postmarked by the end of the comment period in preparing the Draft LLNL SWEIS. Comments received or postmarked after the comment period will be considered to the extent practicable. Written comments on the scope of the LLNL SWEIS or requests for information related to the LLNL SWEIS should be sent to: Ms. Fana Gebeyehu-Houston, NEPA Document Manager, National Nuclear Security Administration, Livermore Field Office, 7000 East Avenue, L–293, Livermore, CA 94550–9234 or email to: LLNLSWEIS@NNSA.DOE.GOV. Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment—including your personally identifiable information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously.

Information related to the online scoping meeting, including internet and telephone access details, and instructions on how to participate will be available at the following website: [https://www.energy.gov/nnsa/nnsa-](https://www.energy.gov/nnsa/nnsa-nepa-reading-room)

[nepa-reading-room](#) and announced in local media outlets.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Ms. Fana Gebeyehu-Houston, NEPA Document Manager, National Nuclear Security Administration, Livermore Field Office, 7000 East Avenue, L–293, Livermore, CA 94550–9234; phone: 833–778–0508; or email to: LLNLSWEIS@NNSA.DOE.GOV.

SUPPLEMENTARY INFORMATION:

Background

LLNL has been in existence for 68 years, has an annual budget of approximately \$2.2 billion and employs approximately 8,000 people. LLNL consists of two federally-owned sites: A 770-acre site in Livermore, California (Livermore Site) and a 7,000-acre experimental test site (Site 300) southeast of the Livermore Site between Livermore and Tracy, California. Most LLNL operations are located at the Livermore Site, which is situated about 50 miles east of San Francisco in southeastern Alameda County. Site 300 is primarily a test site for explosives and non-nuclear weapons components; it is located about 15 miles southeast of Livermore in the hills of the Diablo Range. Most of Site 300 is located in San Joaquin County; the western edge of the site is in Alameda County.

Missions

The 21st century presents a growing set of challenges that are the focus of the Laboratory’s mission as a DOE/NNSA national security laboratory. LLNL’s defining responsibility is ensuring the safety, security, and reliability of the nation’s nuclear deterrent. LLNL’s mission is broader than stockpile stewardship and also includes missions that respond to national security and global security concerns that range from nuclear proliferation and terrorism to energy shortages and climate change. The Laboratory’s science and engineering capabilities are applied to these challenges. Programs at LLNL support DOE, NNSA, Department of Defense (DoD), Department of Homeland Security (DHS), and other federal sponsor missions. LLNL also conducts work to collaborate with and

support state and local agencies, private and academic sponsors, and other scientific collaborators.

Basic science is the engine that drives national security research at LLNL. Funded by a broad contingent of the scientific community—including the Office of Science, academic partners, and Laboratory Directed Research and Development investments—basic science ensures that LLNL research capabilities remain at the cutting edge and that LLNL's scientists and engineers are prepared to solve critical challenges across national security missions. This basic science supports the LLNL missions.

Weapons

The Weapons Program works to ensure that the nation's nuclear deterrent remains safe, secure, and reliable. The program accomplishes this through the Stockpile Stewardship Program—an ongoing effort to apply a science-based fundamental understanding of nuclear weapons performance—from the development of enhanced warhead surveillance tools that detect the onset of problems to manufacturing capabilities that produce critical components. High performance computational capabilities used for physics computer simulations and code development are conducted on some of the world's most capable supercomputers, located at LLNL.

Lasers

The National Ignition program is an important national scientific resource that uses advanced lasers to research materials at temperatures and pressures that otherwise would only exist in the cores of stars and giant planets and inside nuclear weapons. The National Ignition Facility's (NIF) primary purpose is assuring viability of the nation's nuclear deterrent as part of the Stockpile Stewardship Program. This includes a variety of scientific studies from the DOE national laboratories, high energy density science research centers, academia, and other national and international scientific programs.

Biosecurity

To keep the world safe from ever-changing biological threats, revolutionary advances in detection, characterization and mitigation are essential to safeguard against disease. High performance computational capabilities are used to enhance bioinformatics and to develop novel drug development strategies and point-of-care public health monitoring and detection.

Counterterrorism

In a world where threats are continuously changing, the Laboratory is working diligently to help the nation prevent and mitigate catastrophic incidents arising from biological, chemical, radiological, or high explosive materials. This broad scope of capabilities has resulted in collaborations with sponsors such as DHS, the Department of Agriculture, the Department of Justice, the Department of Commerce, state and local governments, and non-governmental organizations.

Defense

LLNL supports DoD as a preeminent innovative science and technology contributor. For 68 years the Laboratory has answered the call to help defend this nation, fielding products and providing services that strengthen the ability of the DoD to achieve precision effects and enhance situational awareness.

Energy

LLNL advances the nation's security through innovative science and technology solutions to improve national energy security and surety while reducing environmental impact. LLNL is developing technologies that enable expanded use of renewable energy, improved efficiency, new resources, systems integration, and reduced costs.

Intelligence

The Laboratory's Intelligence Program delivers comprehensive analysis, policy and operational support in areas where technology research and development are critical to national strategic priorities, from combating weapons of mass destruction and cyber security, to space and other emerging and disruptive technologies.

Nonproliferation

With globalization and the spreading availability of technologies, proliferation challenges continue to grow and evolve. LLNL works to stem chemical, biological, radiological, and nuclear proliferation by providing scientific and technological solutions and sound advice to counter emerging threats.

Purpose and Need for Agency Action

National security policies require DOE, through NNSA, to maintain the U.S. nuclear weapons stockpile and the nation's core competencies in nuclear weapons. NNSA has the mission to maintain and enhance the safety, security, and effectiveness of the

nuclear weapons stockpile. The 2018 Nuclear Posture Review (NPR) states that an effective, responsive, and resilient nuclear weapons infrastructure is essential to the U.S. capacity to adapt flexibly to shifting requirements and support the sustainment of its nuclear forces to protect the homeland, assure allies, deter adversaries, and hedge against adverse developments.

The U.S. nuclear weapons infrastructure is aging and historically underfunded. Over half of NNSA's infrastructure is over 40 years old, and a quarter dates back to the early 1950s. Previous NPRs have highlighted the need to maintain a modern nuclear weapons infrastructure, but the U.S. has fallen short in sustaining a modern infrastructure that is resilient and has the capacity to respond to unforeseen developments. The 2018 NPR places a high priority on recapitalizing the physical infrastructure needed to produce strategic materials and components for U.S. nuclear weapons.

The 2018 NPR affirms the U.S. will have the ability to maintain and certify a safe, secure, and effective nuclear arsenal. Synchronized with DoD replacement programs, the U.S. will sustain and deliver on-time the warheads needed to support both strategic and non-strategic nuclear capabilities by completing several Life Extension Programs (LEPs) as part of the Stockpile Stewardship Program. LLNL will complete some of the LEPs by conducting testing and maintenance of weapons components without nuclear testing. LLNL will also continue its basic science to support biosecurity, counterterrorism, defense, weapons technology, energy, intelligence, nonproliferation, space programs, climate security, and cybersecurity.

LLNL is in need of facilities and infrastructure investments. Half of the operating buildings at LLNL are assessed as being inadequate or in substandard condition. This deterioration of assets presents program and operational risks in executing mission needs, attracting and maintaining a high-quality workforce, and meeting regulatory requirements.

Requirements To Fulfill DOE NEPA Compliance

The LLNL SWEIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR part 1021). The DOE regulations (10 CFR 1021.330) require preparation of site-wide

documents for certain large, multiple facility sites, such as LLNL. The purpose of a SWEIS is to provide the public with an analysis of the potential environmental impacts from ongoing and reasonably foreseeable new and modified operations and facilities, and reasonable alternatives at a DOE site, to provide a basis for site-wide decision making, and to improve and coordinate agency plans, functions, programs, and resource utilization. The SWEIS provides an overall NEPA baseline so that the environmental effects of proposed future changes in programs and activities can be compared to the baseline. A SWEIS also enables DOE to “tier” its later NEPA project-specific reviews at a site to eliminate repetitive discussion of the same issues in future project-specific NEPA studies, and to focus on the actual issues ready for decisions at each level of environmental review.

The NEPA process allows for all interested agencies (federal, state and local), public interest groups, Native American Tribes, local businesses, and members of the general public to participate in the environmental review process. The new SWEIS will utilize the baseline information from the previous LLNL SWEIS (2005 LLNL SWEIS), to the extent possible, as well as current information contained in annual site environmental reports and other technical reports.

Preliminary Alternatives

The scoping process is an opportunity for the public to assist NNSA in determining the alternatives and issues for analysis. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. A preliminary set of alternatives and issues for evaluation in the LLNL SWEIS is identified below. Additionally, during the development of the LLNL SWEIS, NNSA may consider other alternatives judged to be reasonable.

No Action Alternative: Continuing Present Operations

The No Action Alternative would continue current facility operations throughout LLNL in support of assigned missions. NEPA regulations require analysis of the No Action Alternative to provide a benchmark for comparison with environmental effects of the other alternatives. This alternative includes the programs and activities described above in the LLNL Mission and those activities for which NEPA review is already done or underway.

Proposed Action Alternative

The programmatic context for this alternative is the continued support of existing programs and development of additional missions or projects that would be needed to meet DOE/NNSA mission requirements and sustain science, technology, and engineering excellence to respond to future national security challenges. This alternative would include the scope of the No Action Alternative, as described above, and an increase in current facility operations or enhanced operations that may require new or modified facilities and are reasonably foreseeable over the next 15 years. NNSA has identified four categories of actions associated with the Proposed Action: (1) New Facility Construction Projects; (2) Modernization/Upgrades of Existing Facilities and Infrastructure; (3) Operational Changes; and (4) Decontamination, Decommissioning, and Demolition Projects. Each of these categories of actions is discussed below.

NNSA has identified approximately 35 new facility construction projects, including laboratory facilities related to materials engineering, exascale computing, laser-explosives applications, and high explosives research and development; general office buildings; maintenance facilities; science centers for both nuclear security and forensics; and a new fire station. New facility projects would be proposed at both the Livermore Site and Site 300.

With regard to modernization/upgrades of existing facilities and infrastructure, NNSA has identified approximately 65 discrete projects, including upgrades to basic infrastructure (e.g., domestic water systems, electrical systems, fire protection systems, communication systems, and security systems); modernization of firing and control systems at Site 300; NIF laser power upgrades and utility system replacements; biosecurity and bioscience facility upgrades; modernization of high performance computing capabilities; seismic risk reduction initiatives; and waste management facility enhancements. Modernization/upgrades will extend facility lifetimes, improve work environments, and enhance operational capabilities.

Proposed operational changes are expected to include: Changes to material-at-risk (MAR), administrative limits, and radiological bounding accident scenarios as a result of the deinventory of Security Category I and II special nuclear materials from LLNL, which was completed in 2012; and

changes in various facility operations, which would be defined in the LLNL SWEIS, and may result in changes in generated wastes and shipments to disposal sites. All proposed operational changes would be described in detail and analyzed in the Draft LLNL SWEIS.

Decontamination, decommissioning, and demolition of older facilities would be conducted on a continuing basis to eliminate excess facilities and reduce costs and risks. Over the 15-year LLNL SWEIS planning horizon, NNSA has identified more than 110 excess facilities, totaling more than 1.1 million square feet, to be decontaminated, decommissioned, and demolished.

The net effect of new facility construction, existing facility modernization/upgrades, and demolition of excess facilities is expected to reduce LLNL’s footprint and improve the efficiency of operations. The LLNL SWEIS will identify the specific projects and facilities that are potentially affected by the Proposed Action, and will assess the potential impacts associated with implementation of the Proposed Action.

Other Potential Reasonable Alternatives

The timeframe for the LLNL SWEIS analysis is approximately 15 years into the future. NNSA recognizes that requirements, needs, opportunities, and vision may change over such a long planning horizon. Consequently, NNSA is exploring the possibility of including additional alternatives in the LLNL SWEIS—such as reduced operations or expanded operations—that could be reasonable and responsive to that planning horizon. NNSA welcomes input on alternatives that the public thinks are reasonable and should be analyzed in the LLNL SWEIS.

Alternatives that NNSA will not consider as reasonable are: The complete closure and decontamination and decommissioning of the Livermore Site or Site 300, and transfer of current missions/operations from LLNL to other sites, as those actions would be inconsistent with the LLNL mission defined by NNSA. Such a possibility was considered in 2008 when NNSA prepared the Complex Transformation Supplemental Programmatic EIS. In that document, NNSA concluded that, “as a result of the continuing challenges of certification [of nuclear weapons] without underground testing, the need for robust peer review, benefits of intellectual diversity from competing physics design laboratories, and uncertainty over the details [of] future stockpiles, NNSA does not consider it reasonable to evaluate laboratory

consolidation [or elimination] at this time.” That conclusion has not changed today. In addition, as one of only three nuclear weapons laboratories, LLNL contributes significantly to the core intellectual and technical competencies of the United States related to nuclear weapons. These competencies embody more than 50 years of weapons knowledge and experience. The laboratories perform the basic research, design, system engineering, development testing, reliability and assessment, and certification of nuclear weapon safety, reliability, and performance. From a broader national security perspective, the core intellectual and technical competencies of LLNL (and Los Alamos National Laboratory and Sandia National Laboratories [NNSA’s other nuclear weapons laboratories]) provide the technical basis for the pursuit of U.S. arms control and nuclear nonproliferation objectives.

The Complex Transformation Supplemental Programmatic EIS also considered and evaluated the transfer of missions/operations to/from LLNL, and NNSA has implemented, as appropriate, decisions that followed preparation of that document. NNSA has not identified any new proposals for current missions/operations that are reasonable for transfer to/from LLNL.

Preliminary Environmental Analysis

The following issues have been identified for analysis in the LLNL SWEIS. The list is tentative and intended to facilitate public comment on the scope of the LLNL SWEIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The NNSA specifically invites suggestions for the addition or deletion of items on this list.

1. Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations, construction, reasonably foreseeable accidents, and intentional destructive acts.
2. Impacts on surface and groundwater, floodplains and wetlands, and on water use and quality.
3. Impacts on air quality.
4. Impacts to plants and animals and their habitat, including species which are federally- or state-listed as threatened or endangered, or of special concern.
5. Impacts on physiography, topography, geology, and soil characteristics including vadose zone.
6. Impacts to cultural resources such as those that are historic, prehistoric, archaeological, scientific, or paleontological.

7. Socioeconomic impacts to affected communities.

8. Environmental Justice, particularly whether or not activities at LLNL have a disproportionately high and adverse effect on minority and/or low-income populations.

9. Potential impacts on land use and applicable plans and policies.

10. Impacts from traffic and transportation of radiological and hazardous materials and waste on and off the LLNL sites.

11. Pollution prevention and materials and waste management practices and activities.

12. Impacts on visual aesthetics and noise levels of the LLNL facilities on the surrounding communities and ambient environment.

13. Impacts to community services, including fire protection, police protection, schools, and solid waste disposal in landfills.

14. Impacts from use of utilities, including water and electricity consumption, fuel use, sewer discharges, and resource conservation.

15. Impacts from site contamination, characterization and remediation.

16. Unavoidable adverse impacts due to natural phenomena (e.g., floods, earthquakes, etc.).

17. Environmental compliance and inadvertent releases.

18. Short term uses and long-term productivity.

19. Irreversible and irretrievable commitment of resources.

20. Cumulative effects of past, present, and future operations.

21. Reasonably foreseeable impacts associated with the shutdown or demolition of excess facilities.

22. Mitigation commitments.

Site Specific LLNL SWEIS Process

The scoping process is intended to involve all interested agencies (federal, state, and local), public interest groups, Native American Tribes, local businesses, and members of the general public. Interested parties are invited to participate in the LLNL SWEIS process, to refine the preliminary alternatives and environmental issues that are not reasonable or pertinent. Input from the scoping meeting will assist NNSA in formulating the proposed action, refining the alternatives, and defining the scope of the LLNL SWEIS analyses.

Following the scoping process announced in this Notice, and after consideration of comments received during scoping, NNSA will prepare a Draft LLNL SWEIS for the continued operation of the LLNL. NNSA will announce the availability of the Draft LLNL SWEIS in the **Federal Register**

and local media outlets. NNSA will hold one or more public hearings for the Draft LLNL SWEIS. Any comments received on the Draft LLNL SWEIS will be considered and addressed in the Final LLNL SWEIS. NNSA will then issue a Record of Decision no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final LLNL SWEIS.

Relationship to Existing and Other NEPA Analyses

NNSA is responsible for management and implementation of the requirements of NEPA and the regulations and policies promulgated thereunder, including but not limited to the Council of Environmental Quality NEPA regulations (40 CFR parts 1500–1508), the DOE NEPA implementing procedures (10 CFR part 1021), and NNSA Policy (NAP) 451.1. In addition to compliance with NEPA, the LLNL SWEIS will address requirements in the California Environmental Quality Act (CEQA), Public Resources Code Sec 21000 *et seq.* Because requirements for NEPA and CEQA are somewhat different, the document would be prepared to comply with whichever requirements are more stringent.

The current SWEIS for Continued Operation of LLNL (2005 LLNL SWEIS) was completed in 2005. This was the conclusion of a process involving roughly 42 months of analysis, public meetings, and document preparation. Previously, a SWEIS was issued in 1992. While there is no specific “lifespan” for a SWEIS, historically, NNSA has performed new SWEIS analyses for national laboratories on an average of every 10 years.

In 2008, the NNSA completed the Complex Transformation Supplemental Programmatic EIS which included further analysis for LLNL programs/facilities. Some facilities identified for closure in that document remain operational due to programmatic requirements.

In 2011, NNSA prepared a Supplement Analysis (SA) to the 2005 LLNL SWEIS which included new information that was not available for consideration when the 2005 LLNL SWEIS was prepared. It concluded that the 2005 LLNL SWEIS remained adequate for LLNL for the next five years. A team of LFO and Lawrence Livermore National Security, LLC subject matter experts then began working on a new SA in 2016. Although this more recent SA process was not completed, the team reached a consensus that a new SWEIS would provide numerous programmatic and

operational benefits for the LLNL national security mission.

EIS Preparation and Schedule

NNSA expects to issue the Draft LLNL SWEIS in early 2021.

Signing Authority

This document of the Department of Energy was signed on this 21st day of July, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security and Administrator, NNSA, 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 July 31, 2020.

Treena V. Garrett,

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

[FR Doc. 2020-17054 Filed 8-4-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13652-001]

Gary and Rita Hall; Notice of Revocation of Exemption and Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

- a. *Type of Proceeding:* Revocation of exemption pursuant to Article 14.
- b. *Project No.:* 13652-001.
- c. *Date Initiated:* May 9, 2018.
- d. *Exemptee:* Gary and Rita Hall.
- e. *Name of Project:* Potter Creek Hydroelectric Project.
- f. *Location:* The project was located on Potter Creek, in Flathead County, Montana, and occupied lands within the Flathead National Forest managed by the U.S. Forest Service (Forest Service).
- g. *Pursuant to:* Article 14 and section 31(a) of the Federal Power Act.
- h. *Exemptee Contact:* Rita Hall, P.O. Box 133, Olney, Montana 59927.

i. *FERC Contact:* Diana Shannon, (202) 502-6136 or diana.shannon@ferc.gov.

j. Deadline for filing comments, interventions, and protests is August 31, 2020.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests and 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 at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 if you are using the United States Postal Service, and to Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852 if you are using any other carriers/couriers. The first page of any filing should include docket number P-13652-001.

k. *Description of Proceeding:* Article 14 of the exemption provides, in part, for the Commission to revoke the exemption if essential project property is removed or destroyed or becomes unfit for use without adequate replacement. On May 9, 2018, the Forest Service filed a report with the Commission indicating that project features, including the dam, were removed on October 20, 2017 by the Forest Service. Sediments were excavated, the historic channel was reshaped, erosion control measures were implemented, and the area was replanted with native shrubs. The exemptee did not file an application to surrender the exemption and neither the exemptee nor the Forest Service contacted the Commission before the project was removed and restoration work completed. Because essential project property was removed, and the area has been restored, we are providing notice of revocation pursuant to Article 14 of the exemption.

l. Filings may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13652-001) excluding the last three digits in the docket number field to access the documents. 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, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .212 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-17076 Filed 8-4-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER20–2542–000]

All Choice Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of All Choice Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 19, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field

to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (888) 208–3676 or TYY, (202) 502–8659.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020–17072 Filed 8–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–221–000.

Applicants: Kings Point Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Kings Point Wind, LLC.

Filed Date: 7/30/20.

Accession Number: 20200730–5103.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: EG20–222–000.

Applicants: North Fork Ridge Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of North Fork Ridge Wind, LLC.

Filed Date: 7/30/20.

Accession Number: 20200730–5105.

Comments Due: 5 p.m. ET 8/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1902–003.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Compliance filing; ER19–1902 Second Compliance Filing to be effective 5/20/2019.

Filed Date: 7/30/20.

Accession Number: 20200730–5049.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER19–2507–003; ER13–1793–015; ER12–1260–016.

Applicants: Convergent Energy and Power LP, Hazle Spindle, LLC, Stephentown Spindle, LLC.

Description: Notice of Change in Status of the Convergent MBR Sellers.

Filed Date: 7/30/20.

Accession Number: 20200730–5123.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2047–001.

Applicants: Ormond Beach Power, LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 12/31/9998.

Filed Date: 7/30/20.

Accession Number: 20200730–5131.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2048–001.

Applicants: Ellwood Power, LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 12/31/9998.

Filed Date: 7/30/20.

Accession Number: 20200730–5133.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2542–000.

Applicants: All Choice Energy, LLC.

Description: Baseline eTariff Filing: All Choice Energy Market-Based Rate Application to be effective 7/31/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5001.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2543–000.

Applicants: Crystal Lake Wind Energy II, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 9/28/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5009.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2544–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3718 Frontier Windpower II GIA to be effective 7/24/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5012.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2545–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3719 Chilocco Wind Farm GIA to be effective 7/24/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5013.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2546–000.

Applicants: Midcontinent Independent System Operator, Inc, Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2020–07–30_SA 2276 Ameren-Dynegy 2nd Rev DFSA to be effective 9/29/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5036.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2547–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1166R34 Oklahoma Municipal Power Authority NITSA NOA to be effective 7/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5041.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2548–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Sharyland Utilities 3rd Amended Interconnection Agreement to be effective 7/27/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5056.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2549–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3499R1 Poplar Bluff Municipal Utilities NITSA NOA to be effective 7/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5078.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2550–000.

Applicants: Entergy Mississippi, LLC.
Description: § 205(d) Rate Filing: EML Choctaw Reactive to be effective 10/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5085.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2551–000.

Applicants: ISO New England Inc., New England Power Company.

Description: Compliance filing: New England Power Company; Order No. 864 Compliance Revisions to be effective 1/1/2021.

Filed Date: 7/30/20.

Accession Number: 20200730–5086.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2552–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Lockhart Revised NITSA SA- 407 to be effective 7/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5114.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2553–000.

Applicants: New England Power Company.

Description: Compliance filing: Order No. 864 Compliance Revisions to TSA–NEP–22 to be effective 1/1/2021.

Filed Date: 7/30/20.

Accession Number: 20200730–5116.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2554–000.

Applicants: Entergy Texas, Inc.

Description: § 205(d) Rate Filing: ETI-Newton Wholesale Distribution Service Agreement to be effective 9/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5124.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2555–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 tariff revisions to enhance peak load forecast to be effective 9/29/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5143.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2556–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised Service Agreement No. 4547; Queue No. AF1–181/AF1–182/AF1–183 to be effective 6/30/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5145.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2557–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF-Winter Park NITSA to be effective 10/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5158.

Comments Due: 5 p.m. ET 8/20/20.

Docket Numbers: ER20–2558–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.RVL to be effective 10/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730–5160.

Comments Due: 5 p.m. ET 8/20/20.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:

<http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–17074 Filed 8–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–501–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 27, 2020, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in Docket No. CP20–501–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, to abandon four injection/withdrawal wells and associated pipelines and appurtenances, located in its Brinker Storage Field in Columbiana County, Ohio, Donegal Storage Field in Washington County, Pennsylvania, and Ripley Storage Field in Jackson County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas, 77002–2700, at (832) 320–5209 or sorana_linder@tcenergy.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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit

a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020-17073 Filed 8-4-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP19-343-000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.501: TETLP Base Rate Refund Report to be effective N/A under RP19-343.

Filed Date: 6/12/20.

Accession Number: 20200612-5143.

Comments Due: 5 p.m. ET 08/6/20.

Docket Numbers: RP16-943-003.

Applicants: Vector Pipeline L.P.

Description: Vector Pipeline L.P.

submits tariff filing per 154.203: Substitute Tariff Sheets for Non-Conforming Agreements—Errata to be effective 6/1/2016 under RP16-943.

Filed Date: 07/17/2020.

Accession Numbers: 20200717-5065.

Comments Due: 5 p.m. ET 08/6/20.

Docket Numbers: RP20-1033-000.

Applicants: Great Lakes Gas

Transmission Limited Partnership.

Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: Semi-Annual Transporter's Use Report July 2020 to be effective N/A under RP20-1033.

Filed Date: 07/22/2020.

Accession Numbers: 20200722-5127.

Comments Due: 5 p.m. ET 8/3/20.

Docket Numbers: RP20-1043-000.

Applicants: Dauphine Island.

Description: 2020 Cash Out Report of Dauphin Island Gathering Partners under RP20-1043.

Filed Date: 07/27/2020.

Accession Numbers: 20200727-5058.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20-467-002.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: Compliance filing DECP—2020 Rate Case Motion Filing (Revised Tariff Records) to be effective 8/1/2020.

Filed Date: 7/29/20.

Accession Number: 20200729-5121.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20-1047-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Update (Conoco Aug 20) to be effective 8/1/2020.

Filed Date: 7/29/20.

Accession Number: 20200729-5050.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20-1048-000.

Applicants: Big Sandy Pipeline, LLC.

Description: Compliance filing Big Sandy Fuel Filing effective 9/1/2020 to be effective N/A.

Filed Date: 7/29/20.

Accession Number: 20200729-5104.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20-1049-000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Vol. 2- Negotiated Rate Agreements—Sequent, Spotlight, Tenaska, Conexus to be effective 7/29/2020.

Filed Date: 7/29/20.

Accession Number: 20200729-5138.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: RP20-1050-000.

Applicants: Algonquin Gas

Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 8-1-2020 to be effective 8/1/2020.

Filed Date: 7/30/20.

Accession Number: 20200730-5002.

Comments Due: 5 p.m. ET 8/11/20.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/>

docs-filing/efiling/filing-req.pdf. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-17075 Filed 8-4-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-498-000]

Bluewater Gas Storage, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 21, 2020, Bluewater Gas Storage, LLC (Bluewater), 231 W. Michigan Street, Milwaukee, WI 53203, filed a prior notice application pursuant to sections 157.206(b), 157.208(c) and 157.213(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Bluewater's blanket certificate issued in Docket No. CP19-471-000. Bluewater requests authorization to authorization to construct, own, and operate a new horizontal well at the Kimball 27 storage facility in St. Clair County, Michigan, all as more fully set forth in the request, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Conor Ward, WEC Business Services LLC, 231 W. Michigan Street, Milwaukee, WI 53203 at (414) 221-2539 or by email at conor.ward@wecenergygroup.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 commenter 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 fue Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the eFile link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: July 30, 2020.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2020-17077 Filed 8-4-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OARM-2016-0762; FRL-10012-85-OMS]

Proposed Information Collection Request; Comment Request; General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "General Administrative Requirements for Assistance Programs" (EPA ICR No. 0938.22, OMB Control No. 2030-0020 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2021. 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.

DATES: Comments must be submitted on or before October 5, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OARM-2016-0762 online using www.regulations.gov (our preferred method), by email to docket_oms@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Elizabeth January, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (617) 918-8655; fax number: (202) 565-2470; email address: January.Elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The information is collected from applicants and recipients of EPA assistance to monitor adherence to the programmatic and administrative

requirements of the Agency's financial assistance program. The information collected is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). For awards made prior to December 26, 2014, 40 CFR part 30, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," establishes the management requirements for institutions of higher education, hospitals, and other non-profit organizations, as well as procurement requirements for non-governmental recipients. For awards made prior to December 26, 2014, 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," includes the management requirements for States, local governments, and Indian Tribal governments. These regulations include only those provisions mandated by statute, required by Office of Management and Budget (OMB) Circulars, or added by EPA to ensure sound and effective financial assistance management. For awards made after December 26, 2014, 2 CFR 200 and EPA's implementation of 2 CFR 200 at 2 CFR 1500 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" establishes the management requirements for all entity types. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This ICR combines all of these requirements under OMB Control Number 2030-0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately.

Form Numbers: EPA Form 190-F-04-001, "EPA Payment Request" EPA Form 190-F-05-001, "Fellowship Stipend Payment Enrollment Form" EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients

Requesting Federal Financial Assistance" EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" EPA Form 5700-53, "Lobbying and Litigation Certification for Grants and Cooperative Agreements" EPA Form 5700-54, "Key Contacts Form," and EPA Form 5700-54-2, "Key Contacts Form for Multiple Principal Investigators" EPA Form 5770-2, "Fellowship Application" EPA Form 5770-3, "Fellowship Facilities and Commitment Statement" EPA Form 5770-5, "Agency Fellowship Certification" EPA Form 5770-7, "EPA Fellowship Activation Notice" EPA Form 5770-8, "Fellowship Agreement" EPA Form 5770-9, "Completion of Studies Notice" EPA Form 6600-01, "EPA Administrative and Financial Onsite Review Questionnaire" EPA Form 6600-06, "Certification Regarding Lobbying" EPA Form 6600-08, "Lobbying Cost Certificate for Indirect Costs/ Certificate of Indirect Costs for State and Local Governments" EPA Form 6600-09, "EPA Administrative Capability Questionnaire" NCER Form 5, "Current and Pending Support"

Respondents/affected entities: The primary recipients of EPA assistance agreements are State and local governments, Indian Tribes, educational institutions, and not-for-profit institutions.

Respondent's obligation to respond: Required to obtain an assistance agreement (40 CFR part 30 and 40 CFR part 31 for awards made prior to December 26, 2014, and 2 CFR 200 and 2 CFR 1500 for awards made after December 26, 2014).

Estimated number of respondents: 5,492 (total).

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 90,124 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: \$5,263,533 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: Estimates are likely to stay substantially the same compared with the ICR currently approved by OMB due to limited programmatic changes or changes in the estimated respondent universe.

Dated: July 30, 2020.

Michael Osinski,

Acting Director of the Office of Grants and Debarment.

[FR Doc. 2020-17102 Filed 8-4-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2015-0341; FRL-10012-94-OAR]

Notice of Availability of One Updated Chapter in the Environmental Protection Agency's Air Pollution Control Cost Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that one chapter of the current EPA Air Pollution Control Cost Manual (Control Cost Manual) has been updated. The EPA is requesting comment on: Chapter 1, Section 5, "Wet Scrubbers for Acid Gas." This Control Cost Manual chapter covers control measures for sulfur dioxide (SO₂) and acid gas emissions.

DATES: Comments must be received on or before November 3, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2015-0341, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.

- *Email:* a-and-r-Docket@epa.gov. Include the Docket ID No. EPA-HQ-OAR-2015-0341 in the subject line of the message.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this document. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information

on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Larry Sorrels, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, C439-02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541-5041; fax number: (919) 541-0839; email address: sorrels.larry@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is requesting comment on the specific Control Cost Manual chapter included in this document.

I. General Information

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0341, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA docket office, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 Code of Federal Regulation (CFR) part 2. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. 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 (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

B. Tips for Preparing Your Comments

When submitting comments, remember to: Identify the notification by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language/data for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Available for Public Comment

The EPA is requesting comment on one updated chapter of the EPA Air Pollution Control Cost Manual. The Control Cost Manual contains individual chapters on control measures, including data and equations to aid users in estimating capital costs for installation and annual costs for operation and maintenance of these measures. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings, and serves as a basis for sources to estimate costs of controls that are Best Available Control Technology under the New Source Retrofit Program, and Best Available Retrofit Technology under the Regional Haze Program and for other programs.

The one updated Control Cost Manual chapter is: Chapter 1, Section 5, "Wet Scrubbers for Acid Gas" (to be renamed "Wet and Dry Scrubbers for Acid Gas"). This chapter in the Control Cost Manual will, for the first time, include cost and performance data for dry scrubbers as well as wet scrubbers. This revised Control Cost Manual chapter can be found in the docket for the Control Cost Manual update (Docket ID No. EPA-HQ-OAR-2015-0341). The current Control Cost Manual version (sixth edition) including the current chapter is available at <http://epa.gov/ttn/catc/products.html#cccinfo>, and last updated in 2003. The Consolidated Appropriations Act of 2014 requested that the EPA begin development of a seventh edition of the Control Cost Manual. The EPA has met with state, local, and tribal officials to discuss plans for the Control Cost Manual update as called for under the Consolidated Appropriations Act of 2014. The EPA has met with other groups as well as their request. The EPA has updated the selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR) chapters, the first two chapters (Chapter 1, Section 4; Chapter 2, Section 4, respectively) completed for the seventh edition of the Control Cost Manual, and made them available to the public in May 2016 (81 FR 38702, June 14, 2016) and also updated these chapters again in May 2019. In addition, the EPA has updated the Refrigerated Condensers (Chapter 1, Section 3 and Section 3.1) and Incinerators (Chapter 2, Section 3, Section 3.2, now Incinerators/Oxidizers) chapters in November 2017,

the Cost Estimation: Concepts and Methodology chapter (Chapter 2, Section 1) as of November 2017, and also the Carbon Adsorbers (Chapter 1, Section 3, Section 3.1) and Flares (Chapter 1, Section 3, Section 3.2) chapters in October 2018.

To help focus review of the Wet Scrubbers for Acid Gas (or Wet and Dry Scrubbers) chapter, we offer the following list of questions that the EPA is particularly interested in addressing in the updated chapter. Commenters are welcome to address any aspects of this chapter. Please provide supporting data for responses to these questions and for other comments on the chapter.

For the Wet and Dry Scrubbers for Acid Gas Chapter

(1) What is a reasonable and up-to-date estimate of equipment life (defined as design or operational life) for wet scrubbers (FGD)? Dry scrubbers? Please provide data, if possible, on accurate estimates of equipment life.

(2) Are the descriptions of wet FGD scrubbers complete, up-to-date, and accurate with regard to control of SO₂ and acid gases? Dry scrubbers? Please provide information, if possible, on descriptions of wet and dry scrubbers' control of SO₂ and acid gases if you do not believe that the descriptions in the draft chapter are complete, up-to-date, and accurate.

(3) Is the applicability of wet FGD scrubbers to various types of emissions sources complete, up-to-date, and accurate? Dry scrubbers?

(4) Are the cost correlations, factors, and equations for wet FGD scrubbers accurate and up-to-date? For dry scrubbers? If not, how should they be revised? Please provide data, if possible, to address inaccuracies.

(5) Are the estimates of SO₂ removal or control efficiency for wet FGD scrubbers accurate and up-to-date? For dry scrubbers? If not, what are more accurate estimates? Please provide data, if possible, to address inaccuracies.

Dated: July 30, 2020.

Erika N. Sasser,

Director, Health and Environmental Impacts Division.

[FR Doc. 2020-17065 Filed 8-4-20; 8:45 am]

BILLING CODE 6560-50-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 August 20, 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 or Comments.applications@rich.frb.org:

1. *The Vanguard Group, Inc., and its subsidiaries and affiliates, Malvern, Pennsylvania*; to acquire additional voting shares of E*TRADE Financial Corporation, and thereby, indirectly acquire additional voting shares of E*TRADE Bank, both in Arlington, Virginia.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *The Vanguard Group, Inc., and its subsidiaries and affiliates, Malvern, Pennsylvania*; for the Vanguard funds to acquire additional voting shares of Commerce Bancshares, Inc., and thereby, indirectly acquire additional voting shares of Commerce Bank, both in Kansas City, Missouri.

C. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *David Lynn Davis and the Estate of James Lee Davis, both of Midland, Texas; Sandra Davis Maddox, as co-executor of the Estate of James Lee Davis, Dallas, Texas; all individually and together with Nancy Chandler Davis and the Estate of Michael Keith Davis, both of Midland, Texas*; to join a family

group acting in concert to retain voting shares of First West Texas Bancshares, Inc., and thereby, indirectly retain voting shares of West Texas National Bank, both of Midland, Texas.

Board of Governors of the Federal Reserve System, July 31, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020-17069 Filed 8-4-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project “Programmatic Information Collection for the AHRQ Initiative to Support Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events.”

DATES: Comments on this notice must be received by 60 days after date of publication of this notice.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Programmatic Information Collection for the AHRQ Initiative To Support Primary Care To Advance Cardiovascular Health in States With High Prevalence of Preventable CVD Events

Despite improvements in recent years, cardiovascular disease (CVD) is a significant national health burden and the leading cause of death, involved in nearly one of every three deaths.

Modifiable risk factors for CVD, such as high blood pressure, high cholesterol, and smoking, remain poorly controlled. Evidence from patient-centered outcomes research (PCOR) shows that increasing the delivery of the ABCS of heart health—Aspirin in high-risk individuals, Blood pressure control, Cholesterol management, and Smoking cessation—can reduce risk and reduce heart attacks and strokes.

In 2010, Congress established the Patient-Centered Outcomes Research (PCOR) Trust Fund and instructed AHRQ to support the dissemination of PCOR findings. In accordance with its mandated role, AHRQ issued a Request for Applications (RFA) entitled Supporting Primary Care to Advance Cardiovascular Health in States with High Prevalence of Preventable CVD Events. AHRQ anticipates investing up to \$18 million to support a maximum of four awards. Each grantee will establish a state-level entity—known as a Cooperative—to support primary care improvement and run a Heart Health Quality Improvement (QI) project. The expected earliest start date for the grants is December 30, 2020.

This initiative has the following goals:

1. To improve heart health and help reduce CVD disparities by engaging with primary care practices, and disseminating and implementing PCOR findings to improve care delivery.

2. To learn how to develop sustainable state-level primary care QI infrastructure to improve the uptake of PCOR evidence in primary care.

3. To disseminate lessons learned, which take into consideration the context in which each program operated, on how to replicate successes and avoid challenges.

This new grant initiative is being conducted pursuant to AHRQ’s statutory authority to support the agency’s dissemination of PCOR findings. 42 U.S.C. 299b-37(a)-(c). The information collection described in this request is being collected under AHRQ’s authority in 42 U.S.C. 299b-37(c), which authorizes AHRQ to gather feedback about the value of the PCOR information it disseminates. The information described in this request will be collected by AHRQ’s contractor, Abt Associates.

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

1. Key informant interviews. AHRQ will conduct phone interviews with a variety of state-level organizations involved in primary care support and with primary care practices. This

information will be used to develop case studies for each Cooperative as well as program-level generalizations and lessons learned that might inform other efforts to improve care delivery.

2. Member check-in sessions. AHRQ will conduct group phone discussions with a subset of participants in the key informant interviews to corroborate case studies and lessons learned, and to provide additional shared insights across participants.

Key Informant Interviews

Individual key informant interviews will be conducted with the following groups:

- Grantee and Cooperative leadership, and Cooperative partners—about decision to participate in the project, prior collaborations, organization and governance of the Cooperative, nature and extent of partnerships, what worked well and barriers, changes to the Cooperative and their impact on provision of quality improvement (QI) support, QI support strategies and their perceived effectiveness, successful strategies for recruiting practices and types of practices recruited, success in establishing state-level capacity to provide QI support, factors associated with successful implementation of QI, longer-term impact of the grant and sustainability of capacity developed, suggestions for improvement, and lessons learned from the project.

- Unaffiliated organizations involved in or knowledgeable about primary care in the states—nature and extent of connection to the Cooperatives, awareness of the project, views about the organization and effectiveness of the Cooperatives and their networks, other local activities that may have affected the work of the Cooperatives, views on changes in practice capacity to deliver better care and on sustainability of improvements, benefits to and any potential adverse consequences for patients, suggestions for improvement and lessons learned from the project.

- Practices within the network not participating in the Heart Health QI project—prior collaboration and experience of recruitment to the network, decision to participate, nature of engagement with the Cooperative and network, benefits and drawbacks of network participation, interest in participating in Heart Health QI project, strategies employed to improve heart health, knowledge of and views on QI strategies at participating practices, concurrent efforts to improve care delivery, plans to continue participating in the network, suggestions for improvement and lessons learned.

- Practices within the network participating in the Heart Health QI project—prior collaboration and experience of recruitment to the network and Heart Health QI project, decision to participate, nature of engagement with the Cooperative and network, benefits and drawbacks of network participation, weaknesses in care delivery that QI strategies are designed to address and how the practices handle these, expectations for improvements stemming from QI projects and any potential challenges, nature of and satisfaction with support for Heart Health QI project, contribution of QI support to practice capacity to improve heart health outcomes, concurrent efforts to improve care delivery, plans to continue implementing the intervention, other benefits of participation in the Heart Health QI project, plans to remain in the project, suggestions for improvement and lessons learned.

A total of 200 interviews is anticipated over the course of three years.

All interviews will be conducted by telephone and are expected to take 45–60 minutes. Grantee and Cooperative leadership and Cooperative partner groups will be interviewed annually for three years, while the grants are active. Unaffiliated organizations and network practices, including those participating

in the Heart Health QI project, will be interviewed in years 2 and 3 of the grants. This schedule of interviews reflects the anticipated evolution of the state-level entity, development of new partnerships, recruitment of practices to the network, and implementation of Heart Health QI project.

All interviews will include at least one lead interviewer and a note-taker and will be recorded with respondents' permission as a back-up. Detailed notes will be prepared after each interview. The purpose of the proposed information collection effort is to explore each grantee's primary care quality improvement, including their members and partners; and their experiences and achievements. Additionally, this information collection will serve to help synthesize insights from across grantees, identify key themes, and distill lessons learned, taking into consideration the context in which each program operated.

The following knowledge will be generated to understand the contribution of the program to developing sustainable state-level capacity to implement PCOR findings in primary care and the pros and cons of various Cooperative models, as well as lessons learned about approaches to assisting practices in implementing evidence to improve care.

Estimated Annual Respondent Burden

Table 1 presents estimates of the reporting burden hours for the information collection efforts. Time estimates are based on prior experiences and what can reasonably be requested of participating entities.

Key-informant interviews. In-depth interviews will be conducted with the total of up to 88 individuals. Respondents from Grantee and Cooperative leadership and Cooperative partner groups will be interviewed every year for three years. Respondents from unaffiliated organizations and non-participating practices will be interviewed twice, in years 2 and 3, and respondents from participating practices once or twice in years 2 and 3. The interviews are expected to last for up to one hour.

Member-checking sessions. Three member-checking sessions will be conducted with a total of up to 36 participants. Grantee and Cooperative leadership and key Cooperative organizations and partners will participate in two sessions, in year 1 and year 3. Network practices (those participating and not participating in heart health QI project) will participate in a member-checking session only in year 3. The sessions are expected to last for up to 1.5 hours.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method or project activity	Number of respondents A	Number of responses per respondent B	Hours per response C	Total burden hours A*B*C D
<i>Key Informant Interviews:</i>				
Grantee leadership	12	3	1	36
Cooperative leadership	12	3	1	36
Cooperative partners	24	* 2.5	1	60
Unaffiliated organizations	12	2	1	24
Practices in network not participating in Heart Health QI project	8	2	1	16
Practices in network participating in Heart Health QI project	20	** 1.4	1	28
<i>Member Checking Sessions:</i>				
Grantee leadership	4	2	1.5	12
Cooperative leadership	4	2	1.5	12
Cooperative partners	2	2	1.5	6
Unaffiliated organizations	2	2	1.5	6
Network practices	12	1	1.5	18
Total	112	.....	.....	254

* **Note:** This number reflects that in Year 1 we will only interview 12 respondents, but 24 in years 2 and 3, hence 2.5 # of responses.

** This number reflects that in Year 2 we will interview 8 respondents and in year 3 we will interview 20 respondents.

Table 2 presents the estimated annualized cost burden associated with the respondents' time to participate in

this research. The total cost burden is estimated to be \$29,260.96.

TABLE 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method or project activity	Number of respondents A.	Total burden hours B.	Average hourly rate C.	Total cost burden B*C D.
Key Informant Interviews:				
Grantee leadership	12	36	\$110.74	\$3,986.64
Cooperative leadership	12	36	110.74	3,986.64
Cooperative partners	24	60	110.74	6,644.40
Unaffiliated organizations	12	24	110.74	2,657.76
Practices in network not participating in Heart Health QI project	8	16	136.49	2,183.84
Practices in network participating in Heart Health QI project	20	28	136.49	3,821.72
Member Checking Sessions:				
Grantee leadership	4	12	110.74	1,328.88
Cooperative leadership	4	12	110.74	1,328.88
Cooperative partners	4	6	110.74	664.44
Unaffiliated organizations	2	6	110.74	664.44
Network practices	12	18	110.74	1,993.32
Total	112	254	.....	29,260.96

Note: the rates were based on the mean hourly wages from the Bureau of Labor & Statistics for the closest categories of respondents and doubled to account for overhead and fringe.

The mean hourly wage rates were obtained from the Bureau of Labor & Statistics and doubled to account for overhead and fringe benefits. The occupational codes used were as follows:

- For grantee and cooperative leadership, partners, and unaffiliated organizations—medical and health service managers (11–9111, \$53.37)
- For practices—an average of physicians (29–1228, \$97.81), medical and health services managers (11–9111, \$53.37), and nurse practitioners (29–1171, \$53.77)

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ’s information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ’s health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ’s estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency’s subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Dated: July 30, 2020.
Virginia L. Mackay-Smith,
Associate Director.
 [FR Doc. 2020–17013 Filed 8–4–20; 8:45 am]
BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)-PAR 18–812, NIOSH Member Conflict.
Date: October 27, 2020.
Time: 1:00 p.m.–5:00 p.m., EDT

Place: Teleconference.
Agenda: To review and evaluate grant applications.
For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Reviewer Officer, Office of Extramural Programs, CDC/NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, Telephone: (304) 285–5951, *MGoldcamp@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. 2020–17094 Filed 8–4–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Revised Procedures and Standards: Home Visiting Evidence of Effectiveness (HomVEE) Review

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), oversees the Home Visiting Evidence of Effectiveness

(HomVEE) review, which is proposing to revise the procedures and standards that guide its work. The revised procedures and standards will be presented in two separate **Federal Register** notices. The current **Federal Register** notice seeks comments on proposed changes and clarifications to several procedural topics and on the standards for assessing the quality of impact study designs. Readers are referred to the full version of the HomVEE Draft Version 2 Handbook on the HomVEE website (<https://homvee.acf.hhs.gov>) for more details. Another **Federal Register** notice summarizes updated definitions, rules, and procedures related to handling home visiting model versions (commonly referred to in the home visiting research literature as adaptations) in the review.

DATES: Send comments on or before September 1, 2020.

ADDRESSES: Submit questions, comments, and supplementary documents to HomVEE@acf.hhs.gov with “HomVEE procedures and standards FRN comment” in the subject line.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: HHS invites comments regarding this notice. To ensure that your comments are clearly stated, please identify the section of this notice or the chapter and section of the HomVEE Draft Version 2 Handbook that your comments address.

1.0 Background

To help policymakers, program administrators, model developers, researchers, and the public identify rigorous research and understand which early childhood home visiting models are effective, ACF’s Office of Planning, Research, and Evaluation within HHS oversees the HomVEE review. HomVEE’s mission is to conduct a thorough and transparent review of the research literature on home visiting for families with pregnant women and children from birth to kindergarten entry. The review team identifies well-designed research within that pool and extracts and summarizes the findings from that research.

One critical use of HomVEE’s results is to determine which home visiting models meet the HHS criteria for an “evidence-based early childhood home visiting service delivery model” (see Exhibit II.11 in the HomVEE Draft Version 2 Handbook), a key requirement of eligibility for implementation with the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program funding. The MIECHV Program

is administered by the Health Resources and Services Administration in partnership with ACF. Created in 2010, the MIECHV Program provides funding to states, territories, and tribal entities to implement home visiting models. MIECHV awardees have the flexibility to tailor the program to serve the specific needs of their communities. Through a needs assessment, awardees identify at-risk communities and select home visiting service delivery models that best meet state and/or local needs. As per MIECHV’s authorizing statute, state and territory awardees must spend the majority of their MIECHV Program grants to implement evidence-based home visiting models, with up to 25 percent of funding available to implement promising approaches that will undergo rigorous evaluation.

For the first time since its inception in 2009, HomVEE is proposing to revise the procedures and standards that guide the systematic review. The proposed revisions include (1) clarifying and updating standards and procedures for rating the quality of impact studies that are used to determine which home visiting models meet HHS criteria for an “evidence-based early childhood home visiting service delivery model” and (2) clarifying definitions, rules, and procedures for handling model versions (commonly referred to in the home visiting research literature as adaptations) in the review (presented in a separate **Federal Register** notice). The current **Federal Register** Notice focuses on the former set of revisions.

The proposed changes to HomVEE procedures and standards generally bring the review into alignment with procedures and standards for other federally sponsored systematic evidence reviews. The proposed revisions also specify standards for research designs that are becoming increasingly common in home visiting studies. Over the course of the past 2 years, HomVEE consulted with methodological experts and other federal evidence reviews to refine and update the procedures and standards.

Through this **Federal Register** notice, HomVEE seeks to provide a transparent account of how the review operates and to gather stakeholder input on draft changes. The sections below summarize the main changes to the procedures and standards. A preliminary version of these revisions, the HomVEE Draft Version 2 Handbook, is available during the public comment period on the HomVEE website at (<https://homvee.acf.hhs.gov>).

After a period of public comment (including close consultation with selected methods experts outside of

HomVEE), HomVEE will release a final Version 2 Handbook.

2.0 Changes and Clarifications to HomVEE Procedures

It is natural in the course of a systematic review for issues to arise that cannot be addressed by existing procedures. These issues require the HomVEE team to develop internal guidance to guide the review.

Clarifications to the procedures added to the HomVEE Draft Version 2 Handbook, summarized in Sections 2.1 through 2.7 below, represent HomVEE’s attempt to formalize internal guidance generated over the course of conducting reviews so that the procedures are applied systematically.

Similarly, as reviews evolve, it is necessary for ongoing systematic reviews to change their procedures to meet the needs of the field. Changes are new procedures proposed to align with best practices in systematic reviews and keep the HomVEE review current.

2.1 Clarify Definitions of Research Terms

Recognizing the importance of clear communication and consistent terminology when applying systematic review rules, HomVEE clarifies the definitions of important research terms in the HomVEE Draft Version 2 Handbook. Exhibit I.3 of the HomVEE Draft Version 2 Handbook presents these, as listed below.

- A study evaluates a distinct implementation of an intervention (that is, with a distinct sample, enrolled into the research investigation at a defined time and place, by a specific researcher or research team). HomVEE reviews eligible manuscripts about studies that examine the impact of an early childhood home visiting model by comparing an intervention condition (in which study participants are offered the home visiting model under study) and a comparison condition (in which study participants are not offered that model). This includes eligible manuscripts about studies on model replications, iterations, and versions. See Chapter III, Section A.1.b of the HomVEE Draft Version 2 Handbook, including Exhibit II.4, for more information on how HomVEE screens research for eligibility.

- A sample encompasses both the entire intervention group and the entire comparison group of participants included in a study.

- A subgroup is a subset of the sample examined in a study (that is, an analytic subgroup). For example, researchers may examine how a home visiting model affects teenage mothers when there are mothers with a range of

ages in their study; hence, teenage mothers would be an analytic subgroup. Sometimes, researchers present subgroup findings in a manuscript alongside findings for the overall sample, and sometimes researchers prepare a manuscript based exclusively on subgroup findings from a broader study. (For HomVEE, results from teenage mothers would not be considered an analytic subgroup analysis when the overall study only enrolled teenage mothers.) See 2.7 below for more details on HomVEE's clarified subgroup definition.

- Manuscripts describe study results. Manuscripts may be published or unpublished research, such as journal articles, book chapters, or working papers. A single study may produce one, or many, manuscripts. Typically, one manuscript reports on only one study, although in rare cases one manuscript may include several studies, if it describes evaluations of multiple interventions or the same intervention evaluated in multiple distinct (non-overlapping) samples.

- Findings summarize the effect of a home visiting model on a specific sample or subgroup, on a specific eligible outcome measure (see Chapter III, Section A.4.a of the HomVEE Draft Version 2 Handbook), at a specific time point, from a specific analysis. A manuscript typically includes multiple findings.

HomVEE rates findings (according to standards proposed in Chapter III of the HomVEE Draft Version 2 Handbook) and sorts manuscripts according to the highest-rated finding in the manuscript (see Chapter II, Section B.2.b of the HomVEE Draft Version 2 Handbook). When determining which models meet HHS criteria for an "evidence-based early childhood home visiting service-delivery model," HomVEE considers both whether the research that calculated the findings was well designed, and whether the findings come from different studies (with distinct samples). See Exhibit II.11 of the HomVEE Draft Version 2 Handbook for details.

2.2 Establish a 20-Year Moving Search Window for Reviewing Most Manuscripts

Searches in HomVEE's first 11 annual reviews were for manuscripts published in or after 1989. Generally, the HomVEE Draft Version 2 Handbook updates the description of how HomVEE identifies research.

Now, HomVEE proposes to implement a 20-year moving window for previously unreviewed manuscripts to be eligible for review. Beginning with

the 2021 review, to keep the review current, HomVEE proposes establishing a 20-year moving search window for previously unreviewed manuscripts to be eligible for review. For example, for the 2021 review, HomVEE would consider manuscripts released or published in 2001 through 2020. However, HomVEE proposes that two categories of older research remain eligible for review (1) older research that HomVEE has already reviewed and (2) research submitted at any time (that is, since HomVEE's inception and moving forward) through the call for research. This change is described in Chapter II, Section A.1.a.1 of the HomVEE Draft Version 2 Handbook.

2.3 Adopt the PRESS Method for Systematic Searching

Professional librarians have always conducted annual HomVEE literature searches using a transparent process in which the databases and search terms are published on the HomVEE website. Beginning with the 2021 review, in recognition of accepted practice in the library science field, HomVEE proposes to use a modified Peer Review of Electronic Search Strategies (PRESS) method to refine the search terms (McGowan et al. 2016). This approach includes adjusting search terms and search databases in keeping with the recommendations of professional librarians. This change is described in more depth in Chapter II, Section A.1.a.1 of the HomVEE Draft Version 2 Handbook.

2.4 Add New "Grey Literature" Databases

To better capture research that is not published in academic journals, HomVEE proposes to expand its annual search, beginning in 2021, to include two new databases to identify this "grey literature": Google Scholar and the Harvard Think Tank Search. See Chapter II, Section A.1.a.1 of the HomVEE Draft Version 2 Handbook.

2.5 Establish Rule for Accepting Supplemental Information

HomVEE will continue, as it always has, to accept submissions from the public, both during its call for research and at other times, and to consider those annually as part of prioritizing research for review. The HomVEE Draft Version 2 Handbook proposes a clarification stating that, if authors submit unpublished work to the HomVEE call for research, HomVEE will consider only unpublished full manuscripts with sufficient text describing the study's procedure, analysis approach, and findings.

As part of the HomVEE Draft Version 2 Handbook (Chapter II, Section B.1.b), HomVEE proposes establishing a new rule about accepting supplemental information from stakeholders. Under the new rule, HomVEE would accept supplemental information only under specific circumstances. HomVEE must maintain a strict review schedule for the annual review to ensure results are released on time.

Supplemental information can take two forms (1) new information about a study's methods or procedures, or (2) new research that supplements what HomVEE had on hand at the close of that year's call for research, such as additional findings or new analyses of research in a previously reviewed manuscript, or an entirely new set of findings.

2.5.1 HomVEE Rule About New Information

HomVEE proposes to incorporate new information about methods and procedures into the initial review of a manuscript only if (1) it is provided in direct response to an author query and (2) authors submit it in time for reviewers to examine it during the same annual review cycle in which HomVEE issued the query. Otherwise, HomVEE intends to require authors wait until HomVEE releases its annual review results for the model described in the manuscript in question. Then, authors could follow the process for requesting a reconsideration of evidence to ask HomVEE to examine supplemental information that authors provide, through the appeals process, about methods or procedure.

2.5.2 HomVEE Rule About New Research

HomVEE proposes to treat all new research as a submission to the following year's call for research, unless it consists of new analyses conducted at the explicit request of the HomVEE review team (see Sections 3.3.1 and 3.3.2, below on repeated measures studies and structural equation models, respectively).

2.6 Define Contrasts in Impact Research That Are Ineligible for Review by HomVEE

To date, HomVEE has placed no restrictions on services offered to the comparison condition in the impact studies it reviews. Beginning with the 2021 review, HomVEE proposes that the review generally exclude research that isolates the impact of model features. Research on specific features does not answer HomVEE's core question of whether an early childhood home

visiting model is effective. Specifically, HomVEE proposes not to review studies about the impact of model features. However, studies isolating the impact of a curriculum module may be treated as evidence for an independent model if all of the following criteria are met:

- The curriculum module satisfies the definition of an early childhood home visiting model;
- The treatment group does not receive any other curriculum modules from the base model; and
- The curriculum module has a manual and implementation infrastructure independent from that of the base model.

This change is described in Chapter III, Section A.2 of the HomVEE Draft Version 2 Handbook.

2.7 Defining Subgroups and Protocol for Reporting Subgroup Analyses

In the HomVEE Draft Version 2 Handbook, HomVEE defines a subgroup as a subset of the sample that researchers choose to examine in a study; that is, an analytic subgroup.

Subgroup research is important for HomVEE because a model can meet the HHS criteria for “evidence-based early childhood home visiting service delivery models” based on findings from subgroups. The HHS criteria for an “evidence-based early childhood home visiting service delivery model” include special rules about subgroup findings: If favorable results that could form the evidence base for a model “[are] found for subgroups but not for the full sample for the study, [the findings must] be replicated in the same domain in two or more studies using non-overlapping analytic study samples.” (See Exhibit II.11 in the HomVEE Draft Version 2 Handbook.) Therefore, HomVEE exercises care in identifying subgroup research and understanding how the subgroup relates to the overall study sample.

HomVEE defines a subgroup as a subset of the overall sample examined in a study—that is, an analytic subgroup (see Section 2.1, above). Notably, this is different from defining subgroup as a subset of the overall population. Although researchers may examine an analytic subgroup in hopes of making inferences about a subset of the population, the goal of the HHS criteria is to ensure that program impacts are replicated consistently for an outcome domain. Such replication is what gives HomVEE confidence that evidence of effectiveness is not due simply to chance. Thus, if a model meets HHS criteria for evidence of effectiveness based on subgroup findings, this means that research in which that subgroup

was similarly defined in relation to the broader sample had consistent, favorable (statistically significant) findings in distinct study samples.

Subgroup results may be nested within a manuscript (for example, results from teenage mothers when the overall results in the manuscript are from mothers with a range of ages), or they may be the main focus of a manuscript (for example, a manuscript focusing on results from teenage mothers when the overall study sample included mothers with a range of ages). HomVEE treats both of those as analytic subgroup analyses. HomVEE’s definition means that not all analyses restricted to a certain characteristic are subgroup analyses. For example, results from teenage mothers are not an analytic subgroup analysis when the overall study only enrolled teenage mothers, even though teenage mothers are a subgroup of the population of mothers as a whole.

Because HomVEE’s mission is to identify which models are effective according to the HHS criteria, and to use project resources judiciously, HomVEE proposes to only review research on replicable subgroups (if it meets other eligibility criteria defined in Chapter II, Section A of the HomVEE Draft Version 2 Handbook), and to only report review results for replicated subgroups. HomVEE proposes the following definitions for those terms:

- Replicable subgroups are defined by a characteristic that a different study could replicate with a non-overlapping sample. Most subgroups are replicable, in theory. However, HomVEE does not consider subgroups defined by cohort or time (for example, a subgroup of mothers enrolled in 1995 in a study that included mothers enrolled across several years) to be replicable in subsequent studies, and therefore does not review time-based subgroups. Similarly, HomVEE will only consider a subgroup defined by location to be replicable if the location was selected based on defined characteristics (for example, county with the highest teen birth rate in the state in a study conducted in several counties). Location-based subgroups defined by a location name (for example, Adams County in a study conducted in several counties) will not be reviewed because the HomVEE team cannot confidently verify whether the subgroup sample in a subsequent study in that county overlaps with the first study when the team applies HHS criteria.

HomVEE will report subgroup results only from a replicated subgroup, one that has an identical definition in two non-overlapping research samples. For

example, a study examining a subgroup of primiparous teenagers is not replicated by a study examining primiparous women of all ages. This approach is consistent with the HHS criteria’s emphasis on observing effects across independent samples.

2.8 Clarify HomVEE’s Approach to Operationalizing the HHS Criteria for Randomized Controlled Trials

As specified in the statute that authorized the MIECHV Program and required HHS to establish criteria for evidence of effectiveness of home visiting models, the HHS criteria for an “evidence-based early childhood home visiting service delivery model” state that additional criteria apply when the research on home visiting models comes from randomized controlled trials (see Exhibit II.11 in the HomVEE Draft Version 2 Handbook). Specifically, one or more favorable impacts must be sustained for at least 1 year after program enrollment, and one or more favorable impacts must be reported in a peer-reviewed journal. The HomVEE Draft Version 2 Handbook clarifies the way that HomVEE has operationalized the additional criteria for randomized controlled trials (RCTs). Specifically, these two requirements can be satisfied by findings from different studies, provided the quality of these findings is rated as moderate or high.

3.0 Clarifications and Changes to HomVEE Standards

HomVEE proposes several updates to its standards for reviewing manuscripts about impact studies, including both clarifications and changes.

It is natural in the course of a systematic review for issues to arise that cannot be addressed by existing standards and rules. These issues require the HomVEE team to develop internal guidance to guide the review.

Clarifications to the standards added to the HomVEE Draft Version 2 Handbook, summarized in Section 3.1 below, represent HomVEE’s attempt to formalize internal guidance generated over the course of conducting reviews so that the procedures are applied systematically.

Similarly, as research methods evolve, it is necessary for ongoing systematic reviews to change their standards to meet the needs of the field. Changes are HomVEE’s attempt both to align with aspects of other ongoing, federally sponsored systematic evidence reviews (Section 3.2) and to specify standards for research designs that are becoming increasingly common in home visiting studies (Section 3.3).

3.1 Clarifications

3.1.1 Changes to Terminology Used

HomVEE reviews manuscripts about research that uses any of three types of quasi-experimental designs (QEDs)—regression discontinuity designs (RDDs), single-case designs (SCDs), and non-experimental group designs (NEDs). Previously, HomVEE used QED to refer only to NEDs. Other designs, including SCD and RDD, are also quasi-experimental, so HomVEE proposes labeling this category of research more precisely, as NED (see Chapter I, Section C of the HomVEE Draft Version 2 Handbook). HomVEE intends to use this new terminology to more accurately reflect the fact that HomVEE does not have (and does not propose to implement) requirements about statistical matching in NED designs.

3.1.2 Ineligible and Preferred Analyses

To date, as long as the underlying study design is an RCT or QED, HomVEE has not specified rules for identifying analyses as ineligible for review.

Starting with the 2021 review, HomVEE proposes to exclude certain analyses within manuscripts about RCTs and QEDs as ineligible, as described in Chapter III, Section A.3 of the HomVEE Draft Version 2 Handbook. HomVEE's mission is to determine whether research shows that a home visiting model improves outcomes for children and families. Questions about the mechanisms behind how a model works, the settings where it might work best, and the populations who benefit the most from the intervention are outside of the scope of the HomVEE review. Although answers to these questions are important for understanding and improving home visiting models, the primary aim of the HomVEE review is to identify currently available models that are effective. For this reason, certain types of analyses designed to answer questions other than whether a model is effective are not eligible for review.

In addition, analyses of how the home visiting model affected only sample members who received it are sometimes ineligible for review if other analyses in the manuscript better address HomVEE's mission.

3.1.2.1 Mediating and Moderating Analyses

First, HomVEE proposes that most mediating and moderating analyses (except some structural equation models, see Section 3.3.2 below), would be ineligible for review. HomVEE focuses on research that answers the

following question: Is the home visiting model effective? Mediating and moderating analyses answer important, but slightly different questions of how, and for whom, the model works.

3.1.2.2 Endogenous Analyses

Second, HomVEE proposes that the review would exclude analyses that control for endogenous characteristics. These characteristics (1) are defined by behavior emerging after study participants know whether they will be in the intervention group or the comparison group and (2) could theoretically be affected by a home visiting model. Analyses that control for endogenous characteristics produce biased estimates of the effectiveness of an intervention. Analyses of subgroups defined by endogenous characteristics would also be ineligible for review.

3.1.2.3 Analyses of the Impact of the Treatment on the Treated

The HomVEE Draft Version 2 Handbook also specifies a proposed clarification to how HomVEE would review studies that examine the effect of the treatment (the home visiting model) on the treated (study sample members who receive the treatment). Specifically, when a study's researchers examine the effect of both the intent to treat (ITT) and the treatment on the treated (TOT), HomVEE proposes to focus its review on the ITT, because those estimates more realistically depict the average magnitude of the effect that a program replicating the model would cause. If those researchers report only TOT estimates, HomVEE reviews those using What Works Clearinghouse (WWC) Version 4.1 guidance on reviewing for Complier Average Causal Effects.

3.1.3 Eligible Outcomes and Baseline Assessability

Since its inception, HomVEE has reviewed findings of home visiting impact studies that fall into eight domains related to child, maternal, and family well-being. In the HomVEE Draft Version 2 Handbook, HomVEE proposes clarifying which specific findings within eligible analyses are eligible for review (see Chapter III, Section A.4). These clarifications formalize and expand HomVEE's existing internal guidance on eligible outcomes and baseline assessability.

First, the HomVEE Draft Version 2 Handbook clarifies that only unique findings would be eligible for review (those that report results on a different outcome, sample or subgroup, or time period, or with a different analytic approach, than findings reported in other manuscripts about the same home

visiting model). In these cases, consistent with current HomVEE practices, the review simply would reference the other manuscript—the first or most complete one in which HomVEE encountered the finding—where HomVEE users could find those results and the review conclusions. The Draft Version 2 Handbook also clarifies that HomVEE would not consider simple transformations of analyses with the same sample, outcome, and time period to be unique findings within a manuscript if they (1) transform findings data from frequency to a ratio (such as percentage or per thousand) or (2) transform findings data across different ratio types (such as from percentage to per thousand) because these simple transformations do not constitute a different analytic approach. In manuscripts with such transformations, HomVEE proposes to review the finding that is calculated as a percentage, because it is an intuitive measure to many readers and can be easily compared across studies.

Second, the HomVEE Draft Version 2 Handbook specifies categorization practices and baseline equivalence requirements for outcomes that HomVEE reviews. See Exhibit III.2 and Chapter III, Section B.3 of the HomVEE Draft Version 2 Handbook for a summary and Appendix C of that document for a detailed listing. That appendix indicates which outcomes or outcome categories belong under each of the eight domains. Also, although HomVEE requires NEDs and certain RCTs (those with high attrition or compromised randomization) to establish that the intervention and comparison groups are equivalent at baseline, the review team recognizes that some measures cannot or should not be measured at baseline. Therefore, Appendix C of the HomVEE Draft Version 2 Handbook clarifies which outcomes HomVEE would expect authors to assess at baseline.

3.2 Changes To Align HomVEE With Standards of Other Federally Sponsored Systematic Reviews

HomVEE's initial standards aligned to WWC standards, Version 2.1, which were the latest standards implemented when the HomVEE review began. These standards define the criteria that research must meet to be assigned each of three ratings. HomVEE calls these ratings high, moderate, and low, although the WWC rates research as Meets Standards (HomVEE high), Meets Standards with Reservations (HomVEE moderate), and Does Not Meet Standards (HomVEE low). The WWC remains a prominent and influential

federally sponsored systematic evidence review. In early 2020, WWC released Version 4.1 standards. Furthermore, in the time since HomVEE began, ACF has begun overseeing another, related systematic review: The Title IV–E Prevention Services Clearinghouse. That review focuses on child welfare research, some of which overlaps with home visiting research, and its standards are similar to those of WWC Version 4.1. ACF is interested in aligning standards for HomVEE and the Prevention Services Clearinghouse where appropriate.

In its HomVEE Draft Version 2 Handbook, HomVEE proposes to adopt many aspects of the latest WWC standards and some aspects of the Prevention Services Clearinghouse standards so that the review stays synchronized with accepted best practices in federally sponsored systematic reviews. The sections below describe proposed changes to the HomVEE review that would affect study ratings as the HomVEE criteria stand now. (HomVEE proposes to fully adopt WWC Version 4.1 criteria for regression discontinuity design studies, which are not described below because HomVEE has not, to date, reviewed any studies with this design.)

3.2.1 Requirement for Validity and Reliability of Outcome Measures

To date, HomVEE has had no stated validity and reliability requirements that outcomes must meet, although the review reports whether outcomes are primary (which HomVEE defines as an outcome measured through direct observation, direct assessment, or administrative data; or self-reported data collected using a standardized [normed] instrument) or secondary (for HomVEE, most self-reported data, excluding self-reports based on a standardized instrument). With the Draft Version 2 Handbook (see Chapter III, Section B.4), HomVEE proposes to introduce face validity and reliability standards. HomVEE reviewers will apply these new standards to all findings that are within one of HomVEE's eight outcome domains and to all measures HomVEE uses to assess baseline equivalence. Findings about outcomes that do not meet both the face validity and the reliability standard would rate low. With this change, HomVEE proposes to stop sorting outcomes as primary or secondary.

To meet the face validity standard, an outcome measure must be (1) clearly defined and (2) measure the construct it was designed to measure. This information could come from the manuscript reviewers examine, or from

supplemental information that HomVEE requests from the author. HomVEE reviewers propose to consult with project leaders whenever it is not clear whether a measure meets the validity requirement, and project leaders would in turn consult with subject matter experts and with ACF about the validity of new and of modified standardized measures.

Some outcome measures are not appropriate to validate with psychometric tests. HomVEE proposes to assume that the following measures are reliable: (1) Administrative records obtained from child welfare or other social service agencies, hospitals or clinics, and schools; (2) demographic characteristics; and (3) medical or physical tests.

Otherwise, to demonstrate reliability, outcome measures must meet at least one of the following standards:

- Internal consistency (such as Cronbach's alpha) of 0.50 or higher.
- Test-retest reliability of 0.40 or higher.
- Inter-rater reliability (as indicated by percentage agreement, correlation, or kappa) of 0.50 or higher.

Under the proposed approach, HomVEE reviewers would prioritize reliability statistics on the sample of participants in the manuscript under review, but would also consider statistics from test manuals or studies of the psychometric properties of the measures. The review team may ask authors to provide additional information about the reliability of their measures.

3.2.2 In Some Cases, Some Sample Loss Does Not Count as Attrition

Attrition happens when outcome data are missing for some members of the intervention and comparison groups in a study. Previously, HomVEE counted all sample loss as attrition unless the authors had imputed findings (see Section 3.2.3, below). In alignment with Version 4.1 of the WWC Standards, the HomVEE Draft Version 2 Handbook (see Chapter III, Section B.1) proposes that some types of sample loss will not count as attrition in HomVEE. First, losing sample members after random assignment because of acts of nature, such as hurricanes, fires, or the COVID–19 pandemic, is not considered attrition if the loss affects the intervention and comparison conditions in the same way. However, if the sample loss due to an act of nature was concentrated in one of the conditions, then the sample loss would be considered attrition. Second, when researchers exclude a subsample of the randomly assigned sample from their analysis, HomVEE would not

consider that excluded subsample to constitute attrition if (1) the subsample was randomly selected or (2) the subsampling was based on characteristics that were clearly determined before the start of the intervention and applied consistently across the intervention and comparison conditions.

3.2.3 Standards for Addressing Missing Data

The original HomVEE standards did not specify how reviewers would respond when study authors used various analytic strategies to account for missing data. The HomVEE Draft Version 2 Handbook (see Chapter III, C.2, as well as Appendix F) proposes to align HomVEE's practices to the way WWC Version 4.1 standards handle studies with missing data. Specifically, HomVEE proposes to first calculate attrition based on the analytic sample in the manuscript, treating any imputed values as lost sample. If baseline data in the analytic sample are missing or imputed, baseline equivalence would have to be established using the largest baseline difference accounting for missing or imputed baseline data. Second, manuscripts about studies with missing data would only be eligible for review by HomVEE if the authors had used the following specific approaches to address the missing data:

- Complete case analysis
- Maximum likelihood (including expectation maximization and full information maximum likelihood)
- Multiple imputation (must be conducted separately by treatment status)
- Nonresponse weights (must be conducted separately by treatment status; acceptable only for missing outcome data, not for missing baseline data)

In alignment with WWC version 4.1 standards, if the baseline data include imputed data, HomVEE would also apply other criteria when assessing baseline equivalence (see 3.2.5).

3.2.4 No Baseline Equivalence Requirement for Low-Attrition RCTs

Original HomVEE standards require authors of RCTs and non-experimental designs to establish baseline equivalence on race and ethnicity, socioeconomic status, and measures of outcomes that are feasible to assess when the study begins.

In low-attrition RCTs, the original standards allow authors to instead implement statistical controls for these characteristics. In alignment with WWC Version 4.1 Standards, the HomVEE

Draft Version 2 Handbook proposes that HomVEE would no longer require that RCTs with low attrition establish equivalence or adjust for baseline differences. This is because proper randomization is expected to produce groups that are similar, and baseline differences that might be observed on one or more measures are not generally evidence of differences that will introduce bias into research findings.

3.2.5 Baseline Equivalence Depends on Difference in Effect Sizes, and Other Considerations

The original HomVEE standards based the assessment of equivalence on measuring statistically significant differences between intervention and comparison groups at baseline. In line with WWC Version 4.1 standards, HomVEE's Draft Version 2 Handbook proposes that HomVEE will assess baseline equivalence based on the magnitude of the difference in standard deviation units (effect size).

To limit bias that can arise from differences in the treatment and comparison group units used to measure the effect of a home visiting model on outcomes, the groups must appear similar on the relevant baseline characteristics that are thought to be related to the outcomes. This balance is best shown using the observed magnitude of differences in the sample.

Specifically, the new HomVEE criterion for baseline equivalence proposes to rely on effect size, computed as the absolute value of the difference between treatment and comparison groups in standard deviation units. HomVEE would require the following to be true for research to demonstrate baseline equivalence for a specified characteristic:

- A baseline effect size less than or equal to 0.05 meets the baseline equivalence requirement and requires no statistical adjustment.
- For a baseline effect size that is greater than 0.05 and less than or equal to 0.25, an acceptable statistical adjustment for the baseline characteristic is required to meet the baseline equivalence requirement.
- If the baseline effect size is greater than 0.25, HomVEE considers the intervention and comparison groups to be nonequivalent, that is, the intervention and comparison groups do not meet the baseline equivalence requirement for the specified characteristic.

Under the proposed new standards, HomVEE would also consider the following when assessing baseline equivalence:

- HomVEE would allow baseline data that include imputed data to be used to demonstrate baseline equivalence of the analytic sample in some cases. If the baseline data include imputed data, HomVEE would first estimate how large the baseline difference (in standard deviation units) between intervention and comparison groups might be under different assumptions about how the missing data are related to measured and unmeasured factors. Then HomVEE would use the largest of those estimates in absolute value as the effect size for assessing baseline equivalence.

- The measures used to establish baseline equivalence must be at the same level as the unit of analysis. For example, in an analysis at the individual or family level, measures of socioeconomic status at the ZIP code level may not be used to establish baseline equivalence between the individuals or families in the intervention and comparison groups.

- If the impact analyses use weights, then the baseline means must be calculated using the same weights.

- If the study conducted random assignment within blocks or strata, and the analyses include dummy variables that differentiate these blocks or strata, then these same dummy variables can be used to adjust the baseline means.

This criterion is described in the HomVEE Draft Version 2 Handbook, Chapter III, Section B.2.

3.2.6 Allowable Statistical Adjustment Techniques

HomVEE has always required that authors implement statistical adjustments for baseline differences if their studies use (1) an RCT design or (2) one type of quasi-experimental design, NED. To date, HomVEE has not specified allowable techniques for that adjustment. With the HomVEE Draft Version 2 Handbook (see Chapter III, Section B.2.b), HomVEE proposes to follow WWC Version 4.1 guidelines about which statistical adjustment procedures are acceptable. Those are:

- Acceptable analytic methods to adjust for baseline differences:
 - Regression adjustments
 - Analysis of covariance (ANCOVA) or multivariate analysis of covariance (MANCOVA)
 - Repeated measures analysis of variance (ANOVA) or multivariate analysis of variance (MANOVA)
 - Estimating impacts only for groups defined at baseline (for example, ever had a baby versus never had a baby)
 - Growth curve modeling (this approach to modeling repeated measures research is also subject to other requirements; see 3.3.1 below)

- Acceptable methods if baseline and follow-up measures of outcome are the same and have a strong relationship to each other
 - Gain or change scores (pre-post differences)
 - Difference-in-difference adjustments
 - Fixed effects for individuals

3.2.7 Cluster RCTs

HomVEE rarely encounters RCTs with a cluster design in which a group of sample members, such as a neighborhood, is assigned to be offered a home visiting model or some other condition. However, in such designs, limiting sample loss at both the cluster (for example, a neighborhood) and subcluster (for example, a family that received home visiting) levels is important to maintaining the integrity of the randomization design. Under HomVEE's original standards, reviewers would apply a cluster correction to findings if authors themselves had not done so, but no special requirements were in place for rating studies that used a cluster design.

Instead, in research reviewed under the HomVEE Draft Version 2 Handbook, HomVEE proposes to align to WWC Version 4.1 guidelines for calculating attrition and non-response of subcluster members (such as individuals or families) in cluster RCTs. Exhibit III.14 of the HomVEE Draft Version 2 Handbook specifies how studies would be rated based on their combination of attrition at the cluster and individual levels, and authors' decisions about implementing statistical controls. In brief, a cluster RCT would be eligible to rate high only if it has low sample loss at both the cluster level and the individual level. To rate moderate, research about cluster RCTs with high attrition and research about cluster NEDs would need to demonstrate baseline equivalence of the analytic sample. Additional detail about this new standard appears in Chapter III, Section C.1 of the HomVEE Draft Version 2 Handbook.

3.2.8 Adopt New WWC Version 4.1 Standards for Regression Discontinuity Designs

Regression discontinuity research has been eligible for review by HomVEE since the project's inception, using earlier WWC pilot criteria for this research. This design is rare in home visiting research, and, to date, HomVEE has not reviewed any research that uses this design.

HomVEE proposes to align its Version 2 standards to WWC's latest (Version 4.1) RDD standards. The updates to the RDD standards consist of:

- A new set of procedures for reviewing “fuzzy” RDDs (for example, those in which some intervention group members do not receive intervention services and the analysis adjusts for this nonparticipation),

- Expanded procedures for reviewing multi-site and multiple assignment variable regression discontinuity designs, and

- A preference for local bandwidth impact estimation over global impact regression with flexible functional forms.

Appendix D of the HomVEE Draft Version 2 Handbook thoroughly describes the new WWC Version 4.1 RDD standards that HomVEE propose to implement, and their corresponding reporting procedures.

3.3 Other Changes

The HomVEE Draft Version 2 Handbook proposes two other changes to standards for reviewing impact studies. The two changes would define a new approach to reviewing designs that are becoming increasingly common in home visiting studies—repeated measures analyses and structural equation models. The third change pertains to SCD research.

3.3.1 Repeated Measures Analyses

In repeated measures analyses, authors measure the research sample at several time points to chart its growth over the course of the intervention and sometimes beyond. To date, HomVEE has not specified any standards for reviewing repeated measures analyses in group-design studies (such as RCTs and NEDs), nor have other federally sponsored systematic evidence reviews thoroughly addressed this.

In the proposed new standard, HomVEE would only review and report findings from repeated measures analyses with multiple follow-ups in RCTs and NEDs when the findings are available for individual time points, relative to baseline. When rating each time point, HomVEE would apply its Version 2 RCT or NED standards. Generally, when gathering information to rate each time point, HomVEE would defer to what the author reported or what the review team could calculate based on details the author provided. As a last resort, when adjusted analyses are necessary in order to rate the study, and the HomVEE team cannot make the necessary calculations, the HomVEE team would ask authors to reanalyze their data to calculate adjusted time point findings. HomVEE would exclude from its review of a repeated measures analysis any time points for which an impact cannot be included in HomVEE

reports because neither author-provided nor HomVEE-calculated estimates are available. Chapter III, Section C.3 of the HomVEE Draft Version 2 Handbook describes the proposed new approach to rating repeated measures analyses in detail.

3.3.2 Structural Equation Models

Structural equation models (SEMs) examine the relationship between a dependent variable and multiple independent variables, often incorporating multiple outcomes from different follow-up periods. To date, HomVEE standards did not define how the review would incorporate SEM research. Chapter III, Section C.4 of the HomVEE Draft Version 2 Handbook specifies how HomVEE proposes to approach the review of research with this design going forward. In brief, only SEMs that are accompanied by a path diagram (including one authors may submit in response to a query from HomVEE) and that are identified (that is, the degrees of freedom are greater than the parameters to be estimated) would be eligible for review. Within SEMs that are eligible for review, HomVEE would review only findings for which the answer to the following two questions is yes: (1) Is there a direct pathway from the intervention to the outcome? and (2) Are there no pathways leading to that outcome from another outcome? This approach is consistent with HomVEE’s proposed new approach to mediated and moderated analyses. See also Section 3.1.2.1 above.

3.3.3 Review of Single-Case Design (SCD) Research

SCDs are quasi-experimental research designs in which an individual case serves as its own control, and the outcome is measured repeatedly within and across different conditions (as defined in What Works Clearinghouse [WWC] Version 4.1 standards). SCD research has been eligible for HomVEE review since its inception, using earlier WWC pilot criteria for this research. With Version 4.1, WWC has removed the “pilot” designation from its standards and has updated its procedures for reviewing SCD research in several ways; HomVEE proposes aligning to WWC’s version 4.1. Although WWC previously standards instructed reviewers to only use visual analysis of changes in the outcome over time and across conditions to characterize the findings from an SCD study, the new standards from WWC also have reviewers calculate and use a design-comparable effect size to characterize the findings. Reviewers would still use visual analysis to assess

whether a SCD study is well designed. To calculate a design-comparable effect size, the HomVEE contractor review team would use data presented in the study if possible, or (only if necessary) contact the study authors to request raw study data so the team could calculate that value. Appendix E of the HomVEE Draft Version 2 Handbook thoroughly describes the WWC Version 4.1 SCD standards that HomVEE propose to implement, and their newly updated reporting procedures.

4.0 Timeline for HomVEE To Apply New Procedures and Standards

HomVEE proposes to apply the new procedures and standards beginning with the 2021 review. HomVEE will not retroactively apply the new standards to previously reviewed research about evidence-based models unless it is SCD research about a model HomVEE prioritizes and selects for review.

To promote consistency in reporting across the review, clarifications about the outcomes that are eligible for review in each domain retroactively will apply to all models regardless of (1) their evidence-based status according to HHS criteria and (2) whether they are prioritized and selected for review. However, manuscripts that have findings excluded or moved to other domains will not be re-reviewed with HomVEE Version 2 standards (unless they are manuscripts about a SCD study). In addition, the HomVEE team will retroactively apply clarified definitions of study, manuscript, and subgroup, with the aim of relabeling HomVEE products so they use consistent language.

Also, HomVEE typically reviews eligible models every other year at the earliest. In 2021 (the first year that new procedures and standards are in effect), HomVEE will suspend this rule for one year only, so that models reviewed in 2020 are not excluded from consideration for the 2021 review.

4.1 HomVEE Will Not Retroactively Apply New Procedures and Standards to Inactive Models

For models that no longer provide implementation support, the HomVEE team generally does not plan to retroactively apply the new procedures and standards, except to apply the clarifications about the outcomes that are eligible for review in each domain and about the definitions of study, manuscript, and subgroup. The team proposes to update reports about those models on the HomVEE website (<https://homvee.acf.hhs.gov>) to indicate that they were reviewed under the

initial HomVEE procedures and standards.

5.0 Request for Information (RFI)

Through this **Federal Register** Notice, ACF is soliciting information from a broad array of stakeholders on the proposed revisions to HomVEE's procedures. Federal, state, and local decision makers rely on HomVEE to know which home visiting models are effective. New definitions, rules, and procedures about model versions may affect which models are deemed effective by HomVEE. New procedures may affect which models are eligible for review and deemed effective by HomVEE. New standards may affect which studies constitute well-designed research that serves as an evidence base for models that meet HHS criteria for an "evidence-based early childhood home visiting service delivery model."

Responses to this **Federal Register** notice will inform ACF's ongoing discussion about HomVEE's procedures and standards, with the aim of publishing a final HomVEE Version 2 Handbook by the end of 2020. This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

(Authority: Social Security Act Title V § 511 [42 U.S.C. 711], as extended by the Bipartisan Budget Act of 2018 (Pub. L. 115-123) through fiscal year 2022)

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

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[FR Doc. 2020-17001 Filed 8-4-20; 8:45 am]

BILLING CODE 4184-74-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Updated Definitions, Rules, and Procedures Related to Model Versions: Home Visiting Evidence of Effectiveness (HomVEE) Review

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), oversees the Home Visiting Evidence of Effectiveness (HomVEE) review, which is proposing to revise the procedures and standards that guide its work. The revised procedures and standards will be presented in two separate **Federal Register** notices. The current **Federal Register** notice seeks comments on proposed updated definitions, rules, and procedures related to handling home visiting model versions (commonly referred to in the home visiting research literature as adaptations) in the HomVEE review. Another **Federal Register** notice summarizes proposed changes and clarifications to HomVEE's procedures and standards for rating the quality of impact studies and determining which home visiting models meet HHS criteria for evidence of effectiveness. Readers are referred to the full text of the HomVEE Draft Version 2 Handbook on the HomVEE website (<https://homvee.acf.hhs.gov/>) for more details on all proposed changes.

DATES: Send comments on or before September 1, 2020.

ADDRESSES: Submit questions, comments, and supplementary documents to HomVEE@acf.hhs.gov with "HomVEE model versions FRN comment" in the subject line.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: HHS invites comments regarding this notice. To ensure that your comments are clearly stated, please identify the section of this notice that your comments address.

1.0 Background

To help policymakers, program administrators, model developers,

researchers, and the public identify rigorous research and understand which early childhood home visiting models are effective, ACF's Office of Planning, Research, and Evaluation within HHS oversees the HomVEE review. HomVEE's mission is to conduct a thorough and transparent review of the research literature on home visiting for families with pregnant women and children from birth to kindergarten entry. The review team identifies well-designed research within that pool and extracts and summarizes the findings from that research.

One critical use of HomVEE's results is to determine which home visiting models meet the HHS criteria for an "evidence-based early childhood home visiting service delivery model" (see Exhibit II.11 in the HomVEE Draft Version 2 Handbook), a key requirement of eligibility for implementation with the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program funding. The MIECHV Program is administered by the Health Resources and Services Administration (HRSA) in partnership with ACF. Created in 2010, the MIECHV Program provides funding to states, territories, and tribal entities to implement home visiting models. MIECHV awardees have the flexibility to tailor the program to serve the specific needs of their communities. Through a needs assessment, awardees identify at-risk communities and select home visiting service delivery models that best meet state and/or local needs. As per MIECHV's authorizing statute, state and territory awardees must spend the majority of their MIECHV Program grants to implement evidence-based home visiting models, with up to 25 percent of funding available to implement promising approaches that will undergo rigorous evaluation.

For the first time since its inception in 2009, HomVEE is proposing substantial revisions to several procedures and standards that guide the systematic review. The proposed revisions include (1) clarifying and updating standards and procedures (presented in a separate **Federal Register** notice) for rating the quality of impact studies that are used to determine which home visiting models meet HHS criteria for an "evidence-based early childhood home visiting service delivery model" and (2) clarifying definitions, rules, and procedures for handling model versions (commonly referred to in the home visiting research literature as adaptations) in the HomVEE review process. The current **Federal Register** notice focuses on the latter set of revisions.

HomVEE routinely encounters research in which an individual home visiting model has been changed or altered for various reasons, including to fit a new or different context (for example, adding a new curriculum targeted to a specific population) or to implement a new feature (for example, adding text messaging between visits). In order to ensure the transparency and accuracy of the HomVEE review, it is important to have clear definitions, rules, and procedures to classify research on different versions of home visiting models. Over the course of the past 2 years, a HomVEE workgroup composed of ACF and HRSA staff with contractor support met to discuss and develop the draft definitions, rules, and procedures outlined in this **Federal Register** notice. Their work was informed by a close review of the procedures of other federally sponsored systematic evidence reviews.

Through this **Federal Register** notice, ACF seeks to provide a transparent account of how the review operates and to collect stakeholder input on draft definitions, rules, and procedures related to model versions. Because these procedural changes may affect critical decision making, and to better understand the implications of the changes for various stakeholders, ACF seeks public input on the draft changes. After a period of public comment, HomVEE will finalize and release the final definitions, rules, and procedures related to model versions.

2.0 Definitions, Rules, and Procedures for Reviewing Home Visiting Models and Model Versions

First, this **Federal Register** notice presents HomVEE's definition of "early childhood home visiting model." Then, it discusses how HomVEE proposes to define and distinguish among various types of model versions.

2.1 Defining an Early Childhood Home Visiting Model

In order to identify eligible research, HomVEE intends to apply the following definition of an early childhood home visiting model: *HomVEE defines an early childhood home visiting model as an intervention that delivers a specified set of services (through a specified set of interactions). A model has a set of fidelity standards that describe how the model is to be implemented. These voluntary programs are interventions, either designed or adapted and tested for delivery in the home, in which trained home visitors meet with expectant parents or families with young children on a schedule that is defined or can be tailored to meet*

family needs. During the visits, home visitors aim to build strong, positive relationships with families who want and need support to improve child and family outcomes. Models reviewed by HomVEE must serve pregnant women or families with children from birth to kindergarten entry. In a model eligible for review, the primary service delivery strategy must be home visiting and there must be research on the model that examines its effects in at least one of eight outcome domains: Child development and school readiness, child health, family economic self-sufficiency, linkages and referrals, maternal health, positive parenting practices, reductions in child maltreatment, and reductions in juvenile delinquency, family violence, and crime.¹ This definition of a home visiting model is for the purpose of sorting and classifying the research literature as part of the HomVEE review. It is not for the purposes of determining eligibility for MIECHV funding.

2.1.1 Classifying Research on Early Childhood Home Visiting Models

2.1.1.1 Defining Model Versions

To date, the HomVEE team has relied on model developers and manuscript authors to identify the specific version of the model they are examining in a research study. However, manuscripts vary in the extent to which their authors clearly identify the model version being tested. Moving forward, HomVEE intends to implement definitions, rules, and procedures to systematically differentiate versions of a model. This will help ensure that HomVEE treats all models equally and classifies research on model effectiveness accurately. These definitions, rules, and procedures are for the purpose of sorting and classifying the research literature as part of the HomVEE review. It is not for the purposes of determining eligibility for MIECHV funding.

HomVEE proposes to apply the following definitions to differentiate models:

- *Base model*: The model as designed by the developer. (This includes implementations of the base model by the developer and replications of the base model by others.)
- *Model version*: Distinguished by a substantial change to a core feature of the base model (substantial change and core feature are defined below).

¹ These domains are inclusive of the benchmark domains and individual outcomes listed in the statute that authorized the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program (Social Security Act, Section 511 [42 U.S.C. 711]).

- *Model iteration*: Distinguished by a substantial change to a core feature of the base model that the model developer intends to represent a *permanent update* to the base model. The term model iteration is intended to capture changes that are part of the natural evolution of a model over time.

- *Family of models*: A base model and its iterations and versions.

As indicated by the definitions, identifying substantial changes to core features or the addition or removal of core features is critical for differentiating base models and model versions. For the purposes of HomVEE's review, HomVEE conceptualizes home visiting models as being composed of a set of core features that include both *content features* (such as the topics covered in a curriculum) and *implementation features* (such as home visitor training and staff qualifications). Core features are integral to the model and will be defined as the following:

- Visit format (in-person, virtual, mixed)
- Home visit frequency
- Home visit length
- Number of home visits
- Program duration
- Required staffing structure
- Home visitor education and experience
- Home visitor supervision requirements
- Home visitor caseload
- Requirements for program certification
- Training requirements for home visitors (initial and ongoing)
- Trainer qualifications
- Curriculum
- Other features in the model's theory of change

HomVEE further proposes to differentiate core features by whether the feature has a fixed requirement or flexible requirement. Core features with fixed requirements have specific guidelines that guide the implementation of the core feature, such as requiring a specific curriculum or delivering home visits with a specific frequency. Fixed requirements may also be a specific range, such as requiring home visits of 60–90 minutes, or minimum thresholds, such as a staff qualification of at least a B.A. degree. Flexible requirements do not have specific guidelines about implementation, such as no requirement for implementers to use a specific curriculum.

2.1.1.2 Identifying Core Features

For model families that are candidates for review in a given year, HomVEE proposes to generate a list of core

features for each model and determine whether each core feature of each model has fixed or flexible requirements. HomVEE will first generate the list based on information available through manuscripts, the developer website, and/or the existing HomVEE implementation profile. HomVEE will then send the list to model developers to invite them to verify HomVEE's understanding of the model's core features.

2.1.1.3 Using Information on Core Features To Identify Model Versions

Using a set of predetermined decision rules and the list of core features verified by model developers, HomVEE intends to identify substantial changes to core features to distinguish research on model versions and iterations from research on the base model. HomVEE welcomes feedback from the field on these decision rules. The rules draw on

general guidance from the implementation science literature and current practices of other evidence reviews.

Specifically, HomVEE will consider a change substantial if a fixed requirement related to a core feature is added or removed (see Table 1). For example, if researchers or model implementers remove a curriculum module or add text message check-ins with families in between in-person visits, those changes would be considered substantial. In addition, HomVEE will consider as substantial those changes in which a fixed requirement becomes flexible or a flexible requirement becomes fixed. To illustrate, a base model may allow implementers to select their own curriculum that best fits their context. Researchers and model implementers may decide to modify that feature and require a specific curriculum. This

would be considered a substantial change because a flexible requirement (no required curriculum) is now fixed (that is, a specific curriculum is now required).

In addition, for core features that involve a specific frequency or number (such as number of home visits or home visitor caseloads), changes that modify the frequency by more than 50 percent will, in general, be considered substantial.² To illustrate, a base model may require home visitors to offer families a minimum of 40 visits. Researchers and model implementers may change the home visit frequency requirements of the base model to offer families a minimum of 10 visits to better serve a population where 40 visits are not feasible. Given HomVEE's proposed decision rules, this would be considered a substantial change, because the visit frequency was changed by more than 50 percent.

TABLE 1—PROPOSED DECISION RULES FOR IDENTIFYING MODEL VERSIONS

Core feature	Non-substantial change to a core feature include:	Substantial changes to a core feature (model version or iteration) include:	Changes that requires consultation with experts include:
Curriculum	None	—Addition or subtraction of curriculum modules —Flexible requirement becomes fixed —Fixed requirement becomes flexible —Change in required curriculum (from one to another)	Any other changes.
Home visit frequency	—Intended frequency changes by less than 25 percent	—Intended frequency changes by more than 50 percent —Flexible requirement becomes fixed (such as from no required frequency to required monthly visits) —Fixed requirement becomes flexible	—Intended frequency changes by 25–50 percent.
Home visitor caseloads	—Intended caseload changes by less than 25 percent	—Intended caseload size changes by more than 50 percent —Flexible requirement becomes fixed (such as from no caseload guidance to requiring one visitor per 10 families) —Fixed requirement becomes flexible	—Intended caseload size changes by 25–50 percent.
Home visitor education and experience.	None	—Required degree type changes (such as from R.N. to M.S.W.) —Flexible requirement becomes fixed (such as from no education requirement to requiring a Bachelor's degree) —Fixed requirement becomes flexible	None.
Home visitor supervision	—Less than 25 percent change in intended supervision frequency	—More than 50 percent change in intended supervision frequency	—25–50 percent change in intended supervision frequency.

² If a model under study lowers a required minimum threshold for a core feature, such as requiring at least 10 home visits instead of 20, this

is a substantial change to the core feature and, therefore, is a model *version or iteration*. If a model under study exceeds a minimum requirement, this

is not a substantial change to the core feature and therefore is a *model replication*.

TABLE 1—PROPOSED DECISION RULES FOR IDENTIFYING MODEL VERSIONS—Continued

Core feature	Non-substantial change to a core feature include:	Substantial changes to a core feature (model version or iteration) include:	Changes that requires consultation with experts include:
Home visitor pre-service training ...	<ul style="list-style-type: none"> —Less than 25 percent change in required training hours —Change in training mode (in person to virtual) that does not change training content 	<ul style="list-style-type: none"> —Flexible requirement becomes fixed such as from no requirement for the frequency of supervision to requiring monthly supervision meetings) —Fixed requirement becomes flexible —25–50 percent change in required training hours —Addition or subtraction of training modules 	<ul style="list-style-type: none"> —Mode of supervision (one-on-one, reflective supervision) added or dropped. —25–50 percent change in required training hours.
Home visitor in-service training	<ul style="list-style-type: none"> —Less than 25 percent change in required training hours —Change in training mode (in person to virtual) that does not change training content 	<ul style="list-style-type: none"> —Flexible requirement becomes fixed (such as from no training requirement to specified training requirement) —Fixed requirement becomes flexible (such as from specified training requirement to no training requirement) —25–50 percent change in required training hours —Addition or subtraction of training modules —Flexible requirement becomes fixed (such as from no training requirement to specified training requirement) —Fixed requirement becomes flexible (such as from specified training requirement to no training requirement) 	<ul style="list-style-type: none"> —25–50 percent change in required training hours.
Program certification	None	<ul style="list-style-type: none"> —Program certification requirement added or dropped 	Changes to certification standards or procedures.
Number of home visits	<ul style="list-style-type: none"> —Intended dosage changes by less than 25 percent 	<ul style="list-style-type: none"> —Intended dosage changes by more than 50 percent —Flexible requirement becomes fixed (such as from tailored number of visits to fixed number of visits) —Fixed requirement becomes flexible (such as from fixed number of visits to tailored number of visits) 	<ul style="list-style-type: none"> —Intended dosage changes 25–50 percent.
Program duration	<ul style="list-style-type: none"> —Intended duration changes by less than 25 percent 	<ul style="list-style-type: none"> —Intended duration changes by more than 50 percent —Flexible requirement becomes fixed (such as from duration tailored to family need to a fixed number of months) —Fixed requirement becomes flexible (such as from a fixed number of months to duration tailored to family need) 	<ul style="list-style-type: none"> —Intended duration changes 25–50 percent.
Required staffing structure	<ul style="list-style-type: none"> —Less than 25 percent change in recommended supervisor case-load 	<ul style="list-style-type: none"> —More than 50 percent change in recommended supervisor case-load —Flexible requirement becomes fixed (such as from no required structure to specified structure) —Fixed requirement becomes flexible (such as from specified structure to no required structure) 	<ul style="list-style-type: none"> —25–50 percent change in recommended supervisor case-load. —Addition or elimination of required non-supervisory positions
Trainer qualifications	None	<ul style="list-style-type: none"> —Addition or subtraction of certification requirement 	<ul style="list-style-type: none"> —Any other changes.

TABLE 1—PROPOSED DECISION RULES FOR IDENTIFYING MODEL VERSIONS—Continued

Core feature	Non-substantial change to a core feature include:	Substantial changes to a core feature (model version or iteration) include:	Changes that requires consultation with experts include:
Visit format (in person, virtual, mixed).	None —Less than 25 percent change in required number of in-person visits	—Flexible requirement becomes fixed (such as from no required qualifications to specified qualifications) —Fixed requirement becomes flexible (such as from specified qualifications to no required qualifications) —Change from one fixed format to another —More than 50 percent change in number of in-person visits	—Any changes involving phone visits. —25–50 percent change in number of in-person visits.
Visit length	None	—Flexible requirement becomes fixed (such as from no required visit format to required in-person format) —Fixed requirement becomes flexible (such as from required in-person format to no required visit format) —More than 50 percent change in required visit length —Flexible requirement becomes fixed (such as from no required length to required length of one hour) —Fixed requirement becomes flexible (such as from required length of one hour to no required length)	—25–50 percent change in required visit length.
Other features of the model’s theory of change.	None	None	—Any change.

2.1.2 Prioritizing Early Childhood Home Visiting Models

HomVEE proposes that early childhood home visiting models (including base models, model versions, and model iterations) continue to be eligible for review as long as they meet all of HomVEE’s other criteria for inclusion as described in the HomVEE Draft Version 2 Handbook. HomVEE will continue to select families of models for review by creating a prioritization score for each family of models using a combination of manuscript and model characteristics (see the HomVEE Draft Version 2 Handbook, Chapter II, Section A, for additional details). Also, after a family of models is selected for review, HomVEE will continue to review all previously unreviewed research on the base model, model iterations, and model versions.

2.2 Applying the HHS Criteria

HomVEE proposes to review research on a model version and its base model separately. Therefore, a model version would need to independently meet HHS criteria for “an evidence-based early

childhood home visiting service delivery model.” In contrast, HomVEE proposes that research on the base model and research on model iterations be reviewed together and contribute to HomVEE’s determination of whether the base model meets HHS criteria.

2.3 Applying the New Definitions, Rules, and Procedures

The new definitions, rules, and procedures about model versions will apply to all models that HomVEE considers for review, regardless of whether the model already meets HHS criteria for an “evidence-based early childhood home visiting service delivery model.” HomVEE anticipates implementing the new definitions, rules, and procedures to the HomVEE review beginning with the models prioritized for review in 2021. The new definitions, rules, and procedures will be implemented with other models over time.

3.0 Request for Information

Through this **Federal Register** notice, ACF is soliciting information from a broad array of stakeholders on the proposed revisions to HomVEE’s

procedures. Federal, state, and local decision makers rely on HomVEE to know which home visiting models are effective. New definitions, rules, and procedures about model versions may affect which models HomVEE determines to meet HHS criteria for “an evidence-based early childhood home visiting service delivery model.”

Responses to this **Federal Register** notice will inform ACF’s ongoing discussion about HomVEE’s procedures and standards, with the aim of publishing a final HomVEE Version 2 Handbook by the end of 2020. This **Federal Register** notice is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

(Authority: Social Security Act Title V § 511 [42 U.S.C. 711], as extended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123) through fiscal year 2022)

John M. Sweet, Jr.,
ACF/OPRE Certifying Officer.
[FR Doc. 2020–16992 Filed 8–4–20; 8:45 am]

BILLING CODE 4184–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2020-N-1339]

Pilot Program for Request for Designation and Pre-Request for Designation Electronic Submissions**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Office of Combination Products (OCP) in the Food and Drug Administration (FDA) is soliciting applications from members of the public interested in participating in a voluntary pilot program to help OCP evaluate a potential new electronic submissions process for Requests for Designation (RFD) and Pre-RFD. This RFD and Pre-RFD electronic submission process is intended to improve efficiency and completeness of RFD and Pre-RFD submissions. OCP plans to accept up to nine participants for the pilot program. The pilot program is intended to provide OCP input to inform this evaluation.

DATES: Interested parties should submit an electronic application to participate in this pilot program by August 19, 2020. We plan to conduct pilot testing beginning on or about August 26, 2020. See section III of this document for information on applying for participation.

FOR FURTHER INFORMATION CONTACT: Danita Dixon, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-2889, danita.dixon@fda.hhs.gov.

ADDRESSES: If you are interested in participating in this pilot program, please submit an electronic application to combination@fda.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Since its establishment on December 24, 2002, OCP has served as a resource for sponsors at various stages of development of their products. Sponsors often seek OCP feedback on whether their medical product will be regulated as a drug, a device, a biological product, or a combination product, and which medical product FDA Center (Center for Devices and Radiological Health, Center for Drug Evaluation and Research, or Center for Biologics Evaluation and Research) will regulate it if it is a non-combination product, or will have the primary

jurisdiction for the premarket review and regulation of the product if it is a combination product.

There are two ways that a sponsor can receive such feedback from OCP. One option is to submit an RFD to receive a formal, binding determination for the sponsor's product with respect to classification and/or center assignment. The RFD process is codified in 21 CFR part 3, and OCP has issued a guidance about this process (see "How to Write a Request for Designation (RFD)" at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-write-request-designation-rfd>). A second option referred to as the Pre-RFD submission process, is for a sponsor to submit an inquiry to OCP to receive a preliminary assessment of their product's classification and/or assignment, which is not binding. The Pre-RFD process allows for more flexible interaction between sponsors and FDA. RFD and Pre-RFD submissions to OCP are currently, typically submitted via email, although some are submitted in paper copies. Regardless of format, some submissions lack sufficient data for review. Consequently, OCP is announcing a pilot program to test the functionality of a more structured RFD and Pre-RFD electronic submission process that should enhance efficiency and ensure sponsors' understanding of required and recommended submission content.

II. Pilot Program Participation

The pilot program to evaluate the RFD and Pre-RFD electronic submission processes is to last approximately 2 weeks. During the pilot program, OCP staff will be available to address questions or concerns that may arise. Pilot program participants will receive training and will be asked to submit simulated regulatory submissions using data provided to them by OCP for testing purposes. Pilot program participants will also be asked to provide written and verbal feedback during their training and after they submit the simulated regulatory submissions. This feedback will assist OCP in developing the electronic submission processes. OCP estimates that each individual participant's involvement may require about 15 hours over the 2-week period. OCP is soliciting applications from members of the public, such as combination product and other medical product sponsors, as well as entities that may act as authorized agents submitting RFDs or Pre-RFDs for sponsors. At its discretion, OCP may withdraw a participant from the pilot program for not completing the

requested activities within requested timeframes.

III. Applications for Participation

Send applications to participate in the pilot program to combination@fda.gov. Applications should include the following information: Company and contact name, contact phone number, and contact email address. Additionally, although not required for consideration, OCP is particularly interested in whether you are a sponsor or may act as an authorized agent, and whether you have previously submitted an RFD or Pre-RFD. Once applications for participation are received, FDA will contact interested applicants to confirm selection for the pilot program. FDA is seeking a limited number of participants (no more than nine) to participate in this pilot program.

Dated: July 30, 2020.

Lowell J. Schiller,*Principal Associate Commissioner for Policy.*

[FR Doc. 2020-17039 Filed 8-4-20; 8:45 am]

BILLING CODE 4164-01-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2008-N-0424]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Safety Information Sharing by Constituent Part Applicants for Combination Products**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by September 4, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information

collection is 0910–0834. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@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.

Postmarketing Information Sharing Among Constituent Part Applicants for Combination Products—21 CFR 4.103

OMB Control Number 0910–0834—Extension

This information collection request applies to “constituent part applicants” as defined under 21 CFR 4.101 (*i.e.*, any person holding an application under which a constituent part (drug, device, or biological product) of a combination product received marketing authorization if the other constituent

part(s) received marketing authorization under an application held by a different person). Under this collection, constituent part applicants must share safety information they receive related to certain events with the other constituent part applicant(s) and maintain associated records.¹

In the **Federal Register** of April 30, 2020 (85 FR 23971), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE AND RECORDKEEPING BURDEN

21 CFR section; activity	Number of respondents/ recordkeepers	Number of disclosures/ records per respondent/ recordkeeper	Total annual disclosures/ records	Average burden per disclosure/recordkeeping	Total hours
4.103, Sharing information with other constituent part applicants.	33	18	594	0.35 (21 minutes)	208
4.103(b) and 4.105(a)(2), Records of information shared by constituent part applicants.	33	18	594	0.1 (6 minutes)	59
Total .....	.....	.....	.....	.....	267

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. We note in this regard that FDA extended the compliance date for 21 CFR part 4, subpart B, until July 2020 for most combination products, and until January 2021 for the remainder, in response to stakeholder feedback, to ensure that Combination Product Applicants have sufficient time to update reporting and recordkeeping systems and procedures.² Consequently, entities subject to this rule have not yet had to comply with this information request.

Dated: July 30, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–17041 Filed 8–4–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Notice is hereby given of a meeting of the HEAL (Helping to End Addiction Long-term) Multi-Disciplinary Working Group.

The meeting will be open to the public as indicated below via NIH Videocast. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The program documents and the discussions could disclose confidential trade secrets or commercial property

such as patentable material, and personal information concerning individuals associated with the program documents, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: HEAL Multi-Disciplinary Working Group Meeting.

Date: August 31, 2020.

Open: August 31, 2020, 9:00 a.m. to 1:00 p.m.

Closed: August 31, 2020, 1:00 p.m. to 2:50 p.m.

Open: August 31, 2020, 2:50 p.m. to 4:30 p.m.

Agenda: Provide an update on Helping to End Addiction Long-Term (HEAL) Initiative projects and obtain expertise from MDWG relevant to the NIH HEAL Initiative and to specific HEAL projects.

Videocast: The open portion of the meeting will be live webcast at: <https://videocast.nih.gov/>.

Place: National Institutes of Health Building 1, Wilson Hall, 1 Center Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca G. Baker, Ph.D., Office of the Director, National Institutes of

¹ The Postmarketing Safety Reporting (PMSR) information collections for drugs, biological products, and devices found in §§ 314.80, 314.81, 600.80, 600.81, 606.170, 606.171, 803.50, 803.53, 803.56, 806.10, and 806.20 (21 CFR 314.80, 314.81, 600.80, 600.81, 606.170, 606.171, 803.50, 803.53, 803.56, 806.10, and 806.20) have already been approved and are in effect or their extension is being sought separately as required, including with respect to burden for combination products (reflected in the authorization for OMB control

number 0910–0834, but, therefore, not addressed in this extension request). The pertinent PMSR information collection provisions for § 314.80(c) and (e), as well as for § 314.81(b) are approved under OMB control numbers 0910–0001, 0910–0230, and 0910–0291. The information collection provisions for §§ 600.80 and 600.81 are approved under OMB control number 0910–0308. Those for § 606.170 are approved under OMB control number 0910–0116. Those for § 606.171 are approved under OMB control number 0910–0458. The information

collection provisions for §§ 803.50, 803.53, and 803.56 are approved under OMB control numbers 0910–0291 and 0910–0437. The information collection provisions for §§ 806.10 and 806.20 are approved under OMB control number 0910–0359.

² See Compliance Policy for Combination Product Postmarketing Safety Reporting (April 2019) (<https://www.fda.gov/regulatory-information/search-fda-guidance-documents/compliance-policy-combination-product-postmarketing-safety-reporting>).

Health, 1 Center Drive, Room 103A, Bethesda, MD 20892, (301) 402-1994, Rebecca.baker@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Office of the Director for the NIH HEAL Initiative home page: <https://heal.nih.gov/news> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17022 Filed 8-4-20; 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; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) and Coronavirus Disease 2019 (COVID-19).

Date: September 1, 2020.

Time: 11:00 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 3G30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 1206, Bethesda, MD 20892, (301) 435-2398, pughjohn@csr.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: July 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17020 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 22-23, 2020.

Open: October 22, 2020, 8:30 a.m. to 10:45 a.m.

Agenda: Program Discussion.

Place: Virtual Meeting.

Closed: October 22, 2020, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Closed: October 23, 2020, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Contact Person: Dianne Babski, Acting Associate Director, Division of Library

Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301-827-4729, babskid@mail.nih.gov.

Any member of the public may submit written comments no later than 15 days after the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: July 31, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17096 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Fellowship review.

Date: September 16, 2020.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NSC Building, Bethesda, MD 20892, 301-496-9223, deanna.adkins@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Neural, Brain and Pain Relief Devices.

Date: October 13-14, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Diana M. Cummings, BS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, NIH NSC, 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892 cummingsdi@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS K01.

Date: October 16, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, delany.torressalazar@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Biology and Biophysics of Neural Stimulation.

Date: October 21, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC Building, 6001 Executive Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delany Torres, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS Neuroscience Center Building (NSC), 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, delany.torressalazar@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 30, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17023 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: October 22, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20892, 301-443-0800, bbuzas@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 31, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17099 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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/contract proposals 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 Advisory Child Health and Human Development Council.

Date: September 9, 2020.

Open: 12:30 p.m. to 5:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, Division of Extramural Research Report and, other business of the Council.

Place: National Institutes of Health (Teleconference), 6710B Rockledge Dr., Bethesda, MD 21157.

Date: September 10, 2020.

Open: 12:30 p.m. to 1:30 p.m.

Agenda: The agenda will include continuation of other business of the Council.

Place: National Institutes of Health (Teleconference), 6710B Rockledge Dr., Bethesda, MD 21157.

Closed: 1:45 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health (Teleconference), 6710B Rockledge Dr., Bethesda, MD 21157.

Contact Person: Robert Borie, Committee Management Specialist, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, 2221A, Bethesda, MD 20892, 301.827.6244, robert.borie@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. Any member of the public may submit written comments no later than 15 days after the meeting.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: <http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx>.

Information is also available on the Institute's/Center's home page: <https://www.nichd.nih.gov/about/advisory/council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 30, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17021 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, the 91st meeting of the National Advisory Council for Human Genome Research open session will be livestreamed and available for viewing to the public on *Genome.gov* and across NHGRI social media platforms. The open session will be on September 14th and the start time will be 11:30 a.m.

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 Advisory Council for Human Genome Research.

Date: September 14-15, 2020.

Closed: September 14, 2020, 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700-B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Open: September 14, 2020, 11:30 a.m. to 5:45 p.m.

Agenda: To discuss matters of program relevance.

Place: National Human Genome Research Institute, National Institutes of Health, 6700-B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Closed: September 15, 2020, 11:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700-B Rockledge Drive, Suite 1100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700-B Rockledge Drive, Suite 1100, Bethesda, MD 20892, (301) 402-0838, pozzatrr@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.genome.gov/council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 31, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17101 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 materials, 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: Board of Regents of the National Library of Medicine.

Date: September 15, 2020.

Open: September 15, 2020, 10:00 a.m. to 11:15 a.m.

Agenda: Program Discussion.

Place: Virtual Meeting.

Closed: September 15, 2020, 11:15 a.m. to 12:15 p.m.

Agenda: Board of Regents Working Group Breakouts.

Open: September 15, 2020, 12:45 p.m. to 3:45 p.m.

Agenda: Program Discussion and Working Group Reports.

Place: Virtual Meeting.

Closed: September 15, 2020, 3:45 p.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892, 301-594-4929, irelanc@mail.nih.gov.

Any member of the public may submit written comments no later than 15 days after the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.nlm.nih.gov/od/bor/bor.html, where an agenda and any additional information for the meeting will be posted when available. Open sessions of this meeting will be broadcast to the public, and available for viewing at <https://videocast.nih.gov> on September 15, 2020.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: July 31, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17095 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee.

Date: November 5, 2020.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Virtual meeting.

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892-7968, 301-594-4937, huangz@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 30, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-17024 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Therapies To Treat IGF-1 Deficiency and Achondroplasia

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute and the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this notice to PreciThera, Inc, located in Montreal, Canada.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before August 20, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Martha T. Lubet, Ph.D., Licensing and Patenting Manager, NCI Technology Transfer Center, Telephone:

(240) 276-5530 or Email: lubetm@mail.nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

(United States Provisional) Patent Application No. 61/927904, filed January 15, 2014 and entitled: "Cartilage Targeting Agents and Their Use" [HHS Reference No. E-003-2014/0-US-01]; (PCT) Patent Application PCT/US2015/011433, filed January 14, 2015 and entitled "Cartilage Targeting Agents and Their Use" [HHS Reference No. E-003-2014/0-PCT-02]; (and U.S. and foreign patent applications claiming priority to the aforementioned applications).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

(A) A fusion protein comprising one of the anti-matrilin 3 binding agents and insulin-like growth factor 1 (IGF-1) for the treatment of short stature of humans with primary IGF-1 deficiency and

(B) a fusion protein comprising one of anti-matrilin 3 binding agents and C-type natriuretic protein for the treatment of humans with achondroplasia.

This technology discloses antigen binding antibody fragments that bind to matrilin-3. These agents were selected from a yeast display antibody library for the ability to bind to human or mouse matrilin-3. Matrilin-3 is strongly expressed in the epiphyseal growth plate of bones. In some embodiments, the antibody fragments are linked to an effector molecule (e.g. growth hormone, IGF-1, or C-type natriuretic protein). Methods of using the anti-Matrilin-3 binding agents to treat skeletal dysplasia, short stature and osteoarthritis are also disclosed.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute and the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development receive written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license

application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 28, 2020.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2020-17098 Filed 8-4-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6195-N-02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 2020, is $\frac{5}{8}$ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2020, is $1\frac{1}{4}$ percent.

FOR FURTHER INFORMATION CONTACT: Elizabeth Olazabal, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5146, Washington, DC 20410-8000; telephone (202) 402-4608 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2020, is 1¼ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 1¼ percent for the 6-month period beginning July 1, 2020. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the last 6 months of 2020).

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅞	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅞	July 1, 1984	Jan. 1, 1985
11⅞	Jan. 1, 1985	July 1, 1985
11⅞	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986

Effective interest rate	On or after	Prior to
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅞	Jan. 1, 1988	July 1, 1988
9⅞	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅞	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅞	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅞	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅞	July 1, 1997	Jan. 1, 1998
6⅞	Jan. 1, 1998	July 1, 1998
6⅞	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅞	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2001	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2002	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2003	Jan. 1, 2004
5⅞	Jan. 1, 2004	July 1, 2004
5½	July 1, 2004	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2005	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅞	July 1, 2006	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅞	July 1, 2008	Jan. 1, 2009
4⅞	Jan. 1, 2009	July 1, 2009
4⅞	July 1, 2009	Jan. 1, 2010
4¼	Jan. 1, 2010	July 1, 2010
4⅞	July 1, 2010	Jan. 1, 2011
3⅞	Jan. 1, 2011	July 1, 2011
4⅞	July 1, 2011	Jan. 1, 2012
2⅞	Jan. 1, 2012	July 1, 2012
2¾	July 1, 2012	Jan. 1, 2013
2½	Jan. 1, 2013	July 1, 2013
2⅞	July 1, 2013	Jan. 1, 2014
3⅞	Jan. 1, 2014	July 1, 2014
3¼	July 1, 2014	Jan. 1, 2015
3	Jan. 1, 2015	July 1, 2015
2⅞	July 1, 2015	Jan. 1, 2016
2⅞	Jan. 1, 2016	July 1, 2016
2½	July 1, 2016	Jan. 1, 2017
2¾	Jan. 1, 2017	July 1, 2017
2⅞	July 1, 2017	Jan. 1, 2018
2¾	Jan. 1, 2018	July 1, 2018
3⅞	July 1, 2018	Jan. 1, 2019
3⅞	Jan. 1, 2019	July 1, 2019
2¾	July 1, 2019	Jan. 1, 2020
1¾	Jan. 1, 2020	July 1, 2020
1¼	July 1, 2020	Jan. 1, 2021

Section 215 of Division G, Title II of Pub. L. 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act)

amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Similarly, Section 520(a) of the National Housing Act (12 U.S.C. 1735d) provides for the payment of an insurance claim in cash on a mortgage or loan insured under any section of the National Housing Act before or after the enactment of the Housing and Urban Development Act of 1965. The amount of such payment shall be equivalent to the face amount of the debentures that would otherwise be issued, plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary. The implementing HUD regulations for multifamily insured mortgages at 24 CFR 207.259(e)(1) and (e)(6), when read together, provide that debenture interest on a multifamily insurance claim that is paid in cash is paid from the date of the loan default at the debenture rate in effect at the time of commitment or endorsement (or initial endorsement if there are two or more endorsements) of the loan, whichever is higher.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month

period beginning July 1, 2020, is $\frac{5}{8}$ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

John Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020-17066 Filed 8-4-20; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2020-0088; FXES1113040000EA-123-FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Florida Scrub-Jay, Volusia County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Freedom Construction USA, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Florida scrub-jay, a bird species, incidental to construction in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 4, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2020-0088 at <http://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2020-0088.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2020-0088; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731-3121 or via email at erin_gawera@fws.gov. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Freedom Construction USA, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*), a bird species, incidental to the construction of multi-family homes (project) in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Freedom Construction USA, LLC requests a 5-year ITP to take Florida scrub-jays through the conversion of approximately 0.17 acres of occupied Florida scrub-jay foraging and sheltering habitat incidental to the construction of multi-family homes located on a 0.64-acre parcel in Sections 13 and 14, Township 18 South, and Range 31 East, in Volusia County, Florida. The applicant proposes to mitigate for take of the Florida scrub-jays by the contribution of \$5,180.58 to the Florida Scrub-Jay Conservation Fund administered by The Nature Conservancy. The Service would require the applicant to make this contribution prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on Florida scrub-jays and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE76013D-0 to Freedom Construction USA, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020-16983 Filed 8-4-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-R4-ES-2020-0087;
FXES1113040000EA-123-FF04EF1000]

**Receipt of Incidental Take Permit
Application and Proposed Habitat
Conservation Plan for the Florida
Scrub-Jay, Volusia County, FL;
Categorical Exclusion**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from ICI Homes, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Florida scrub-jay, a bird species, incidental to construction in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 4, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2020-0087 at <http://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2020-0087.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2020-0087; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904-731-3121 or via email at erin_gawera@fws.gov. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service),

announce receipt of an application from ICI Homes, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed Florida scrub-jay (*Aphelocoma coerulescens*), a bird species, incidental to the construction of a residential development (project) in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

ICI Homes, Inc. requests a 10-year ITP to take Florida scrub-jays by converting approximately 9.21 acres of occupied Florida scrub-jay foraging and sheltering habitat incidental to the construction of a residential development located on a 113.40-acre parcel in Section 20, Township 18 South, Range 31 East, in Volusia County, Florida. The applicant proposes to mitigate for take of Florida scrub-jays by contributing \$282,323.34 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. The Service would require the applicant to make this contribution prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation funding, would individually and cumulatively have a minor or negligible effect on Florida scrub-jays and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our

NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE76784D-0 to ICI Homes, Inc.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

*Field Supervisor, Jacksonville Field Office,
South Atlantic-Gulf & Mississippi-Basin
Regions.*

[FR Doc. 2020-16977 Filed 8-4-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-R4-ES-2020-0085;
FXES1113040000EA-123-FF04EF1000]

**Receipt of Incidental Take Permit
Application and Proposed Habitat
Conservation Plan for the Sand Skink,
Orange County, FL; Categorical
Exclusion**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Withers, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public

comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 4, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2020-0085 at <http://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2020-0085.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2020-0085; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904-731-3121 or via email at erin_gawera@fws.gov. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Withers, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Withers, LLC requests a 5-year ITP to take sand skinks by converting

approximately 5.42 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to the construction of a housing development located on a 158.4-ac parcel in Section 29; Township 24 South; Range 27 East, on Parcel ID numbers 29-24-27-0000-00-001, 29-24-27-0000-00-010 and 29-24-27-0000-00-00017, in Orange County, Florida. The applicant proposes to mitigate for take of the sand skinks by purchasing 10.84 credits from a Service-approved conservation bank. The Service would require the applicant to make this purchase prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 410.8405 and 410.8410. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the

Service will issue ITP number TE 76035D-0 to Withers, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020-16980 Filed 8-4-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2020-0086; FXES11130400000EA-123-FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Titan Liberty Lake Underhill JV and Village I-545 (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 4, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2020-0086 at <http://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2020-0086.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2020-0086; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904-731-3121 or via email at erin_gawera@fws.gov. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Titan Liberty Lake Underhill JV and Village I-545 (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Titan Liberty Lake Underhill JV and Village I-545 requests a 5-year ITP to take sand skinks by converting approximately 2 acres of occupied skink foraging and sheltering habitat incidental to the construction of a housing development located on a 222.5-acre parcel in Section 19, Township 24 South, Range 27 East, on Parcel ID numbers 23-27-0000-00-002, 19-24-27-0000-00-012, 19-24-27-0000-00-013, and 19-24-27-0000-00-014, in Orange County, Florida. The applicant proposes to mitigate for take of the sand skinks by purchasing 4 credits from a Service-approved conservation bank. The Service would require the applicant to make this purchase prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal

identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 44.005 and 44.010. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE76779D-0 to Titan Liberty Lake Underhill JV and Village I-545.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020-16978 Filed 8-4-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2020-0084; FXES11130400000EA-123-FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from BB Groves, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before September 4, 2020.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2020-0084 at <http://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2020-0084.

- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2020-0084; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904-731-3121 or via email at erin_gawera@fws.gov. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from

BB Groves, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

BB Groves, LLC requests a 5-year ITP to take sand skinks through the conversion of approximately 13.15 acres of occupied skink foraging and sheltering habitat for the construction of a housing development located on a 120.18-acre parcel in Sections 30 and 31; Township 24 South; Range 27 East, Orange County, Florida. The applicant proposes to mitigate for take of the sand skinks by purchasing 26.30 credits from a Service-approved conservation bank. The Service would require the applicant to make this purchase prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 426.3005 and 426.3010. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and

candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 75283D-0 to BB Groves, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office.

[FR Doc. 2020-16979 Filed 8-4-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO430000/20X/L12200000.PM0000/241E]

Notice of Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of fee adjustments.

SUMMARY: The Bureau of Land Management (BLM) is adjusting certain Special Recreation Permit (SRP) fees for various recreation activities on BLM-administered public lands and related waters. The BLM is adjusting the minimum fee for commercial, competitive, and organized group activities and events, and assigned sites.

FOR FURTHER INFORMATION CONTACT: Cory Roegner, Division of Recreation and Visitor Services, telephone: 573-261-0163, email: croegner@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact Mr. Roegner during normal

business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: 43 CFR 2932.31 authorizes the BLM Director to periodically adjust SRP fees. This notice establishes that effective immediately, the SRP minimum fee for commercial use is \$115 per year (an increase from \$110). The minimum fee for both competitive events and organized group activities remains \$6 per person per day, and the minimum fee for an assigned site for exclusive commercial use is \$230 per site (an increase from \$220). Individual States also have the option of imposing application fees as a matter of cost recovery and/or establishing higher minimum fees for SRPs. The next fee adjustment is scheduled for March 1, 2023.

The intended effect of the fee calculation process is to ensure that fees cover administrative costs of permit issuance, provide a fair return to the U.S. Government for use of the public lands, and reflect fair market value. The BLM, in coordination with the U.S. Forest Service, adjusts the minimum commercial, competitive, organized group and activity special recreation permit fees, and minimum assigned site fees every 3 years.

These fees are calculated and adjusted based on the change in the Implicit Price Deflator-Gross Domestic Product Index (IPD-GDP). The IPD-GDP is also available from the U.S. Department of Commerce, Bureau of Economic Analysis, at the following website: http://www.bea.gov/iTable/index_nipa.cfm.

Authority: 43 U.S.C. 1740, 16 U.S.C. 6802, and 43 CFR 2932.31.

Thomas Heinlein,

Acting Assistant Director, National Conservation Lands and Community Partnerships.

[FR Doc. 2020-17052 Filed 8-4-20; 8:45 am]

BILLING CODE 4310-84-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-657 and 731-TA-1537 (Preliminary)]

Chassis From China; Institution of Antidumping and 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 antidumping and countervailing duty investigation Nos. 701–TA–657 and 731–TA–1537 (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 certain chassis and subassemblies thereof (“chassis”) from China, provided for in subheadings 8716.39.00 and 8716.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by September 14, 2020. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by September 21, 2020.

DATES: July 30, 2020.

FOR FURTHER INFORMATION CONTACT:

Jordan Harriman ((202) 205–2610), 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 these investigations 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 sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on July 30, 2020, by the Coalition of American Chassis Manufacturers, consisting of Cheetah Chassis Corporation, Fairless Hills, Pennsylvania, Hercules Enterprises, LLC, Hillsborough, New Jersey, Pitts Enterprises, Inc., Pittsview, Alabama, Pratt Industries, Inc., Bridgman,

Michigan, and Stoughton Trailers, LLC, Stoughton, Wisconsin.

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 investigations 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 antidumping duty and 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 the Title VII (antidumping duty and countervailing duty) preliminary phase staff conference through video conferencing on August 20, 2020. Requests to participate in this video conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before August 18, 2020. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission’s Daily Calendar. 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 August 25, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony to the Commission on or before 12:00 p.m. August 19, 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: July 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-17055 Filed 8-4-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Blowers and Components Thereof, DN 3481*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Regal Beloit America, Inc. on July 31, 2020. The complaint alleges violations of

section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain blowers and components thereof. The complaint names as respondents: East West Manufacturing, LLC of Atlanta, GA and East West Industries of Vietnam. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation 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 requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no

later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3481") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). 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. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

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,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 31, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-17097 Filed 8-4-20; 8:45 am]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Civil Rules; Meeting of the Judicial Conference

AGENCY: Advisory Committee on Civil Rules; Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Civil Rules will hold a virtual meeting on October 16, 2020. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone conference to listen but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books>.

DATES: October 16, 2020.

Time: 10 a.m.–5 p.m. (Eastern).

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Telephone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

Authority: 28 U.S.C. 2073.

Dated: July 30, 2020.

Shelly L. Cox,

Rules Committee Staff.

[FR Doc. 2020-17006 Filed 8-4-20; 8:45 am]

BILLING CODE 2210-55-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Meeting of the Judicial Conference

AGENCY: Advisory Committee on Bankruptcy Rules, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Bankruptcy Rules will hold a virtual meeting on September 22, 2020. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone conference to listen but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books>.

DATES: September 22, 2020.

Time: 10 a.m.–5 p.m. (Eastern).

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Telephone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

Authority: 28 U.S.C. 2073.

Dated: July 30, 2020.

Shelly L. Cox,

Rules Committee Staff.

[FR Doc. 2020-17005 Filed 8-4-20; 8:45 am]

BILLING CODE 2210-55-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Meeting of the Judicial Conference

AGENCY: Advisory Committee on Evidence Rules Judicial Conference of the United States; Advisory Committee on Evidence Rules.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Evidence Rules will hold a virtual meeting on November 13, 2020. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone conference to listen but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books>.

DATES: November 13, 2020.

Time: 10 a.m.–5 p.m. (Eastern).

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of

the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Telephone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

Authority: 28 U.S.C. 2073.

Dated: July 30, 2020.

Shelly L. Cox,

Rules Committee Staff.

[FR Doc. 2020-17007 Filed 8-4-20; 8:45 am]

BILLING CODE 2210-55-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Meeting of the Judicial Conference

AGENCY: Advisory Committee on Appellate Rules, Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Appellate Rules will hold a virtual meeting on October 20, 2020. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone conference to listen but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books>.

DATES: October 20, 2020.

Time: 10 a.m.–5 p.m. (Eastern).

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Telephone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

Authority: 28 U.S.C. 2073.

Dated: July 30, 2020.

Shelly L. Cox,

Rules Committee Staff.

[FR Doc. 2020-17004 Filed 8-4-20; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium Americas**

Notice is hereby given that, on July 24, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (“RIC-Americas”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellegated, St. Louis, MO, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on June 29, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2020 (85 FR 43261).

Suzanne Morris,
Chief, Premerger and Division Statistics,
Antitrust Division.

[FR Doc. 2020–17048 Filed 8–4–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Space Enterprise Consortium**

Notice is hereby given that, on July 28, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Space Enterprise

Consortium (“SpEC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Applied Research Associates, Inc., Albuquerque, NM; Astranis Space Technologies Corp., San Francisco, CA; Astrobotic Technology, Inc., Pittsburgh, PA; Astroscale, U.S. Inc., Denver, CO; Chandler Automated Systems, LLC dba Vigilant Technologies, Tempe, AZ; Ciena Government Solutions, Inc., Hanover, MD; Cognitives Space, Inc., Manvel, TX; Collier Research and Development Corporation, Newport News, VA; Enduralock, LLC, Lenexa, KS; Fairwinds Technologies, LLC, Annapolis, MD; GenOne Technologies LLC, Cambridge, MA; HawkEye 360, Inc., Herndon, VA; Home2Office Computing Solutions, Inc. (dba C3 Networx), San Diego, CA; Hypergiant Galactic Systems Inc., Austin, TX; Nou Systems, Inc., Huntsville, AL; O Analytics Incorporated, Fairmont, WV; Optisys, West Jordan, UT; PredaSAR Corporation, Boca Raton, FL; Psionic, LLC, Hampton, VA; Qubitekk, Inc., Bakersfield, CA; Red Hat Professional Consulting, Inc., Raleigh, NC; Robert Doto Associates, LLC, Ft Myers, FL; Sanden High Assurance Solutions, LLC, Ashburn, VA; Sea Air Machining & Molding, Streetsboro, OH; Shift8, Inc., Arlington, VA; Square Peg Technologies LLC, Washington, DC; Steelhead Composites, Inc., Golden, CO; Stress Engineering Services, Inc., Houston, TX; Tableau Software, Inc., Seattle, WA; Umbra Lab, Inc., Santa Barbara, CA; VES LLC, Aberdeen Proving Ground, MD; and Vulcan Wireless, Inc., Carlsbad, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and SpEC intends to file additional written notifications disclosing all changes in membership.

On August 23, 2018, SpEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2018 (83 FR 49576).

The last notification was filed with the Department on April 30, 2020. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on May 19, 2020 (85 FR 29978).

Suzanne Morris,
Chief, Premerger and Division Statistics,
Antitrust Division.

[FR Doc. 2020–17049 Filed 8–4–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****Petitions for Modification of Application of Existing Mandatory Safety Standards**

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of 6 petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA’s Office of Standards, Regulations, and Variances on or before September 4, 2020.

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist’s desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9557 (voice), Noe.Song-Ae.A@dol.gov (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44

govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2020-008-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including total station surveying equipment, distance meters, theodolites, and data loggers, in or inby the last open crosscut.

The petitioner states that:

(a) The Longview mine will utilize room and pillar and longwall coal mining methods.

(b) Coal extraction will be at an average mining height of 6.5 feet; at the Longview Portal, the coal seam will be 880 feet below the surface. It will be ventilated by a 16-foot diameter intake air shaft and fan at the portal site. A 24-foot combination return and hoist divided shaft will be used for exhaust air and personnel access through a 5-ton rated hoist and cage.

(c) Coal will be transported from the seam to the surface using a 72-inch mine conveyor.

(d) To support mining operations, specifically for accurately locating entries, bore holes, gas wells, and other features, mine surveying will be used. Surveying technology such as total stations and theodolites have advanced greatly in recent years, allowing for

increased accuracy and precision for calculating distances and angles. These new surveying systems are not currently MSHA-certified and do not meet the requirements of 30 CFR 75.500(d). For this equipment to be employed in the Longview mine, the mine operator has submitted this petition for modification of 30 CFR 75.500(d).

As an alternative to the existing standard, the petitioner proposes the following:

(a) The operator proposes to use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut, subject to this petition:

- (1) Sokkia Electronic Total Station Model SET 350RX-3
- (2) Sokkia Electronic Total Station Model SET 350R
- (3) Sokkia Electronic Total Station Model SETS 50 RX
- (4) Sokkia Electronic Total Station Model SET-300
- (5) Sokkia Compact X-ellence Station CX
- (6) Sokkia Compact X-ellence Station CX-60
- (7) Sokkia Intelligence Measurement Station iM-100
- (8) Sokkia SHC250 Data Collector
- (9) Topcon Electronic Total Station Model GTS-225
- (10) Topcon Electronic Total Station Model GTS-300W
- (11) Topcon Digital Theodolite Model DT-270L
- (12) Topcon Digital Theodolite Model DT-209L
- (13) Topcon Electronic Total Station Model GTS-301D
- (14) Topcon Electronic Total Station Model GTS-235W
- (15) Topcon Electronic Total Station Model GM-50
- (16) Topcon Electronic Total Station Model GM-100
- (17) Topcon FC-5000 Handheld Controller
- (18) Topcon FC-500 Handheld Controller

(b) The survey equipment will only be used if the equipment has an IP 66 rating or higher when available, if such a rating is not available then the highest IP rating available will be used. If the equipment contains lithium batteries, they will meet the lithium battery safety standard UL 1642 or IEC 62133.

(c) A record of the equipment will be kept on mine property in either a secure book or electronically in a secure computer where the records will not be alterable. The record will contain: The date of manufacture and/or the purchase information of each piece of survey equipment; proof of compliance with lithium battery standards; the original equipment manufacturers' user and maintenance manuals. These records will be available to the Authorized

Representatives of the Secretary and miners at the mine.

(d) Survey equipment will be examined by a qualified person, as in 30 CFR 75.153, before the equipment is taken underground to ensure safe operating conditions. The minimum requirements of the examination by a qualified person are the following:

(1) Check the equipment for physical damage and the integrity of the case;

(2) Remove the battery and check for corrosion, if removable;

(3) Inspect the contact points to ensure a secure connection to the battery, if removable;

(4) Reinsert the battery, power up and shut down to ensure proper connections, if accessible;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium cells, the cells will be inspected to ensure they are not damaged or swelled in size.

(7) The results of the examinations will be recorded.

(e) A qualified person, as in 30 CFR 75.512-2, will examine the equipment weekly and record the results. Records will be expunged after one year.

(f) The equipment will be serviced per the manufacturers' recommendation, dates of service and a description of the work performed will be recorded.

(g) Surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. Batteries will not be removed to de-energize equipment due to the possibility of accidental short-circuiting. All requirements of 30 CFR 75.323 will be complied with prior to entering in or inby the last open crosscut.

(h) A qualified person, as in 30 CFR 75.100, will conduct a visual examination of the location that the survey equipment will be used in before the equipment is taken into or energized in that area. The visual examination will include: Evidence that the area is properly rock dusted and whether there is an accumulation of combustible material (such as float coal dust). If float coal dust is observed in suspension then the equipment cannot be energized until sufficient rock dusting has been applied and/or the combustible material has been cleaned up or removed.

(i) A methane test will be made at least 12 inches from the roof, face, ribs, and floor (as set out by 30 CFR 75.323)

before energizing equipment in the subject area.

(j) Hand-held methane detectors will be MSHA-approved as set forth by 30 CFR 75.320. Measurement devices will be calibrated or bump tested before each shift to ensure that they function properly. Methane detectors will provide visual and audible warnings when methane is detected above 1.0 percent.

(k) As required by 30 CFR 75.360, the subject area must be pre-shift examined before using surveying equipment. If not examined pre-shift, a supplemental examination will be conducted (as in 30 CFR 75.361) before a noncertified person enters the subject area.

(l) A qualified person must confirm, either by measurement or inquiry of the certified person in charge of the section, that the air quantity meets the minimum quantity required by the mine's approved ventilation plan.

(m) Methane will be continuously monitored before and during the use of equipment in the subject area by a qualified person.

(n) Batteries must be "changed out" in the intake area and no work will be performed on the equipment listed in the petition while in the subject area. Replacement batteries will not be brought into the subject area; all batteries for equipment listed will be charged and protected (using equipment carrying cases or in the equipment) during each entry into the mine.

(o) The following maintenance and use conditions are required for lithium batteries:

(1) The battery pack will not be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The battery pack will only be charged using the original equipment manufacturer's recommended charger.

(3) The battery will not be exposed to water or allowed to get wet; not precluding incidental exposure of sealed battery packs.

(4) The battery will not be placed in direct sunlight or used or stored near a source of heat.

(5) The battery will not be used at the end of its life cycle (when there is a performance decrease of greater than 20% in battery operated equipment).

(6) The battery will be properly disposed of.

(p) Personnel using the equipment will be qualified, as in 30 CFR 75.153, and trained according to the manufacturer's recommended safe use procedures, including recognizing hazards associated with using equipment where methane could be present.

(q) The above non-permissible survey equipment will be used when production is occurring, if the following conditions are met:

(1) On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as "baloney skins") or curtains.

(2) Production will continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring, or the surveying equipment is upwind of the production equipment.

(3) Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine's ventilation system that causes the ventilation system not to function in accordance with the mine's approved ventilation plan.

(4) If, while surveying, a surveyor must disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation must be disrupted. Production will stop while ventilation is disrupted.

Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.

(5) All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The operator will keep a record of the training and provide the record to MSHA on request.

(6) The operator will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The operator will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The operator will keep a record of the training and provide the record to MSHA personnel on request.

(r) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-009-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible electronic testing and diagnostic equipment, in or inby the last open crosscut.

The petitioner states that:

(a) The Longview mine will utilize room and pillar and longwall coal mining methods.

(b) Coal extraction will be at an average mining height of 6.5 feet; at the Longview Portal, the coal seam will be 880 feet below the surface. It will be ventilated by a 16-foot diameter intake air shaft and fan at the portal site. A 24-foot combination return and hoist shaft will be used for exhaust air and personnel access through a 5-ton rated hoist and cage.

(c) Coal will be transported from the seam to the top of the slope using a 72-inch mine conveyor.

(d) To support mining, electrical testing and diagnostic equipment is necessary. Modern mining equipment includes programmable logic controllers which use digital signals from machine sensors to govern machine systems. To troubleshoot such modern systems, as required by 30 CFR 75.503, certain electronic tools are needed such as electronic tachometers. This electronic equipment includes: Laptop computers to communicate with machine control systems; vibration, temperature, and electronic tachometers to support preventative and predictive maintenance to identify hazards; cable fault detectors and insulation testers (meggers), which identify and locate insulation failures in trailing cables, electric motors, and control cables with power removed; oscilloscopes to view machine control and communication signals for proper wave forms frequency and amplitude, removing improper control signals that can create hazards to mine personnel; voltage, current, resistance, and power test meters for troubleshooting that mining machines and systems are properly functioning. These electronic systems are not currently MSHA-certified and do not meet the requirements of 30 CFR

75.500(d). For this equipment to be employed in the Longview mine, the mine operator has submitted this petition for modification of 30 CFR 75.500(d).

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner proposes using the following testing and diagnostic equipment in by the last open crosscut: Laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current, resistance meters, power testers, and electronic tachometers. Other testing and diagnostic equipment would also be used if approved in advance by MSHA's District Manager. The petitioner will use more than one piece of testing equipment at the same time.

(b) The petition excludes MSHA's already approved list of permissible electronic testing and diagnostic equipment.

(c) The testing or diagnostic equipment will only be used:

(1) Until equal MSHA-approved permissible electronic testing and diagnostic equipment is available.

(2) When commercially available, the operator must use equipment that meets IEC 60079-11 or the ANSI/UL 60079-11 for two-fault IS (marked ia), one-fault IS (marked ib), or no-fault IS (marked ic) in that order of preference. The equipment must have an IP 66 rating or higher when available; if IP 66 is not available, the highest available IP rating available will be used.

(3) If any of the equipment uses lithium batteries, they must meet lithium battery safety standards UL1642, IEC 62133, or current equal standards.

(d) A record of the equipment will be kept on mine property in either a secure book or electronically in a secure computer where the records will not be alterable. The record will contain: The date of manufacture and/or the purchase information of each piece of equipment; proof of compliance with lithium battery standards; the original equipment manufacturers' user and maintenance manuals. These records will be available to the Authorized Representatives of the Secretary and miners at the mine.

(e) Testing or diagnostic equipment will be examined by a qualified person, as in 30 CFR 75.153, before the equipment is taken underground to ensure safe operating conditions. The minimum requirements of the examination by a qualified person are the following:

(1) Check the instrument for physical damage and the integrity of the case;

(2) Check that the battery compartment cover or attachment is securely fastened if equipped; and

(3) For equipment utilizing lithium cells, the cells will be inspected to ensure they are not damaged or swelled in size.

(4) The results of the examinations will be recorded.

(f) A qualified person, as in 30 CFR 75.512-2, will examine the equipment weekly and record the results. Records will be expunged after one year.

(g) The equipment will be serviced per the manufacturers' recommendation, dates of service and a description of the work performed will be recorded.

(h) Equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn out by the last open crosscut. Batteries will not be removed to de-energize equipment due to the possibility of accidental short-circuiting. All requirements of 30 CFR 75.323 will be complied with prior to entering in or in by the last open crosscut.

(i) A qualified person, as in 30 CFR 75.100, will conduct a visual examination of the location that the testing equipment will be used in before the equipment is taken into or energized in that area. The visual examination will include: Evidence that the area is properly rock dusted and whether there is an accumulation of combustible material (such as float coal dust). If float coal dust is observed in suspension then the equipment will not be energized until sufficient rock dusting has been applied and/or the combustible material has been cleaned up or removed.

(j) All hand-held methane detectors will be MSHA-approved as set forth by 30 CFR 75.320. Measurement devices will be calibrated or bump tested before each shift to ensure that they function properly. Methane detectors will provide visual and audible warnings when methane is detected above 1.0 percent.

(k) Methane tests will be made at least 12 inches from the roof, face, ribs and floor, as in 30 CFR 75.323(a), before energizing equipment in the subject area.

(l) As required by 30 CFR 75.360, the subject area will be pre-shift examined before using equipment. If not examined pre-shift, a supplemental examination will be conducted (as in 30 CFR 75.361) before a noncertified person enters the subject area.

(m) A qualified person will confirm, either by measurement or inquiry of the certified person in charge of the section, that the air quantity for that shift meets the minimum quantity required by the mine's approved ventilation plan before using any testing or diagnostic equipment.

(n) A qualified person will continuously monitor methane immediately before and during use of testing and diagnostic equipment in the area. Monitoring will be conducted using a hand-held methane detector, positioned in locations with the best possibility of detecting hazardous gas in the area where equipment is being used; a qualified person will be with the equipment while it is in use.

(o) Batteries must be "changed out" in intake area and no work will be conducted on the equipment while in the subject area. Replacement batteries will not be brought into the subject area; all batteries for equipment listed will be charged and protected (using equipment carrying cases or in the equipment) each entry into the mine.

(p) The following maintenance and use conditions will apply to lithium batteries:

(1) The battery pack will not be disassembled or modified by anyone other than permitted by the manufacturer of the equipment.

(2) The battery pack will only be charged using the original equipment manufacturer's recommended charger.

(3) The battery will not be exposed to water or allowed to get wet; not precluding incidental exposure of sealed battery packs.

(4) The battery will not be placed in direct sunlight or used or stored near a source of heat.

(5) The battery will not be used at the end of its life cycle (when there is a performance decrease of greater than 20% in battery operated equipment).

(6) The battery will be properly disposed.

(q) Personnel using the equipment will be qualified, as in 30 CFR 75.153, and trained according to the manufacturer's recommended safe use procedures, including recognizing hazards associated with using equipment where methane could be present.

(r) All qualified persons and miners affected by this petition will receive specific training on the conditions of this petition before using testing and diagnostic equipment in the subject area. A record of training will be: Maintained, provided upon request by an Authorized Representative of the Secretary, documented on a MSHA Certificate of Training form (form 5000-

23); a notation will be included on the certificate of training to indicate that it was for non-permissible testing equipment.

(s) Testing or diagnostic equipment will not be used when coal production is occurring on the MMU and all mining on the MMU will stop before use of testing or diagnostic equipment in the subject area. If troubleshooting or testing without power, the petitioner will de-energize, lock, and tag-out the circuit on the equipment. Personal protective equipment (like electrically rated gloves), will be worn when troubleshooting or testing energized low and medium voltage circuits. Once the issue is determined, before performing electrical work, petitioners will open the circuit breaker, disconnect, and lock-out and tag-out the visual disconnect device. High voltage circuits will be grounded before conducting repairs.

(t) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-010-C.

Petitioner: Century Mining LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia 26330.

Mine: Longview Mine, MSHA I.D. No. 46-09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1700, as it relates to vertical oil and gas wells at the Longview mine. The operator is petitioning in order to mine through existing wells as they are met.

The petitioner states that:

(a) The Longview mine will utilize room and pillar and longwall coal mining methods.

(b) Coal extraction will be at an average mining height of 6.5 feet; at the Longview Portal, the coal seam will be 880 feet below the surface. It will be ventilated by a 16-foot diameter intake air shaft and fan at the portal site. A 24-foot combination return and hoist divided shaft will be used for exhaust air and personnel access through a 5-ton rated hoist and cage.

(c) Coal will be transported from the seam to the surface using a 72-inch mine conveyor.

(d) In order to efficiently develop and mine the reserve, the petitioner is planning to mine through conventional vertical and coal bed methane (CBM) wells, instead of utilizing the 300' barrier that is required by 30 CFR 75.1700, by cleaning out, preparing,

plugging, and/or re-plugging each well and follow safety precautions as outlined below. CBM wells are drilled from the surface to develop horizontal branches within the coal seam; multiple branches can be developed from a single well and multiple seams from a single well. The proprietary drilling process is generically known as surface directional drilled (SDD) wells.

(e) In the Longview mine, there are approximately 194 conventional or CBM wells. 116 are active, 19 are abandoned, and 59 are plugged. There are 4 CBM wells, 5 horizontal wells, and 185 vertical wells restricting Longview mining operations. The petitioner proposes to address potential hazards to miners, presented by CBM wells, through plugging procedures, water infusion, ventilation methods, and other safety precautions.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The following are proposed for safety barriers:

(1) A safety barrier will be constructed and maintained around each conventional vertical oil and gas wells (active, inactive, abandoned, shut-in, and previously plugged wells, including water injections wells) until mining is allowed to continue by the district manager. The safety barrier will be 300 feet in diameter and 150 feet between a mined area and conventional vertical well. The petitioner will request a permit to lower the 300-foot safety barrier if the operator's planned mining operations will not intersect a well but will mine within the 300-foot barrier.

(2) There is a probability of error of location due to estimated location systems, which depending on the equipment and techniques are accurate to within one or two degrees. Probability of error is dependent on a cone described by the accuracy of angular measurements around the hole. Other errors include: Underground survey errors, surface survey errors, and random survey errors.

(3) The minimum working barrier surrounding a coalbed methane well or any branches of a coalbed methane well will be 50 feet plus the probable error of location. 50 feet is considered by the petitioner to be a reasonable distance between the well and mining operations.

(4) The petitioner will provide the district manager with a sworn affidavit or declaration by a company official (accompanied by logs and records requested) that procedures for cleaning out, preparing, and plugging oil or gas wells have been done according to the terms and condition of this petition,

before mining within the safety barrier around the well.

(b) Proposed procedures for cleaning out, preparing, plugging, and replugging oil or gas wells:

(1) For preparing conventional vertical oil and gas wells before plugging or replugging:

(i) The petitioner will completely clean out the well from the surface to at least 200 feet below the base of the lowest mineable coal seam, removing material from the well (wall to wall).

(ii) Down-hole logs will be prepared for each well consisting of caliper survey logs suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon producing strata and the location for the bridge plug. A journal will be kept describing the depth and nature of materials encountered, the bit size and type used to drill each portion of the hole; the length and type of material for plugging the well, the length of casing removed, perforated or ripped or left in place, any sections where casing was cut or milled, or any other information for cleaning and sealing the well. Invoices, work-orders, and other related records will be maintained and available to MSHA at request.

(iii) When cleaning out the well, a diligent effort will be made to remove all the casing in the well, but if it is not possible then the petitioner will make sure that the annulus between the casing and well walls are filled with expanding cement (at a minimum 0.5% expansion upon setting) with no voids. If the casing cannot be removed, it will be cut or milled at all mineable coal seam levels. Remaining casing will be perforated or ripped every 50 feet from 200 feet below the base of the lowest mineable coal seam and up to 100 feet above the uppermost part of the mineable coal seam. If the petitioner, using a casing bond, can demonstrate the annuli in the wells are adequately sealed with cement, the petitioner will not perforate or rip casing for that well. If there are multiple casing and tubing strings present in the coal horizon(s), remaining casing can be ripped or perforated and filled with expanding cement, as directed above. An acceptable casing bond log for each casing and tubing string will be provided if used instead of ripping or perforating multiple strings.

(iv) If the cleaned-out well is emitting excessive gas, a mechanical bridge plug will be placed in the well in a competent stratum at least 200 feet below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon-producing

stratum. If this is not possible, a properly sized packer will be used.

(v) If the uppermost hydrocarbon-producing stratum is within 300 feet of the base of the lowest minable coal seam, the properly placed mechanical bridge plugs, described in subparagraph (b)(1)(iv) above, will be used to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nonetheless, a minimum of 200 feet of expanding cement will be placed below the lowest mineable coal seam.

(2) For plugging or replugging conventional vertical oil or gas wells to the surface: A cement plug will be set by pumping an expanding cement slurry down the well from at least 200 feet below the base of the lowest mineable coal seam under 200 pounds per square inch of pressure, using Portland cement or another lightweight cement to fill from 100 feet above the top of the uppermost mineable coal seam to the surface; steel turnings or small magnetic particles will be embedded in the top of the cement near the surface as a permanent magnetic monument of the well, or alternatively, a 4.5 inch or larger casing set in cement will be extended 36 inches above ground level with the API well number engraved or welded on the casing (if not marked physically, high-resolution GPS coordinates will be provided).

(3) For plugging or replugging conventional vertical oil and gas wells for use as degasification boreholes:

(i) A cement plug will be set in the well by pumping an expanding cement slurry down the tubing to provide at least 200 feet of expanding cement below the lowest mineable coal seam under 200 pounds per square inch of pressure. The top of the expanding cement will extend above the coal seam being mined by at least 30 feet.

(ii) The bedrock will be grouted into the upper part of the degasification well to protect it and the remainder will be cased or uncased.

(iii) The top of the degasification casing will be fitted with a wellhead. Such equipment will include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing.

(iv) The ventilation plan will address the operation of the degasification well, including periodic methane tests and limits on the extraction of methane concentrations.

(v) After the part of the coal mine that has been degassed by a well is sealed or if the coal mine is abandoned, degassed holes will be sealed by: Inserting a tube to the bottom of the hole (if not possible then not greater than 100 feet above the mined seam) and removing any

blockage. A cement plug will be set in the well by pumping Portland cement or another lightweight cement mixture down the tubing until the well is filled to the surface; steel turnings or small magnetic particles will be embedded in the top of the cement near the surface to serve as a permanent magnetic monument for the well, alternatively a 4.5 inch or larger casing, set in cement, will be extended 36 inches above ground level with the API well number engraved or welded on the casing (if not marked physically, a high-resolution GPS coordinates will be provided).

(4) An alternative to preparing and plugging or replugging conventional vertical oil or gas wells:

(i) The below provisions apply to wells that cannot be cleaned out because of damage, caused by subsidence, caving, or other factors.

(ii) A hole will be drilled adjacent and parallel to the well to a depth of at least 200 feet below the lowest mineable coal seam.

(iii) A geophysical sensing device will be used to locate casings remaining in the well.

(iv) If there are casing(s) present in the well, the petitioner will access the well from a parallel hole, the petitioner will perforate or rip all casings at intervals of at least 5 feet, from 10 feet below the coal seam to 10 feet above the coal seam. After that, the petitioner will perforate or rip at least every 50 feet from 200 feet below the base of the lowest mineable coal seam up to 100 feet above the seam mined. The annulus between casings and the well wall will be filled with expanding cement (at a minimum 0.5% expansion upon setting), with no voids. If the petitioner, using a casing bond, can demonstrate that the annulus of the well is adequately sealed with cement, the petitioner will not perforate or rip casing for that well. When there are multiple casings and tubing strings in the coal horizon, remaining casing will be ripped or perforated and filled with expanding cement. A casing bond log for casing and tubing string will be used instead of ripping or perforating multiple strings.

(v) If there is not enough casing in the well, a horizontal hydraulic fracturing technique can be used to intercept the original well. The petitioner will fracture at least six places at intervals agreed on with the district manager after taking into account geological strata and well pressure. These fractures will be from at least 200 feet below the base of the lowest mineable coal seam to at least 50 feet above the seam mined. Expanding cement will be pumped into the fractured well to intercept voids.

(vi) Down-hole logs will be prepared for each well consisting of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of coal seams and the potential hydrocarbon-producing strata and the location for the bridge plug. Logs can be obtained from an adjacent hole if the conditions of the well makes it impractical to insert the equipment necessary to obtain the log. Down hole camera surveys will be used instead of down-hole logs if the logs are not suitable for obtaining the data or are impractical to obtain, due to the condition of the drill hole. A journal will be kept describing the depth and nature of materials encountered, the bit size and type used to drill each portion of the hole, the length and type of materials for plugging the well, the length of casing removed, perforated, ripped, or left in place, and other information concerning sealing the well. Invoices, work-orders, and other related records will be maintained and available to MSHA at request.

(vii) Once the well has been plugged, the petitioner will use Portland cement or another lightweight cement mixture to plug open portions of both holes from the bottom to the surface. The petitioner will embed steel turnings or small magnetic particles in the top of the cement near the top of the surface as a permanent magnetic monument of the well, alternatively a 4.5 inch or larger casing, set in cement, will be extended 36 inches above ground level with the API well number engraved or welded on the casing.

(5) The petitioner proposes the following procedures for plugging or replugging SDD wells:

(i) Approved methods will be completed on each SDD well before mining near the minimum working barrier around the well; if methane leakage is an issue during retreat mining, the minimum working barrier must be maintained around wells for a safe intersection.

(ii) Cement plugs will be used to fill the SDD hole system using squeeze cementing due to the lack of tubing. Cement will be used to eliminate methane leakage. After the cement has cured, the SDD system will be intersected multiple times without additional hole preparation. Gas cutting will occur if the cement placement pressure is less than the methane pressure. If done, gas will bubble out of the seam into the unset cement creating pressurized voids or interconnected pressurized voids. Water cutting occurs when water in the hole enters unset cement. Standing water will be bailed out of the hole or driven into the

formation with compressed gas to lessen water cutting. Cement pressure must be kept higher than the formation pressure until its sets to avoid water and gas cutting. Because of the amount of cement and potential problems, pumping units with back-up capacity will be used. Additives such as retarders, lightweight extenders, viscosity modifiers, thixotropic modifiers, and fly ash will be added to the cement mix. The volume of the cement pumped will exceed the hole volume to fill voids. Safety Data Sheets for all materials, cements, additives, components of protective equipment, and techniques protecting workers from potential harm from cement (along with cement components) will be kept in records at the mine office along with records of the mixes, materials, pressures, flow rates and times for each plugged hole.

(iii) SDD holes plugged before mining will have appropriate documentation of the cement plugging.

(iv) Polymer gels will be pumped into the SDD system; they start as low viscosity, water-based mixtures of organic polymers that are crosslinked using time-delayed activators to create water-insoluble, high viscosity gel after being pumped into the SDD system. Although polymer gel never solidify, the activated gel should develop sufficient strength to resist gas flow. Such gel suitable for treating SDD wells for mine intersection will reliably fill the SDD system and prevent gas-filled voids.

(v) These gels will be resistant to bacteria and chemical degradation and will stay stable throughout the mining of an SDD system. The following are considerations for polymer gels: (1) Water can dilute the gel, making it unable to set to the applicable strength. Water will be removed from holes before gel is injected, which will be accomplished through bailing and injecting compressed gas to push water that is in low spots into formation. This process of gas pressurization will continue until the hole is dry. Dissolved salts in the formation waters can also pose a potential problem because they can interfere with the cross-linking reactions using gels. (2) The equipment to mix and pump gels will be able to fill the hole before the gel sets and backup units will be on hand in case issues arise. The volume of gel pumped will exceed estimated hole volume to make sure voids are filled and for gel to infiltrate joints surrounding the hole. To reduce the potential for inundation of gel, the level will be close to the level of the coal seam and the rest of the hole will be open to atmosphere until mining in the SDD system vicinity is

completed. To isolate portions of the SDD system, packers will be used. (3) Safety Data Sheets will be maintained in the mine office for all gel components, and any protective equipment, and techniques used to protect miners from harmful effects of the gel (or gel components). A record of hole volume, gel quantities, gel formation, pump pressures, and flow rates and times will also be kept for holes treated with gel.

(vi) Bentonite gel will be injected into the SDD system to infiltrate the cleat and butt joints of the coal seam near the well bore to seal conduits against the flow of methane by filling and sealing the borehole. Bentonite gel is a thixotropic fluid that sets when it stops moving. Bentonite gel has a significantly lower viscosity than polymer gel. While the gels seal the borehole, lower strength bentonite gel will penetrate fractures and jointing in the coal seam to be effective. Bentonite gel will only be used for depleted CBM applications with low abandonment pressure and a limited recharge potential. The following are procedures for using this gel: (1) A slug of water is injected before using bentonite gel to lessen moisture-loss, the volume of gel injected should exceed the estimated hole volume to make sure that the gel accesses the joints in the coal seam around the hole. Additives will be needed to change viscosity, lessen filtrates, reduce surface tension, and increase sealing of cracks and joints. The level of the gel should approximate the elevation of the coal seam and the rest of the hole should be open to atmosphere. (2) If a water column is used to pressure gel, it will be taken out to the coal seam elevation before intersection occurs. (3) The Safety Data Sheets for all gel or protective equipment and techniques to protect workers from the potentially harmful effects of the gel and additives must be maintained at the office. A record of the hole preparation, gel quantities, gel formulation, pump pressures, and flow rates will be kept for each hole that is treated by bentonite gel.

(vii) To facilitate the safe intersection of a hole near a coal mine, the technique of reducing pressure to less than atmospheric pressure (using a vacuum blower connected to the wellhead) will be used. Negative pressure in the hole limits the amount of methane released into higher-pressure mine atmosphere. If the intersection is near the end of the horizontal branch of the SDD system, air will go into the upstream side of the hole and be reduced through a surface blower. On the downstream side of the intersection, if the hole length is short, ventilation will dilute methane to safe

levels. Intersection near the bottom of the vertical hole will not be possible because of the difficulty of diluting methane released. The rate of methane emissions is directly related to the length of the open hole. Vacuum systems will be limited due to caving or water collected in the SDD system. The methane liberation rate of coal formation around the well is an important factor for the success of vacuum systems. This technique is more likely to be successful in more depleted wells with lower methane emissions.

(viii) To reduce methane inflow after intersection, packers will be used. All packers on the downstream side must have a center pipe to inject water and measure methane pressure, subsequent intersections will not be completed if pressure in a packer-sealed hole is too high. Alternatively, methane from the downstream hole can be piped to an in-mine degas system to safely transport methane away from the mine or to pipe to the return air course for dilution. In-mine methane piping should be protected, as required by "Piping Methane in Underground Coal Mines" (MSHA IR 1094, 1978). Protected methane diffusion zones will be established in return air courses, if needed.

(ix) Water infusion prior to intersecting the well will temporarily limit methane flow. Water infusion will also help control coal dust levels during mining. High water infusion pressures will be obtained prior to the initial intersection by the hydraulic head resulting from the hole depth or by pumping.

(x) Water infusion pressure is limited by leakage around in-mine packers and issues with the water distribution system; the water level in the hole should be lowered to that of the coal seam elevation if infusing before the initial intersection.

(xi) Negative pressures applied to the system, methane release, use of packers, and any water infusion pressures and application time will all be recorded and kept for each intersection.

(xii) If there are issues during a safe intersection, then remedial actions will be taken to counteract those issues.

(xiii) If problems are encountered in preparing the holes for safe intersection, then remedial measures must be taken to protect the miners. For example: If only one-half of the calculated volume of cement could be placed into a SDD well due to hole blockage, holes should be drilled near each branch that will be intersected and squeeze cemented using pressures sufficient to fracture into the potentially empty SDD holes.

(c) The following are proposed methods for mining within the safety barrier, or mining through a plugged or relogged well:

(1) At least 48 hours before the intended intersection of any well or the initial intersection of any branch of an SDD well, the petitioner will notify the District Manager, the State, and the miner's representative.

(2) No person will be permitted in the area of the mining-through operation except those actually engaged in the operation, company personnel, representatives of the miners, personnel from MSHA, and personnel from the appropriate State agency.

(3) Before the planned intersection, the petitioner will alert all personnel in the mine, to be repeated for all shifts until the well is mined through.

(4) The mine-through operation will be under the direct supervision of a certified individual. Instructions concerning the mine-through operation will be issued only by the certified individual in charge.

(5) The first intersection of a well or branch of a well is a higher risk than ensuing intersections because it is the point where well or branch preparation is enough to prevent the release of methane into the mine. The following procedures will be required for the first intersection encountered:

(i) When using continuous mining methods, the petitioner will install drivage sights at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sites will not be more than 50 feet from the well. When using longwall-mining methods, drivage sights will be installed on 10-foot centers for a distance of 50 feet in advance of the well. Sights will be installed in both the headgate and tailgate.

(ii) Firefighting equipment will be available and usable in the mining site, including fire extinguishers, rock dust, and a fire hose that can reach the working face area of the mining-through will be available when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. The petitioner will maintain the water line to the belt conveyor tailpiece as well as a hose long enough to reach the furthest point of penetration on the section. For longwall mining, a hose to the longwall water supply is enough. All fire hoses will be ready for operation during the mining-through.

(iii) Sufficient supplies of roof support and ventilation materials will be available and located at the last open crosscut. In addition, an emergency plug

and suitable sealing materials will be available in the immediate area of the well intersection.

(iv) All equipment will be checked for permissibility and serviced on the shift prior to mining-through the well.

(v) The methane monitor on the continuous mining machine, or cutting machine and loading machine, will be calibrated on the shift prior to mining-through the well.

(vi) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected and immediately prior to mining through. During the actual cutting through process, no individual will be allowed on the return side until mining-through has been completed and the area has been examined and declared safe. All workplace exams will be completed on the return side of the shearer while the shearer is idle.

(vii) When using continuous or conventional mining methods, the working place will be free from accumulations of coal dust and coal spillages, and rock dust will be placed on the roof, rib and floor within 20 feet of the face when mining through or near the well on the shift or shifts during which the cut-through will occur. For longwall sections, rock dusting will be conducted and placed on the roof, rib, and floor up to the headgate and tailgate gob.

(viii) When the wellbore is intersected, all equipment will be deenergized and the place thoroughly examined and determined safe before mining is resumed. After a well has been intersected and the working place determined safe, mining will continue inby the well a sufficient distance to permit adequate ventilation around the area of the well.

(ix) The use of torches will not be necessary if the casing is cut or milled at the seam level, but in rare circumstance, torches will be utilized for improperly cut or milled casings. An open flame will not be allowed in the area until methane levels are less than 1.0% (in the area exposed to torch flames and sparks) and adequate ventilation is established in the area around the well bore. A thick layer of rock dust will be applied by the petitioner to the roof, face, floor, ribs and any other exposed coal inside of 20 feet of the casing before using torches.

(x) Non-sparking (brass) tools will be located at and used on the working section so as to expose and examine cased wells.

(5) The borehole location will be identified when the initial intersection with the well or branch is made. The borehole location will be identified as the wellbore plot adjusted to reduce the established safety zone of 20 feet for ensuing lateral intercepts. At each new intersection of a branch of the well, the same process will take place except for the reduction of the safety zone.

(6) Upon encountering a void at the mine through (*i.e.*, the presence of backfill material is not detected), if the methane reading is below 1%, then the mining will continue, but if it is greater than 1%, mining will halt. A mechanical air packer will be installed in the rib near the wellhead to correct the situation, the packer will be sealed so that leakage does not occur. If this does not address the issue, an alternative approach will be approved.

(7) Upon encountering a void at the initial mine through (*i.e.*, presence of backfill material not detected), after finishing mining in that block, a mechanical or air packer will be installed on the inby side of the mined through hole (the first intercept). The void will be sealed at the opening using water infusion or grout, before the second intercept and expected mine through. These procedures will be repeated when new hole intercepts are encountered and where expected mine through situations are met for voids.

(d) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-011-C.

Petitioner: Jarisa, Inc., 935 State Hwy 317, Neon, KY 41840.

Mine: E4-1 Mine, MSHA I.D. No. 15-18565, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in or inby the last open crosscut.

The petitioner states that:

(a) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) The petitioner utilizes the continuous mining method.

(c) Accurate survey equipment is an important safety feature for this mine.

(d) Mechanical surveying equipment has been obsolete for a number of years. Such equipment of acceptable quality is not commercially available. Further, it is difficult, if not impossible, to have such equipment serviced or repaired.

(e) Electronic surveying equipment is, at a minimum, 8 to 10 times more accurate than mechanical equipment.

(f) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner will use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in or inby the last open crosscut, subject to this petition:

—Topcon GTS-233 W 7.2 Volts DC
 —Topcon GPT-3003 LW 7.2 Volts DC
 —Topcon GTS 223 7.2 Volts DC
 —Topcon GTS 243 NW 7.2 Volts DC

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites, data loggers, and laser distance meters. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The petitioner will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The petitioner will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in or inby the last open crosscut will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn outby the last open crosscut. All requirements of 30 CFR 75.323 will be complied with prior to entering in or inby the last open crosscut.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rock-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will

provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in or inby the last open crosscut, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in or inby the open crosscut when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in or inby the last open crosscut. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew will become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air outby the last open crosscut. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in or inby the last open crosscut, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in or inby the last open crosscut is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such

equipment in areas where methane could be present.

(g) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in or inby the last open crosscut. A record of the training will be kept with the other training records.

(r) If the petition is granted, the petitioner will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000-23) will be completed and will indicate that it was surveyor training.

(s) The petitioner will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the petitioner will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the petitioner will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The petitioner will ensure that all surveying contractors hired by the petitioner are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in or inby the last open crosscut, regardless of whether the equipment is used by the petitioner or by an independent contractor.

(u) The petitioner states that it will use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

—On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of

any face ventilation controls, such as tubing (including controls such as “baloney skins”) or curtains.

- Production will continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.
- Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine’s ventilation system that causes the ventilation system not to function in accordance with the mine’s approved ventilation plan.
- If, while surveying, a surveyor will disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation will be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.
- Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.
- All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The petitioner will keep a record of the training and provide the record to MSHA on request.
- The petitioner will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The petitioner will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced

miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The petitioner will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2020–012–C.

Petitioner: Jarisa, Inc., 935 State Hwy. 317, Neon, KY 41840.

Mine: E4–1 Mine, MSHA I.D. No. 15–18565, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, in return airways.

The petitioner states that:

(a) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) The petitioner utilizes the continuous mining method.

(c) Accurate survey equipment is an important safety feature for this mine.

(d) Mechanical surveying equipment has been obsolete for a number of years. Such equipment of acceptable quality is not commercially available. Further, it is difficult, if not impossible, to have such equipment serviced or repaired.

(e) Electronic surveying equipment is, at a minimum, 8 to 10 times more accurate than mechanical equipment.

(f) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner will use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater in return airways, subject to this petition:

—Topcon GTS-233 W 7.2 Volts DC
 —Topcon GPT-3003 LW 7.2 Volts DC
 —Topcon GTS 223 7.2 Volts DC
 —Topcon GTS 243 NW 7.2 Volts DC

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites, data loggers, and laser distance meters. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The petitioner will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used in return airways will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The petitioner will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used in return airways will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if

methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn out of return airways. All requirements of 30 CFR 75.323 will be complied with prior to entering in return airways.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment in return airways, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rock-dusted prior to energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment in return airways, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used in return airways when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment in return airways. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the

surveying crew will become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air out of return airways. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment in return airways, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift, in return airways is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment in return airways. A record of the training will be kept with the other training records.

(r) If the petition is granted, the petitioner will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000-23) will be completed and will indicate that it was surveyor training.

(s) The petitioner will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the petitioner will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10

years prior to the date that the petition becomes final. After 5 years, the petitioner will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The petitioner will ensure that all surveying contractors hired by the petitioner are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used in return airways, regardless of whether the equipment is used by the petitioner or by an independent contractor.

(u) The petitioner states that it will use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

- On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as “baloney skins”) or curtains.
- Production will continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.
- Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine’s ventilation system that causes the ventilation system not to function in accordance with the mine’s approved ventilation plan.
- If, while surveying, a surveyor will disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation will be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.
- Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include

a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.

- All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The petitioner will keep a record of the training and provide the record to MSHA on request.
- The petitioner will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The petitioner will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The petitioner will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2019–013–C.

Petitioner: Jarisa, Inc., 935 State Hwy. 317, Neon, KY 41840.

Mine: E4–1 Mine, MSHA I.D. No. 15–18565, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of battery-powered nonpermissible surveying equipment including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers, within 150 feet of pillar workings and longwall faces.

The petitioner states that:

- (a) To comply with requirements for mine ventilation maps and mine maps

in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(b) The petitioner utilizes the continuous mining method.

(c) Accurate survey equipment is an important safety feature for this mine.

(d) Mechanical surveying equipment has been obsolete for a number of years. Such equipment of acceptable quality is not commercially available. Further, it is difficult, if not impossible, to have such equipment serviced or repaired.

(e) Electronic surveying equipment is, at a minimum, 8 to 10 times more accurate than mechanical equipment.

(f) Application of the existing standard would result in a diminution of safety to miners. Underground mining by its nature, size, and complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner will use the following total stations and theodolites and similar low-voltage battery-operated total stations and theodolites if they have an ingress protection (IP) rating of 66 or greater within 150 feet of pillar workings or longwall faces, subject to this petition:

- Topcon GTS–233 W 7.2 Volts DC
- Topcon GPT–3003 LW 7.2 Volts DC
- Topcon GTS 223 7.2 Volts DC
- Topcon GTS 243 NW 7.2 Volts DC

(b) The nonpermissible electronic surveying equipment is low-voltage or battery-powered nonpermissible total stations and theodolites, data loggers, and laser distance meters. All nonpermissible electronic total stations and theodolites will have an IP 66 or greater rating.

(c) The petitioner will maintain a logbook for electronic surveying equipment with the equipment, or in the location where mine record books are kept, or in the location where the surveying record books are kept. The logbook will contain the date of manufacture and/or purchase of each particular piece of electronic surveying equipment. The logbook will be made available to MSHA on request.

(d) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by the person who operates the equipment prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. The result of these examinations will be recorded in the logbook and will include:

(1) Checking the instrument for any physical damage and the integrity of the case;

(2) Removing the battery and inspecting for corrosion;

(3) Inspecting the contact points to ensure a secure connection to the battery;

(4) Reinserting the battery and powering up and shutting down to ensure proper connections; and

(5) Checking the battery compartment cover or battery attachment to ensure that it is securely fastened.

(e) The equipment will be examined at least weekly by a qualified person, as defined in 30 CFR 75.153. The examination results will be recorded weekly in the equipment logbook and will be maintained for at least 1 year.

(f) The petitioner will ensure that all nonpermissible electronic surveying equipment is serviced according to the manufacturer's recommendations. Dates of service will be recorded in the equipment's logbook and will include a description of the work performed.

(g) The nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of this petition.

(h) Nonpermissible electronic surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while such equipment is being used, the equipment will be de-energized immediately and withdrawn further than 150 feet from pillar workings and longwall faces. All requirements of 30 CFR 75.323 will be complied with prior to entering within 150 feet of pillar workings or longwall faces.

(i) Prior to setting up and energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor(s) will conduct a visual examination of the immediate area for evidence that the area appears to be sufficiently rock-dusted and for the presence of accumulated float coal dust. If the rock-dusting appears insufficient or the presence of accumulated float coal dust is observed, the equipment will not be energized until sufficient rock-dust has been applied and/or the accumulations of float coal dust have been cleaned up. If nonpermissible electronic surveying equipment is to be used in an area not rock-dusted within 40 feet of a working face where a continuous mining machine is used, the area will be rock-dusted prior to

energizing the nonpermissible electronic surveying equipment.

(j) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition, as defined in 30 CFR 75.320. All methane detectors will provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) Prior to energizing nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces, methane tests will be made in accordance with 30 CFR 75.323(a). Nonpermissible electronic surveying equipment will not be used within 150 feet of pillar workings or longwall faces when production is occurring.

(l) Prior to surveying, the area will be examined according to 30 CFR 75.360. If the area has not been examined, a supplemental examination according to 30 CFR 75.361 will be performed before any non-certified person enters the area.

(m) A qualified person, as defined in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of nonpermissible electronic surveying equipment within 150 feet of pillar workings and longwall faces. If there are two people in the surveying crew, both persons will continuously monitor for methane. The other person will either be a qualified person, as defined in 30 CFR 75.151, or be in the process of being trained to be a qualified person but has yet to make such tests for a period of 6 months, as required in 30 CFR 75.150. Upon completion of the 6-month training period, the second person on the surveying crew will become qualified, as defined in 30 CFR 75.151, in order to continue on the surveying crew. If the surveying crew consists of one person, that person will monitor for methane with two separate devices.

(n) Batteries contained in the nonpermissible electronic surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings or longwall faces. Replacement batteries will be carried only in the compartment provided for a spare battery in the nonpermissible electronic surveying equipment carrying case. Before each shift of surveying, all batteries for the nonpermissible electronic surveying equipment will be charged sufficiently so that they are not expected to be replaced on that shift.

(o) When using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces, the surveyor will confirm by measurement or by inquiry of the person in charge of the section, that the air quantity on the section, on that shift,

within 150 feet of pillar workings or longwall faces is at least the minimum quantity that is required by the mine's ventilation plan.

(p) Personnel engaged in the use of nonpermissible electronic surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of such equipment in areas where methane could be present.

(q) All members of the surveying crew will receive specific training on the terms and conditions of the petition before using nonpermissible electronic surveying equipment within 150 feet of pillar workings or longwall faces. A record of the training will be kept with the other training records.

(r) If the petition is granted, the petitioner will submit within 60 days after the petition is final, proposed revisions for its approved 30 CFR part 48 training plans to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions of the petition. When training is conducted on the terms and conditions in the petition, an MSHA Certificate of Training (Form 5000-23) will be completed and will indicate that it was surveyor training.

(s) The petitioner will replace or retire from service any electronic surveying instrument that was acquired prior to December 31, 2004 within 1 year of the petition becoming final. Within 3 years of the date that the petition becomes final, the petitioner will replace or retire from service any theodolite that was acquired more than 5 years prior to the date that the petition becomes final or any total station or other electronic surveying equipment identified in this petition and acquired more than 10 years prior to the date that the petition becomes final. After 5 years, the petitioner will maintain a cycle of purchasing new electronic surveying equipment whereby theodolites will be no older than 5 years from the date of manufacture and total stations and other electronic surveying equipment will be no older than 10 years from the date of manufacture.

(t) The petitioner will ensure that all surveying contractors hired by the petitioner are using nonpermissible electronic surveying equipment in accordance with the terms and conditions of this petition. The conditions of use in the petition will apply to all nonpermissible electronic surveying equipment used within 150 feet of pillar workings or longwall faces, regardless of whether the equipment is used by the petitioner or by an independent contractor.

(u) The petitioner states that it will use nonpermissible electronic surveying equipment when production is occurring, subject to the following conditions:

- On a mechanized mining unit (MMU) where production is occurring, nonpermissible electronic surveying equipment will not be used downwind of the discharge point of any face ventilation controls, such as tubing (including controls such as “baloney skins”) or curtains.
- Production will continue while nonpermissible electronic surveying equipment is used, if such equipment is used in a separate split of air from where production is occurring.
- Nonpermissible electronic surveying equipment will not be used in a split of air ventilating an MMU if any ventilation controls will be disrupted during such surveying. Disruption of ventilation controls means any change to the mine’s ventilation system that causes the ventilation system not to function in accordance with the mine’s approved ventilation plan.
- If, while surveying, a surveyor will disrupt ventilation, the surveyor will cease surveying and communicate to the section foreman that ventilation will be disrupted. Production will stop while ventilation is disrupted. Ventilation controls will be reestablished immediately after the disruption is no longer necessary. Production will only resume after all ventilation controls are reestablished and are in compliance with approved ventilation or other plans, and other applicable laws, standards, or regulations.
- Any disruption in ventilation will be recorded in the logbook required by the petition. The logbook will include a description of the nature of the disruption, the location of the disruption, the date and time of the disruption and the date and time the surveyor communicated the disruption to the section foreman, the date and time production ceased, the date and time ventilation was reestablished, and the date and time production resumed.
- All surveyors, section foremen, section crew members, and other personnel who will be involved with or affected by surveying operations will receive training in accordance with 30 CFR 48.7 on the requirements of the petition within 60 days of the date the petition becomes final. The training will be completed before any nonpermissible electronic surveying equipment can be used while production is occurring. The

petitioner will keep a record of the training and provide the record to MSHA on request.

- The petitioner will provide annual retraining to all personnel who will be involved with or affected by surveying operations in accordance with 30 CFR 48.8. The petitioner will train new miners on the requirements of the petition in accordance with 30 CFR 48.5, and will train experienced miners, as defined in 30 CFR 48.6, on the requirements of the petition in accordance with 30 CFR 48.6. The petitioner will keep a record of the training and provide the record to MSHA on request.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Roslyn Fontaine,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2020-17017 Filed 8-4-20; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of 5 petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA’s Office of Standards, Regulations, and Variances on or before September 4, 2020.

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202-693-9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist’s

desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT:

Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9557 (voice), Noe.Song-Ae.A@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2020-014-C.

Petitioner: Westmoreland San Juan Mining LLC, P.O. Box 561, Waterflow, NM 87421.

Mine: San Juan Mine 1, MSHA I.D. No. 29-02170, located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of two Powered Air Purifying Respirator (PAPR) devices (the 3M™ Versaflo™ TR-800 PAPR and the PAF-0060 CleanSpace EX PAPR) for the respiratory protection of miners, in or inby the last open crosscut.

The petitioner states that:

- (a) The San Juan Mine 1 is an underground coal mining operation that

uses longwall and continuous mining to fuel the nearby San Juan Generating Station.

(b) The current PAPR model approved by MSHA is the 3M Airstream Mining Headgear-Mounted PAPR system, which was discontinued by 3M on June 1, 2020. There are no other MSHA-approved units. Because of that, the petitioner is requesting the use of two alternative PAPR units.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner requests the approval of the 3M™ Versaflo™ TR-800 PAPR, which is certified by UL under the ANSI/UL 60079-11 standard to be used in hazardous locations (it meets the most onerous intrinsic safety level and is acceptable for use in mines with potential firedamp).

(b) The second product is the PAF-0060 CleanSpace EX PAPR. It holds the following approvals: EN 12942:1998+A2:2008 TM3 (Europe), SANS 10338: 2009, (NRCS/8072/0090) (South Africa), AS/NZS1716:2012 PAPR-P2 (Australia/NZ), ISO 9001 (Quality Management System), IECEx: IEC 60079-0:2011 Ex ia I Ma, IECEx: IEC 60079-11:2011 Ex ib IIB T4 Gb, IIECEX Quality Assurance: IEC 80079-34:2011, ATEX/EN EX: EN 60079-0:2012 I M1 Ex ia I Ma, ATEX/EN EX: EN 60079-11:2012 II 2 G Ex ib IIB T4 Gb, ATEX Quality Assurance: Annex IV of Directive 94/9/EC (ATEX), EMC Standard: CISPR 11: 2010: Group 1 Class B.

(c) Before energizing either product, methane tests will be made in the mine atmosphere, in accordance with 30 CFR 75.360 and 30 CFR 75.362. The tests will continue in areas where the devices are worn.

(d) The above products will be examined before use and prior to being taken underground to make sure that they work according to the equipment manufacturer's recommendations and maintained in safe operating conditions. The examinations will include the following:

(1) The instrument will be checked for physical damage and the integrity of the case;

(2) Batteries will be removed for inspection for corrosion;

(3) Contact points will be inspected to ensure a secure connection to the battery;

(4) The battery will be reinserted powered up and shut down to ensure proper connections; and

(5) Battery compartment covers or attachments will be checked to make sure they are securely fastened.

(6) If a product uses lithium cells, the examination must ensure that lithium cells and/or packs are not damaged (or swollen in size).

(e) The products will not be put into service until MSHA has inspected them and deemed them in compliance with the terms and conditions of this petition.

(f) The products will not be used if methane is found at or above 1.0 percent. If the methane levels are higher than 1.0 percent while the products are being used, the equipment will immediately be deenergized and withdrawn from affected areas.

(g) Hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition in accordance with 30 CFR 75.320(a). Methane detectors will provide visual and audible warnings when they detect methane at or above 1.0 percent.

(h) A qualified person, in accordance with the definition in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of these products. When crews are working together, at least one qualified person will monitor for methane continuously. If continuous monitoring systems are installed by a longwall face, if they have audible and visual alarms for detecting methane at 1.0 or higher, this will satisfy the requirement for monitoring methane.

(i) Batteries for these products will be "changed out" or "charged" in intake air. Before each shift that these products will be used, batteries for the equipment will be charged so as not to need a replacement during the shift.

(j) The 3M™ Versaflo™ TR-800 PAPR will only use the 3M TR-830 Battery pack. This pack meets the UL1642 or IEC 62133 standards for safety. The following will be done for battery packs:

(1) They will be charged on the surface or in underground not within 150 feet of a worked-out area;

(2) they will be charged by the following products: 3M Battery Charger Kit TR-641N, or 3M 4-Station Battery Charger Kit TR-644N;

(3) they will only be disassembled or modified by those permitted by the manufacturer of the equipment;

(4) the battery will not be exposed to water (or get wet), not including incidental exposure of sealed battery packs as a result of overspray from dust suppression sprays or equipment cleaning;

(5) they will not be used or stored near heat sources or placed in direct sunlight; and

(6) they will not be used when there is a performance decrease of greater than 20 percent in battery operated equipment (at the end of the product's life cycle). The battery will be disposed of properly.

(k) Electromagnetic interference from the products will be investigated by the petitioner and all safety devices will be worn by miners (devices such as proximity detection system miner wearable components, gas detectors, tracking system components, and communication devices). Before placing the PAPR systems into service, the petitioner will inform MSHA if any interference is identified and how to eliminate such interference. Miners will be trained on the above.

(l) Miners using these PAPRs will be trained to recognize hazards and limitations associated with PAPRs.

(m) All section foremen, section crew members, and others involved with PAPRs will receive training, as required in 30 CFR 48.7. The training will be provided before use in this area.

(n) Within 60 days of when the order becomes final, the petitioner will submit revisions for their 30 CFR part 48 training plan. This will include using the Self-Contained Self Rescuer while using a PAPR, initial training, and refresher training. For training, the petitioner will complete the 5000-23 form (MSHA Certificate of Training).

(o) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-015-C.
Petitioner: Westmoreland San Juan Mining LLC, P.O. Box 561, Waterflow, NM 87421.

Mine: San Juan Mine 1, MSHA I.D. No. 29-02170, located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.507-1 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of two Powered Air Purifying Respirator (PAPR) devices (the 3M™ Versaflo™ TR-800 PAPR and the PAF-0060 CleanSpace EX PAPR) for the respiratory protection of miners, in return air outby the last open crosscut.

The petitioner states that:

(a) The San Juan Mine 1 is an underground coal mining operation that uses longwall and continuous mining to fuel the nearby San Juan Generating Station.

(b) The current PAPR model approved by MSHA is the 3M Airstream Mining Headgear-Mounted PAPR system, which was discontinued by 3M on June 1, 2020. There are no other MSHA-approved units. Because of that, the petitioner is requesting the use of two alternative PAPR units.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner requests the approval of the 3M™ Versaflo™ TR-800 PAPR, which is certified by UL under the ANSI/UL 60079-11 standard to be used in hazardous locations (it meets the most onerous intrinsic safety level and is acceptable for use in mines with potential firedamp).

(b) The second product is the PAF-0060 CleanSpace EX PAPR. It holds the following approvals: EN 12942:1998+A2:2008 TM3 (Europe), SANS 10338: 2009, (NRCS/8072/0090) (South Africa), AS/NZS1716:2012 PAPR-P2 (Australia/NZ), ISO 9001 (Quality Management System), IECEx: IEC 60079-0:2011 Ex ia I Ma, IECEx: IEC 60079-11:2011 Ex ib IIB T4 Gb, IIECEX Quality Assurance: IEC 80079-34:2011, ATEX/EN EX: EN 60079-0:2012 I M1 Ex ia I Ma, ATEX/EN EX: EN 60079-11:2012 II 2 G Ex ib IIB T4 Gb, ATEX Quality Assurance: Annex IV of Directive 94/9/EC (ATEX), EMC Standard: CISPR 11: 2010: Group 1 Class B.

(c) Before energizing either product, methane tests must be conducted in the mine atmosphere, in accordance with 30 CFR 75.360 and 30 CFR 75.362. The tests will continue in areas where the devices are worn.

(d) The above products will be examined before use and prior to being taken underground to make sure that they work according to the equipment manufacturer's recommendations and maintained in safe operating conditions. The examinations will include the following:

(1) The instrument will be checked for physical damage and the integrity of the case;

(2) Batteries will be removed for inspection for corrosion;

(3) Contact points will be inspected to ensure a secure connection to the battery;

(4) The battery will be reinserted and the power up will be shut down to ensure connections; and

(5) Battery compartment covers or attachments will be checked to make sure they are properly fastened.

(6) If a product uses lithium cells, the examination must ensure that lithium cells and/or packs are not damaged (or swollen in size).

(e) The products will not be put into service until MSHA has inspected them and deemed them in compliance with the terms and conditions of this petition.

(f) The products will not be used if methane is found at or above 1.0 percent. If the methane levels are higher than 1.0 percent while the products are being used, the equipment will immediately be deenergized and withdrawn from affected areas.

(g) Hand-held methane detectors will be MSHA approved and maintained in proper conditions in accordance with 30 CFR 75.320(a). Methane detectors should provide visual and audible warnings when they detect methane at or above 1.0 percent.

(h) A qualified person, in accordance with the definition in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of these products. When crews are working together, at least one qualified person will monitor for methane continuously. If continuous monitoring systems are installed by a longwall face, if they have audible and visual alarms for detecting methane at 1.0 or higher, this will satisfy the requirement for monitoring methane.

(i) Batteries for these products must be "changed out" or "charged" in intake air. Before the shift that these products will be used during, batteries and equipment will be charged so as not to need a replacement during the shift.

(j) The 3M™ Versaflo™ TR-800 PAPR will only use the 3M TR-830 Battery pack. This pack meets the UL1642 or IEC 62133 standards for safety. The following will be conducted for battery packs:

(1) They will be charged on the surface or in underground not within 150 feet of a worked-out area;

(2) they will be charged by the following products: 3M Battery Charger Kit TR-641N, or 3M 4-Station Battery Charger Kit TR-644N;

(3) they will only be disassembled or modified by those permitted by the manufacturer of the equipment;

(4) the battery will not be exposed to water (or get wet), not including incidental exposure of sealed battery packs as a result of overspray from dust suppression sprays or equipment cleaning;

(5) they will not be used near heat sources or placed in direct sunlight; and

(6) they will not be used when there is a performance decrease of greater than 20 percent in battery operated equipment (at the end of the product's life cycle). The battery will be disposed of properly.

(k) Electromagnetic interference from the products will be investigated by the petitioner and all safety devices will be worn by miners (devices such as proximity detection system miner wearable components, gas detectors, tracking system components, and communication devices). Before placing the PAPR systems into service, the petitioner will inform MSHA if any interference is identified and how to eliminate such interference. Miners will be trained on the above.

(l) Miners using these PAPRs will be trained to recognize hazards and limitations associated with PAPRs.

(m) All section foremen, section crew members, and others involved with PAPRs will receive training, as required in 30 CFR 48.7. The training will be provided before use in this area.

(n) Within 60 days of when the order becomes final, the petitioner will submit revisions for their 30 CFR part 48 training plan. This will include using the Self-Contained Self Rescuer while using a PAPR, initial training, and refresher training. For training, the petitioner will complete the 5000-23 form (MSHA Certificate of Training).

(o) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-016-C.

Petitioner: Westmoreland San Juan Mining LLC, P.O. Box 561, Waterflow, NM 87421.

Mine: San Juan Mine 1, MSHA I.D. No. 29-02170, located in San Juan County, New Mexico.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of two Powered Air Purifying Respirator (PAPR) devices (the 3M™ Versaflo™ TR-800 PAPR and the PAF-0060 CleanSpace EX PAPR) for the respiratory protection of miners, within 150 feet of pillar workings or longwall faces.

The petitioner states that:

(a) The San Juan Mine 1 is an underground coal mining operation that uses longwall and continuous mining to fuel the nearby San Juan Generating Station.

(b) The current PAPR model approved by MSHA is the 3M Airstream Mining Headgear-Mounted PAPR system, which was discontinued by 3M on June 1, 2020. There are no other MSHA-approved units. Because of that, the

petitioner is requesting the use of two alternative PAPR units.

As an alternative to the existing standard, the petitioner proposes the following:

(a) The petitioner requests the approval of the 3M™ Versaflo™ TR-800 PAPR, which is certified by UL under the ANSI/UL 60079-11 standard to be used in hazardous locations (it meets the most onerous intrinsic safety level and is acceptable for use in mines with potential firedamp).

(b) The second product is the PAF-0060 CleanSpace EX PAPR. It holds the following approvals: EN 12942:1998+A2:2008 TM3 (Europe), SANS 10338: 2009, (NRCS/8072/0090) (South Africa), AS/NZS1716:2012 PAPR-P2 (Australia/NZ), ISO 9001 (Quality Management System), IECEx: IEC 60079-0:2011 Ex ia I Ma, IECEx: IEC 60079-11:2011 Ex ib IIB T4 Gb, IIECEX Quality Assurance: IEC 80079-34:2011, ATEX/EN EX: EN 60079-0:2012 I M1 Ex ia I Ma, ATEX/EN EX: EN 60079-11:2012 II 2 G Ex ib IIB T4 Gb, ATEX Quality Assurance: Annex IV of Directive 94/9/EC (ATEX), EMC Standard: CISPR 11: 2010: Group 1 Class B.

(c) Before energizing either product, methane tests must be conducted in the mine atmosphere, in accordance with 30 CFR 75.360 and 30 CFR 75.362. The tests will continue in areas where the devices are worn.

(d) The above products will be examined before use and prior to being taken underground to make sure that they work according to the equipment manufacturer's recommendations and maintained in safe operating conditions. The examinations will include the following:

(1) The instrument will be checked for physical damage and the integrity of the case;

(2) Batteries will be removed for inspection for corrosion;

(3) Contact points will be inspected to ensure a secure connection to the battery;

(4) The battery will be reinserted and the power up will be shut down to ensure connections; and

(5) Battery compartment covers or attachments will be checked to make sure they are properly fastened.

(6) If a product uses lithium cells, the examination must ensure that lithium cells and/or packs are not damaged (or swollen in size).

(e) The products will not be put into service until MSHA has inspected them and deemed them in compliance with the terms and conditions of this petition.

(f) The products will not be used if methane is found at or above 1.0 percent. If the methane levels are higher than 1.0 percent while the products are being used, the equipment will immediately be deenergized and withdrawn from affected areas.

(g) Hand-held methane detectors will be MSHA approved and maintained in proper conditions in accordance with 30 CFR 75.320(a). Methane detectors should provide visual and audible warnings when they detect methane at or above 1.0 percent.

(h) A qualified person, in accordance with the definition in 30 CFR 75.151, will continuously monitor for methane immediately before and during the use of these products. When crews are working together, at least one qualified person will monitor for methane continuously. If continuous monitoring systems are installed by a longwall face, if they have audible and visual alarms for detecting methane at 1.0 or higher, this will satisfy the requirement for monitoring methane.

(i) Batteries for these products must be "changed out" or "charged" in intake air. Before the shift that these products will be used during, batteries and equipment will be charged so as not to need a replacement during the shift.

(j) The 3M™ Versaflo™ TR-800 PAPR will only use the 3M TR-830 Battery pack. This pack meets the UL1642 or IEC 62133 standards for safety. The following will be conducted for battery packs:

(1) They will be charged on the surface or in underground not within 150 feet of a worked-out area;

(2) they will be charged by the following products: 3M Battery Charger Kit TR-641N, or 3M 4-Station Battery Charger Kit TR-644N;

(3) they will only be disassembled or modified by those permitted by the manufacturer of the equipment;

(4) the battery will not be exposed to water (or get wet), not including incidental exposure of sealed battery packs as a result of overspray from dust suppression sprays or equipment cleaning;

(5) they will not be used near heat sources or placed in direct sunlight; and

(6) they will not be used when there is a performance decrease of greater than 20 percent in battery operated equipment (at the end of the product's life cycle). The battery will be disposed of properly.

(k) Electromagnetic interference from the products will be investigated by the petitioner and all safety devices will be worn by miners (devices such as proximity detection system miner wearable components, gas detectors,

tracking system components, and communication devices). Before placing the PAPR systems into service, the petitioner will inform MSHA if any interference is identified and how to eliminate such interference. Miners will be trained on the above.

(l) Miners using these PAPRs will be trained to recognize hazards and limitations associated with PAPRs.

(m) All section foremen, section crew members, and others involved with PAPRs will receive training, as required in 30 CFR 48.7. The training will be provided before use in this area.

(n) Within 60 days of when the order becomes final, the petitioner will submit revisions for their 30 CFR part 48 training plan. This will include using the Self-Contained Self Rescuer while using a PAPR, initial training, and refresher training. For training, the petitioner will complete the 5000-23 form (MSHA Certificate of Training).

(o) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M-2020-001-M.

Petitioner: Morton Salt, Inc., PO Box 1496, Weeks Island, LA 70560.

Mine: Weeks Island Mine and Mill, MSHA I.D. No. 16-00970, located in Iberia County, Louisiana.

Regulation Affected: 30 CFR 57.22603 (Blasting from the surface (II-A mines)).

Modification Request: The petitioner is requesting a modification of 30 CFR 57.22603(d) to allow experienced, competent employees to reenter the mine after a blasting, following the proposed guidelines of this petition. Employees would reenter the mine to determine if a monitor is not working properly, to isolate the area affected, and to make relevant ventilation changes to reduce methane levels. The petitioner is requesting a modification to 30 CFR 57.22603(c) to allow miners to reenter areas of the mine that are unaffected after blasting—non-blast areas when methane levels are below 0.5%.

The petitioner states that:

(a) The Weeks Island mine is a Category II-A gassy mine. Due to this status it is required to blast from the surface without miners underground.

The petition proposes the following:

(a) If monitoring systems show that methane levels in the mine are at 0.5% or above then the mine will be ventilated for at least 45 minutes and the mine power will remain deenergized. If methane levels remain above 0.5% or above, the power will continue to be deenergized and a competent person, will enter the mine,

to test for methane and ventilation changes (for lowering methane levels).

(b) The mine will be entered from the fresh air intake shaft. The competent person will check ventilation controls on the fresh air side to ensure there is no damage.

(c) A miner is considered competent if that person is trained on how to use a hand-held monitor and knows how and where to test for methane. If someone is a qualified electrician then they are competent in addressing electrical issues underground.

(d) Before going underground, to ensure the calibration of all instruments, a bump test will be completed on all hand-held monitors. All competent persons will be trained on these procedures and training will be recorded on a 5000–23 form.

(e) If there is damage to ventilation controls, a competent person will repair them before leaving the mine through the fresh air intake. Repairs will be made in fresh air only. The mine power will continue to be off for an added 45 minutes while ventilation is used to lower methane levels. If methane is still at 0.5% or above then a competent person will enter the mine again from a fresh air intake to the active landing using a permissible ride. Methane levels will be checked via hand-held monitors and a monitor on a pole against the ceiling. Every area that reads methane levels of 0.5% or above will be verified, barricaded, and posted to restrict entry.

(f) The posted and barricaded areas affected by methane will be at least 200 feet away from the methane entry point. Such an area will only be opened when levels fall below 0.5%. Power to the affected areas and the out-by exhaust air route will be disconnected, locked and tagged out by a competent person. After that, all competent persons who entered the mine will return to the surface. Underground power will be reenergized outside the affected areas so that auxiliary fans can help lower methane levels and the mining operations can resume (outside of affected areas). Affected areas will not be opened up until they are below 0.5%; levels will be checked beginning at the barricaded area and working back into the affected areas once the barricade is in place.

(g) In unaffected areas of the mine, allowing workers to enter does not create any greater hazard than using energized equipment for work in unaffected areas when methane is below 0.5% in another area. After a blast, all methane monitors lose battery power within 24 hours, triggering 30 CFR 57.22603(c) if methane levels are at 0.5% for 24 hours. The petitioner states that it creates a greater hazard for

miners to go underground every 24 hours to change batteries on methane monitors rather than allowing an entry where miners can adjust ventilators to remove gas from the mine effectively.

(h) The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard, 30 CFR 57.22603.

Docket Number: M–2020–002–M.

Petitioner: U.S. Silica Company, 5263 Edmund Highway, West Columbia, South Carolina 29170.

Mine: Columbia Plant, MSHA I.D. No. 38–00138, located in Lexington County, South Carolina.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of an air compression system for cleaning clothes after mining operations, which will provide no less a degree of safety than that provided by the standard.

The petitioner states that:

(a) The alternative method provides a direct reduction of miners' exposure to respirable dust, thus reducing their health risks. The proposed alternative method has been jointly developed between Unimin Corporation and the National Institute for Occupational Safety and Health (NIOSH) and successfully tested by the NIOSH.

The petition proposes the following:

(a) Only miners trained in the operation of the clothes cleaning booth will be permitted to use the booth to clean their clothes.

(b) Petitioner will incorporate the NIOSH Clothes Cleaning Process and manufacturer's instruction manual into their MSHA Part 46 training plan and train affected miners in the process.

(c) Miners entering the booth will examine valves and nozzles for damage or malfunction and will close the door fully before opening the air valve. Any defects will be repaired prior to the booth being used.

(d) Miners entering the booth will wear eye protection, ear plugs or muffs for hearing protection, and respiratory protection. Respiratory protection will consist of a full-face or half-mask respirator that meets or exceeds the minimum requirements of a N95 filter to which the miner has been fit-tested. As an alternative, the use of a full-face respirator will meet the requirements for eye protection. A sign will be conspicuously posted requiring the use of the above personal protective equipment when the booth is entered.

(e) Air flow through the booth will be at least 2,000 cubic feet per minute to

maintain negative pressure during use of the cleaning booth in order to prevent contamination of the environment outside the booth. Airflow will be in a downward direction, thereby moving contaminants away from the miner's breathing zone.

(f) Air pressure through the spray manifold will be limited to 30 pounds per square inch or less. A lock box with a single, plant manager controlled key will be used to prevent regulator tampering.

(g) The air spray manifold will consist of schedule 80 steel pipe that has a failure pressure of 1,300 pounds per square inch and will be capped at the base and actuated by an electrically controlled ball valve at the top.

(h) Air nozzles will not exceed 30 pounds per square inch gauge.

(i) The upper most spray of the spray manifold will be located below the booth user's breathing zone. Some type of mechanical device can be used to cover the upper air nozzles to meet the specific height of the user.

(j) Air nozzles will be guarded to eliminate the possibility of incidental contact, which could create mechanical damage to the air nozzles during the clothes cleaning process.

(k) Periodic maintenance checks of the booth will be conducted in accordance with the recommendations contained in the manufacturer's instruction manual.

(l) The air receiver tank supplying air to the manifold system will be of sufficient volume to permit no less than 20 seconds of continuous cleaning time.

(m) An appropriate hazard warning sign will be posted on the booth to state at a minimum, "Compressed Air" and "Respirable Dust".

(n) A pressure relief valve designed for the booth's air reservoir will be installed.

(o) The mine will exhaust dust-laden air from the booth into a local exhaust ventilation system or duct outside the facility while ensuring there is no re-entrainment back into the structure.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Roslyn Fontaine,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2020–17018 Filed 8–4–20; 8:45 am]

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DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. OSHA–2019–0004]

Gestamp West Virginia; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice.

SUMMARY: In this notice, OSHA announces the application of Gestamp West Virginia (Gestamp) for a permanent variance and interim order from the provision of OSHA standards that regulate the control of hazardous energy (lockout/tagout) and presents the agency's preliminary finding to grant the permanent variance. OSHA also announces its grant of an interim order in this notice. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this notice of the application.

DATES: Submit comments, information, documents in response to this notice, and requests for a hearing on or before September 4, 2020. The interim order described in this notice became effective on August 5, 2020, and shall remain in effect until it is modified or revoked, whichever occurs first.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2019–0004, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA

docket number (OSHA–2019–0004). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <https://www.regulations.gov>. Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security Numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov> or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 20, 2020 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: robinson.kevin@dol.gov.

I. Notice of Application

On July 30, 2018, Gestamp West Virginia, LLC (hereafter, “Gestamp” or “the applicant”), 3100 MacCorkle Avenue SW, Building 307, South Charleston, WV 25303, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (“OSH Act”; 29

U.S.C. 655) and 29 CFR 1905.11 (“Variances and other relief under section 6(d)”) an application for a permanent variance from the provision of the OSHA standard that regulates the control of hazardous energy (“lockout/tagout” or “LOTO”), as well as a request for an interim order pending OSHA's decision on the application for variance (OSHA–2019–0004–0001) at the South Charleston, WV facility. Specifically, Gestamp seeks a variance from the provision of the standard that requires: all energy isolating devices needed to control the energy to the machine or equipment shall be physically located and operated in a manner as to isolate the machine or equipment from the energy source(s) (29 CFR 1910.147(d)(3)). Gestamp also requested an interim order pending OSHA's decision on the variance application.

According to the application, Gestamp makes parts for the automotive industry. Gestamp uses a Trumpf laser cell to trim excess metal from automotive parts and burn holes into those parts. The laser operates using a stream of monochromatic coherent light to emit very high levels of energy to cut metal parts. The laser trimming process occurs within a full enclosed machine (cell), which contains the laser that is mounted to a multi-axis transport to allow the laser to cut at a variety of angles; a turntable to load the rough parts to be cut using the laser; a water chilling system used to cool the laser; and numerous engineering controls that prevent unauthorized access to the interior of the cell. When actuated, the turntable rotates to the inside of the machine and presents the parts to the laser. The laser system functions in a robotic manner, with fewer axes of motion to cut the metal parts. The laser is managed by a Human Machine Interface (HMI), an interface by which the operator inputs commands to and receives information from the laser cell machine.

The laser trimming process creates a byproduct of chaff, dust, dirt, chips, and slugs that must be cleaned from the machine enclosure cell frequently to enable the laser to function properly. The cleaning is performed by operators and/or maintenance personnel inside the cell and involves sweeping up the byproducts and debris left on the floor of the cell during the operation. These cleaning activities occur at the end of each shift and typically require about 15 minutes to complete.

Gestamp asserts that without frequent cleaning, the laser system would not function properly. Further, the applicant asserts that while the laser has the capability of being de-energized and

isolated as required by OSHA and ANSI standards, frequent powering down and locking out of the laser greatly reduces the performance and overall life of the laser because it takes anywhere from 30 minutes to several hours to power back up after being completely shut down, which reduces the efficiency of the laser. The applicant notes that powering down the laser to perform cleaning activities requires the addition of auxiliary lighting, which would introduce extension cords and portable lights, potentially creating tripping hazards in the cell as well as shock hazards. Additionally, the applicant notes that the primary electrical disconnects are not designed or intended for frequent cycling and would increase the risk of arc flash hazards to the employees.

OSHA initiated a preliminary technical review of Gestamp's variance application and developed a set of follow-up questions regarding the assertion that the alternative measures provide equivalent worker protection. On March 15, 2019, Gestamp provided supplemental materials to support the variance application including: a side by side analysis of the requirement of the standard and the proposed alternative (OSHA-2019-0004-0002), a safety work instruction outlining their proposed alternative (OSHA-2019-0004-0003) and a description of Gestamp's Lockout/Tagout Program (OSHA-2019-0004-0004). In reviewing the application, OSHA evaluated the alternative work practices identified in the variance application, and the supplemental materials provided by Gestamp.

Following this review, OSHA determined that Gestamp proposed an alternative that will provide a workplace as safe and healthful as that provided by OSHA's existing standard. As a result, OSHA is granting Gestamp an interim order to permit the company to continue work while OSHA continues to consider the application for a permanent variance.

II. The Variance Application

A. Background

Gestamp's variance application and the responses to OSHA's follow-up questions include the following: Detailed descriptions of the laser cutting process; the equipment used in the laser cutting process; the proposed alternative to completely isolating the laser during cleaning activities; and technical evidence supporting Gestamp's assertions that the alternative methods provide equivalent worker protection.

According to the information included in the application, Gestamp's laser is considered a Class 4 operation. Class 4 operations are defined by the American National Standards Institute (ANSI) as "very dangerous to the eyes and skin, with a risk of fire and explosion."¹ No workers are allowed inside the laser cell while the laser is being used. Instead, the operator's station is located outside of the laser cell and the operator uses hand controls to activate the laser turntable. The laser cutting system is a fully enclosed structure, with the laser operating similar to a robot. The laser is affixed to the end of an arm tooling within this fixed structure. Stamped parts are loaded into the cell and unloaded from the cell structure via a turntable from outside of the laser cell. When actuated, the turntable rotates to the inside of the machine and presents the parts to the laser. The turntable cannot rotate until the operator clears the light curtain, which is used as a safeguard blocking access between the turntable and the operator's station.

As noted above, the laser trimming process creates a byproduct of chaff, dust, direct, chips, slugs and debris, and the laser system must be cleaned to enable the laser to function properly. The laser cell has access doors to enable cleaning and certain other necessary tasks to be performed inside the cell. The access doors utilize interlocked switches that disable hazardous motion of the turntable and laser energy when opened.

The machine enclosure of the Trumpf Laser Cell is protected by two entry/exit points: a far access door and a near access door. Each access door has an interlock switch that is integrated into the laser and machinery motions. When the door to the laser cell is opened, the release of laser energy is inhibited and the machine axes cannot move. Further, Gestamp added red mechanical latches (hasps) to the external side of each entry door that allow a lock or a group lockout hasp or lock to be affixed, thus locking the hatch in its location.

In addition, Gestamp has implemented procedures to prevent the door from closing during laser cell cleaning activities, which could actuate the system. Gestamp requires all personnel entering the laser cell to individually lockout by placing their individual lock on the slide bar. Each associate entering the laser cell must remove their own personal key from their individual lock or hasp, take the key into the cell, and keep the key in their possession the entire time they are

in the laser cell. If more than one associate enters the cell, one of the associates shall be designated the LEADER of the cleaning crew. The LEADER can only remove their lock, once they have verified that everyone else in the cleaning crew has left the laser cell.

Gestamp contends that the alternative safety measures included in the application provide the workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's control of hazardous energy (lockout/tagout) standard. Gestamp certifies that it provided employee representatives of affected workers with a copy of the variance application. Gestamp also certifies that it notified the workers of the variance application by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed the workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

B. Variance From 29 CFR 1910.147(d)(3)

As an alternative means of complying with the requirements of 1910.147(d)(3), Gestamp is proposing to use a comprehensive engineered system and appropriate administrative procedures. The applicant references the co-authored standard as written by ANSI and the American Society of Safety Engineers (ASSE) Z244.1-2016, clause 8, which states that "Lockout or tagout shall be used unless the user can demonstrate an alternative method will provide effective protection by persons. When lockout or tagout is not used, then alternative methods shall be used only after the hazards have been assessed and risks documented" as the basis for their alternative lockout method. Gestamp asserts in the Variance application that the cleaning task within the Trumpf laser cell is one that requires access to the machine in a manner that renders full lockout infeasible. Because the Trumpf laser cell is a Class 4 operation, no one is allowed inside the machine enclosure during laser operations. Because the cleaning task occurs on a frequent basis, Gestamp asserts in the Variance application that regular powering down and locking out of the laser to perform the routine cleaning operations could damage the laser over time. Further, full lockout of the laser cell requires the use of auxiliary lighting sources, which could introduce fall and

¹ ANSI B11.21 and ANSI Z136.1.

shock hazards into the cleaning operation. Additionally, the design of the Trumpf laser cell includes advanced control systems that prevent engagement of the laser while the laser cell is occupied. As an alternative lockout method, Gestamp has developed an engineered system that uses red mechanical latches attached to the external side of each door of the laser cell. The latches are secured to the frame of the machine with two metal screws and have a locking capacity that allows a lock or a group lockout hasp to be affixed; this latch prevents the door from closing and the laser from being able to be energized during laser cell cleaning operations.

Gestamp maintains that use of the proposed latch system provides a level of safety equivalent to what can be achieved by strict compliance with the standard at 1910.147(d)(3). According to Gestamp's variance application, equivalent safety is achieved by prohibiting the release of laser energy during cleaning operations utilizing a modified door latch that prevents unintentional re-energization of the laser.

Process To Enter Trumpf Laser Cell To Perform Cleaning Activities

1. Communicate to the Operator and Co-Workers in the area that cleaning will take place. At the Human Machine Interface (HMI) screen, change the Series Production from "Continuous Job" to "Single Job." Once the turntable has come to a complete stop, open one of the doors on the side of the laser cell by using the handle.

2. After the door is open, communicate the lockout to co-workers and move the red slide bar to prevent the door from being shut while inside. All personnel entering the laser cell must individually lockout, by placing their individual lock on the slide bar or hasp. If more than one person is to enter on either side, a lockout hasp must be used.

3. After locking out on the laser cell, verify that "Feed Hold Through Safety Device Error" is displayed on the HMI screen.

4. To verify that the turntable will not move while working inside of the laser cell, hit the green activation button. Associates can enter the Laser Cell only after these four (4) steps are completed.

5. When work is completed inside the laser cell, all associates who entered the cell, except the LEADER when more than one associate entered, shall exit and remove their individual locks. Once all other associates are outside of the laser cell, the LEADER must verify their location and hit the Danger Zone

Acknowledge Button, on the inside of the cell door. The Leader must immediately exit the cell, remove their lock, move the slide bar back to allow the door to shut, and shut the door.

6. Once cleaning of the laser cell is complete and all employees are clear of the restricted area, place the laser HMI back into production by placing the Series Production from "Single Job" to "Continuous Job."

7. After the HMI has been released to production, put a part on the fixture and reset the light curtains by pressing the green button.

Process To Restart Trumpf Laser Cell After Door Is Opened

1. Remove all padlocks from mechanical latch from the far access door.

2. Open the mechanical latch.

3. Visually inspect area for the presence of persons or tools.

4. Close the far machine enclosure door.

5. Walk to near access door.

6. Remove all padlocks from mechanical latch from the near access door.

7. Open the mechanical latch.

8. Visually inspect area for the presence of persons or tools.

9. Press the reset switch on inside of machine enclosure.

10. Close door within 3–4 seconds of pressing reset switch.

11. Turn key switch on the HMI to enable operations.

12. Engage HMI to activate laser.

13. Enable continuous mode operation (push button) within HMI.

The proposed door latch system cannot be easily tampered with or defeated. Gestamp asserts that this alternative meets the requirements for control reliability as stated in ANSI B11.0 and ANSI Z244.1, in that no single fault of a component, wire, device or other element will result in the loss of the safety function.² According to the Variance application, in the event of a fault, the laser will achieve a safe state by inhibiting lasing, machine motions, and the release of hazardous energy. In addition, the system includes system fault monitoring, tamper resistance, and exclusive employee control over lockout

² ANSI B11.0 defines control reliability as the capability of the [machine] control system, the engineering control devices, other control components and related interfacing to achieve a safe state in the event of a failure within the safety-related parts of the control system.

ANSI 244 defines control reliability as the capability of the machine, equipment or process control system, the safeguarding, other control components and related interfacing to achieve a safe state in the event of a failure within their safety-related functions.

devices. The Trumpf laser machine enclosure has a door interlock switch that is integrated to the laser and machinery motions. When the door to the laser cell is open, the release of laser energy is inhibited and the machine axes cannot move, therefore the laser will not operate.

To enhance the lockout functions of the Trumpf laser cell, Gestamp added red mechanical latches to the external side of each entry door to the laser cell. The lockable interface switches, used with the mechanical latches are designed to be used as lockable devices. The circuitry of the lockable interlock switches inhibit both machinery motions and laser energy release with the Trumpf enclosure door switches and will not operate when disengaged.

C. Technical Review

OSHA conducted a review of Gestamp's application and the supporting technical documentation. After completing that review, OSHA concludes that Gestamp:

1. Modified the access door with red mechanical latches with a slide bar to prevent the door from being closed while cleaning activities are performed within the laser cell;

2. Installed a personal lock control system and implemented administrative energy control procedures that prevent employee exposure to hazards associated with energy while performing cleaning activities within the laser cell;

3. Performed a job hazard analysis for tasks associated with cleaning the laser cell and conducted and documented an electrical isolation analysis, system and functional safety reviews, and control reliability analysis to verify that the use of the latch system and administrative energy control procedures prevent the closure of the doors to the laser cell; prevent mistaken or intentional re-energization, and maintain immobility in the event of fault conditions;

4. Developed detailed administrative energy control procedures for entering the laser cell to perform cleaning functions and distinguished these work procedures from other tasks that require full lockout;

5. Implemented detailed administrative energy control procedures designed to ensure that each authorized employee applies a personal lock to the secondary group lock box;

6. Made the administrative energy control policies and procedures available to employees;

7. Trained authorized and affected employees on the application of the proposed alternative work practice and

associated administrative energy control policies and procedures; and

8. Developed a LOTO procedure which includes administrative controls to minimize the potential for authorized and affected employees to enter the laser cell when harm could occur.

After the technical review identified above, OSHA concludes that Gestamp has established an alternative work practice that provides workers protection equivalent to that required of the standard. Specifically, the LOTO process for the Trumpf laser cell identified in the Variance application, regulates the control of hazardous energy from the laser during cleaning and maintenance activities.

III. Description of the Conditions Specified by the Interim Order and the Application for a Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1910.147. These conditions form the basis of the interim order and Gestamp's application for a permanent variance.³

Proposed Condition A: Scope

The scope of the interim order/proposed permanent variance would limit coverage to the work conditions specified under this proposed condition. Clearly defining the scope of the proposed permanent variance provides Gestamp, Gestamp's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that Gestamp exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers)⁴ may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, if OSHA were to grant a permanent variance, it would only apply to the applicant, Gestamp, and

only at the South Charleston, WV plant and no other employers or any other Gestamp plant locations.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the Order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance.

Proposed Condition C: List of Abbreviations

Proposed Condition C defines a number of abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and the employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: List of Definitions

The proposed permanent variance includes definitions for a series of terms. Defining these terms serves to enhance the applicant's and the employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition E: Safety and Health Practices

This proposed condition requires the applicant to: (1) Modify certain controls at the entry door to the laser cell by ensuring that exclusive control is provided by each employee involved in cleaning activities within the machine; (2) utilize a latch with a slide bar, designed to prevent the door from closing; and (3) ensure that the opening to the door to the laser cell shuts down the machinery in the cell.

Proposed Condition F: Steps Required To De-energize the System

This proposed condition requires the applicant to develop and implement a detailed procedure for de-energizing the laser cell in order to perform cleaning and maintenance activities within the laser cell. The procedure for de-energizing the laser cell includes a series of steps to ensure that all authorized and affected employees would be notified that cleaning, service or maintenance would be performed in the laser cell.

Proposed Condition G: Steps Required To Re-Energize the Laser Cell

This proposed condition requires the applicant to develop and implement a

detailed procedure for re-energizing the laser cell in order to resume normal laser cutting operations. The procedure for re-energizing the laser cell would include a series of steps to ensure that all authorized and affected employees would be notified that cleaning activities within the laser cell are complete and that the laser cell is ready for normal use.

Proposed Condition H: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during laser cleaning activities. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during laser cleaning operations.

Proposed Condition I: Worker Qualification and Training

This proposed condition requires Gestamp to develop and implement an effective hazardous energy control qualification and training program for authorized employees involved in cleaning activities in or around the laser cell. Additionally, proposed condition G requires Gestamp to train each affected employee in the purpose and use of the alternative energy control procedures.

The proposed condition specifies the factors that an affected worker must know to perform maintenance and cleaning operations inside the laser cell, including how to enter, work in, and exit from the laser cell under both normal and emergency conditions. Having well-trained and qualified workers performing laser cleaning activities is intended to ensure that they recognize, and respond appropriately to, electrical safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, thereby preventing worker injury, illness, and fatalities.

Proposed Condition J: Inspections, Tests, and Accident Prevention

Proposed condition H requires the applicant to develop, implement, and

³ In these conditions, the present tense form of the verb (e.g., "must") pertains to the interim order, while the future conditional form of the verb (e.g., "would") pertains to the application for a permanent variance (designated as "permanent variance").

⁴ A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

operate an effective program of frequent and regular inspections of the laser equipment, electrical support systems, and associated work areas. Condition J would help to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct cleaning operations in laser cells.

This condition also requires the applicant to conduct tests, inspections, corrective actions and repairs involving the use of the energy isolation devices identified in the application for a permanent variance. Further, this requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems and to determine that the actions taken to correct defects are appropriate.

Proposed Condition K: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904, Gestamp must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to electrical conditions by completing OSHA Form 301 Incident Report and OSHA Form 300 Log of Work Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore must comply fully with those requirements.

Proposed Condition L: Notifications

Under the proposed condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) Any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of cleaning activities around the laser cell; (2) provide OSHA a copy of the incident investigation report (using OSHA Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301 Injury and Illness Incident Report information on the conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Charleston, WV OSHA Area Office within 15 working days should the applicant need to revise the procedures to accommodate for any changes in laser cell cleaning or maintenance activities that affect Gestamp's ability to comply with the

conditions of the proposed permanent variance; (6) provide OTPCA and the Charleston, WV Area Office within 15 working days should the applicant need to revise the energy isolation procedures to accommodate changes in the application of the door switch that affect/would affect the ability to comply with the conditions of the proposed permanent variance; and (7) provide OTPCA and the Charleston, WV Area Office, by January 31st at the beginning of each calendar year, with a report evaluating the effectiveness of the alternate energy isolation program in the previous calendar year.

Additionally, Gestamp must notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to a successor company. In addition, the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the preliminary decision to grant an interim order allowing Gestamp to perform cleaning operations in the laser cell, subject to the conditions that follow in this document. This interim order will remain in effect until the agency modifies or revokes the interim order or makes a decision on Gestamp's application for a permanent variance. During the period starting with the publication of this notice until the agency modifies or revokes the interim order or makes a decision on the application for a permanent variance, Gestamp is required to comply fully with the conditions of the interim order as an alternative to complying with the following requirements of 29 CFR 1910.147(d)(3).

In order to avail itself of the interim order, Gestamp must: (1) Comply with the conditions listed in the interim

order for the period starting with the grant of the interim order and until the agency modifies or revokes the interim order or makes a decision on Gestamp's application for a permanent variance; (2) comply fully with all other applicable provisions of 29 CFR part 1910.147 aside from section 1910.147(d)(3); and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, using the same means it used to inform these employees of the application for a permanent variance.

OSHA is also proposing that the same requirements would apply to a permanent variance if OSHA ultimately issues one for this employer. OSHA requests comment on those conditions as well as OSHA's preliminary determination that the specified alternatives and conditions would provide a workplace as safe and healthful as those required by the standard from which a variance is sought. After reviewing the comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Specific Conditions of the Interim Order and the Application for a Permanent Variance

The following conditions apply to the interim order OSHA is granting to Gestamp. These conditions specify the alternative means of compliance with the requirements of paragraph 29 CFR 1910.147(d)(3). To simplify the presentation of the conditions, OSHA generally refers only to the conditions of the proposed permanent variance, but the same conditions apply to the interim order except where otherwise noted.⁵

These conditions would apply with respect to all employees of Gestamp engaged in cleaning activities of this Trumpf laser cell:

A. Scope

The interim order applies, and the permanent variance would apply, only to the task of performing cleaning and maintenance activities at Gestamp. The interim order and proposed variance apply only to work:

1. That occurs at Gestamp West Virginia LLC, 3100 MacCorkle Avenue SW, Building 307, South Charleston, WV 25303; and

⁵ In these conditions, OSHA is using the future conditional form of the verb (e.g., "would"), which pertains to the application for a permanent variance (designated as "permanent variance") but the conditions are mandatory for purposes of the interim order.

2. Is performed in compliance with all other applicable provisions of 29 CFR 1910.147.

Additionally,

1. No other servicing and/or maintenance work, including electrical maintenance (such as troubleshooting or maintenance covered under 29 CFR 1910.333), may be performed using the conditions of this interim order. These activities are to be performed under full lockout as required by 29 CFR 1910.147.

2. Except for the requirements specified by 29 CFR 1910.147(d)(3), Gestamp must comply fully with all other applicable provisions of 29 CFR 1910.147 during cleaning activities of the laser cell.

B. Duration

The Interim Order is only intended as a temporary measure pending OSHA's decision on the Permanent Variance, so this condition specifies the duration of the Order. If OSHA approves a Permanent Variance, it would specify the duration of the Permanent Variance.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

1. CFR—Code of Federal Regulations;
2. JHA—Job hazard analysis;
3. HMI—Human Machine Interface;
4. OSHA—Occupational Safety and Health Administration; and
5. OTPCA—Office of Technical Programs and Coordination Activities.

D. Definitions

The following definitions would apply to this proposed permanent variance. These definitions would supplement the definitions in Gestamp's application for permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed permanent variance, or any one of his or her authorized representatives. The term "employee" has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Energy isolating device*—a mechanical device that physically prevents the transmission or release of energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect

switch; a manually operated switch by which the conductors of a circuit can be disconnected from all ungrounded supply conductors, and, in addition, no pole can be operated independently; a line valve; a block; and any similar device used to block or isolate energy. Push buttons, selector switches and other control circuit type devices are not energy isolating devices.

4. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

5. *Lockout*—the placement of a lockout device on an energy isolating device, in accordance with an established procedure, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

6. *Lockout device*—a device that utilizes a positive means such as a lock, either key or combination type, to hold an energy isolating device in the safe position and prevent the energizing of a machine or equipment. Included are blank flanges and bolted slip blinds.

7. *Personal lock and key*—a durable, standardized substantial and uniquely identified device (a lock) that is maintained and controlled by a single authorized employee whose name is attached to the device. The key is unique to the device and is equally maintained and controlled by the authorized employee⁶ whose name is attached to the device.

8. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work.

9. *Servicing and/or maintenance*—workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming of machines or equipment and making adjustments or tool changes, where the employee may be exposed to the *unexpected* energization or startup of the equipment or release of hazardous energy.

10. *Tagout*—the placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy

isolating device and the equipment being controlled may not be operated until the tagout device is removed.

E. Safety and Health Practices

1. Gestamp will modify the latch doors of the Trumpf laser cell to prevent employee exposure to hazards associated with the cleaning of the laser cell;

2. Gestamp will continue to use a door switch to prevent engagement of the laser while the laser cell door is open;

3. Gestamp will implement the safety and health instructions included in the manufacturer's operations manuals for the Trumpf laser cell, and the safety and health instructions provided by the manufacturer for the operation of laser cutting equipment; and

4. Gestamp will implement a procedure to ensure that no other servicing and/or maintenance will be performed on the laser cutter, unless full lockout is used.

F. Steps Required To De-Energize the System

Gestamp will develop and implement a detailed procedure for de-energizing the laser cutting machine that will include the following steps to ensure that the laser cell door is prevented from closing and the machine from starting:

1. The authorized employee entering the laser cell will communicate to the operator and co-workers in that area that cleaning will take place;

2. At the HMI screen, change the Series Production from "Continuous Job" to "Single Job";

3. Once the turntable has come to a complete stop, open one of the doors on the side of the laser cell by using the handle;

4. After the door is open, communicate the lockout to the co-workers and move the red slide bar to prevent the door to the laser cell from being shut while inside;

5. All personnel entering the laser cell must individually lockout, by placing a lock on the slide bar or hasp. If more than one person is to enter on either side, a lockout hasp must be used;

6. Each employee entering the cell must remove their own personal key from the lock or hasp, take the key into the cell, and keep the key in their possession the entire time they are in the cell;

7. If more than one employee enters the laser cell, one of the employees shall be designated the leader of the cleaning operation;

8. After locking out the laser cell, verify that the "Feed Hold Through Safety Device Error" is displayed on the HMI screen; and

⁶ See 29 CFR part 1910 [Docket No. S-012A], RIN 1218-AA53. Control of Hazardous Energy Sources (Lockout/Tagout), regarding "one person, one lock, one key."

9. To verify that the turntable will not move while working inside of the laser cell, hit the green activation button. If the machine does not start up, then entry can be made.

G. Steps Required To Start Motion Intentionally

Gestamp will develop and implement a detailed procedure for re-energizing and intentionally starting motion in the laser cutter in order to resume normal operations at the conclusion of the cleaning operation. The procedure for re-energizing the laser cell passes will include the following steps:

1. When work is completed inside the laser cell, all associates that entered the cell, except the leader (when more than one employee entered), shall exit and remove their locks;
2. Open the mechanical latch;
3. Visually inspect the area for the presence of persons or tools within the laser cell;
4. Once all other employees are outside of the laser cell, the leader must verify their location and hit the Danger Zone Acknowledge Button on the inside of the cell door;
5. The leader must exit immediately, remove their lock, move the slide bar back to allow the door to shut, and shut the door. The door must shut within 3–4 seconds of hitting the Danger Zone Acknowledge Button;
6. Once the cleaning operation is complete and employees are clear of the restricted area, place the laser HMI back into production by placing the Series Production from “Single Job” to “Continuous Job”; and
7. After the HMI has been released to production, put a part on the turntable and reset the light curtains by pressing the green button.

Both entry doors to the laser cell must be closed before operations can resume. The 3–4 second limitation ensures that no entry or re-entry into the machine enclosure can be made between the visual inspection and restart (no one can inadvertently slip into the machine enclosure during the restart process).

H. Communication

Gestamp would have to:

1. Implement a system that informs workers using energy isolation devices of any hazardous occurrences or conditions that might affect their safety; and
2. Provide a means of communication among affected workers and support personnel in energy isolation where unassisted voice communication is inadequate.

I. Worker Qualifications and Training

Gestamp will develop and implement a detailed worker qualification and training program. Gestamp must:

1. Develop an energy control training program and train each authorized employee on the latch system, and the procedures required under it;
2. Develop and document a training program and train each affected employee in the purpose and use of the alternative energy control procedures using the latch system;
3. Develop a training program and train other employees whose work operations are or may be in an area where energy control procedures may be utilized. These employees will receive training about the procedure and about the prohibition relating to attempts to restart or reenergize machines or equipment that are locked out.
4. Ensure that each authorized employee, affected employee, and other employees has effective and documented training in the contents and conditions covered by this proposed variance and interim order; and
5. Ensure that only trained and authorized employees perform energy control procedures for the task of performing cleaning of the laser cell at Gestamp’s facility.

J. Inspections, Tests, and Accident Prevention

1. Gestamp will develop and implement a detailed program for completing inspections, tests, program evaluations and incident prevention. Gestamp must:

- (a) Ensure that a competent person (authorized employee) conducts daily visual checks and monthly inspections and functionality tests of the laser cell components and configuration or operation and energy control procedures that ensure that the procedure and conditions of this proposed variance and interim order are being followed;
 - (b) Ensure that a competent person conducts weekly inspections of the work areas associated with the cleaning of the laser cell; and
 - (c) Develop a set of checklists to be used by a competent person in conducting weekly inspections of the energy control procedures used while performing cleaning activities at the laser cell.
2. Remove from service any equipment that constitutes a safety hazard until Gestamp corrects the hazardous condition and has the correction approved by a qualified person.
3. Gestamp would have to maintain records of all tests and inspections of

the laser cell, as well as associated corrective actions and repairs, at the job site for the duration of the variance. Where available, the maintenance, servicing, and installation of replacement parts must strictly follow the manufacturer’s specifications, instructions, and limitations.

K. Recordkeeping

In addition to completing OSHA’s Form 301 Injury and Illness Incident Report and OSHA’s Form 300 Log of Work-Related Injuries and Illnesses in the case of injuries that result from cleaning the laser cell, Gestamp would have to maintain records of:

1. All tests and inspections of the energy control procedures, as well as associated hazardous condition corrective actions and repairs.

L. Notifications

To assist OSHA in administering the conditions specified herein, Gestamp would have to:

- (1) Notify the OTPCA and the Charleston, WV Area Office of any recordable injury, illness, or fatality (by submitting the completed OSHA Form 301 Injuries and Illness Incident Report).⁷
- (2) Provide certification to the Charleston, WV Area Office within 15 working days of the incident that Gestamp informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).
- (3) Notify OTPCA and the Charleston, WV Area Office within 15 working days and in writing, of any change in the laser cell cleaning operations that affects Gestamp’s ability to comply with the proposed conditions specified herein.
- (4) Obtain OSHA’s approval prior to implementing the proposed change in the energy control operations that affects Gestamp’s ability to comply with the conditions specified herein.
- (5) To assist OSHA in administering the proposed conditions specified herein, inform the OTPCA and the Charleston, WV Area Office as soon as possible, but no later than seven (7) days, after it has knowledge that it will:
 - (i) Cease doing business;
 - (ii) Change the location and address of the main office for managing the tunneling operations specified herein; or
 - (iii) Transfer the operations specified herein to a successor company.
- (6) Notify all affected employees of this proposed Permanent variance by

⁷ See footnote 10.

the same means required to inform them of the application for a Variance.

(7) OSHA would have to approve the transfer of the proposed Permanent variance to a successor company.

OSHA will publish a copy of this notice in the **Federal Register**.

VI. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, on July 30, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020-17019 Filed 8-4-20; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20-066)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation, and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, September 1, 2020, 11:00 a.m.–3:30 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual only; see WebEx and dial-in information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4710, or *g.m.green@nasa.gov*.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available by WebEx or telephonically only. If dialing in via toll number, you must use a touch-tone phone to participate in this meeting. Any interested person may join via WebEx at <https://>

nasaenterprise.webex.com, the meeting number is 199 738 5680, and the password is n@cTIE090120. The toll number to listen by phone is +1-415-527-5035. To avoid using the toll number, after joining the WebEx meeting, select the audio connection option that says, "Call Me" and enter your phone number. If using the desktop or web app, check "Connect to audio without pressing 1 on my phone box" to connect directly to the meeting. **NOTE:** If dialing in, please "mute" your telephone. The agenda for the meeting includes the following topics:

- Space Technology Mission Directorate Update
- Nuclear Technology Portfolio Update
- Science Mission Directorate Technology Portfolio Update
- TechPort Demonstration

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020-17070 Filed 8-4-20; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Request: State Library Administrative Agency, FY 2020–FY 2022

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning the continuance of the State Library Administrative Agencies Survey for FY 2020 and FY 2022. A copy of the

proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before September 4, 2020.

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Dr. Connie Bodner, Director of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Dr. Bodner can be reached by Telephone: 202-653-4636, or by email at *cbodner@imls.gov*, or by teletype (TTY/TDD) for persons with hearing difficulty at 202-653-4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit www.imls.gov.

II. Current Actions

State Library Administrative Agencies (SLAAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. (20 U.S.C. Chapter 72, 20 U.S.C. 9122.) The purpose of this survey is to provide state and federal policymakers with information about SLAAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public. This request includes new SLAA data elements regarding the COVID-19 public health emergency. Through the FY 2010 collection, the SLAA Survey was conducted annually; beginning with the FY 2012 collection, the survey is conducted biennially. Because the FY 2020 collection will not begin until early 2021, we are carrying over the documentation associated with the FY

2018 data collection. Except for slight adjustments to respondent burden, the content of the statement is identical to that submitted for the renewal in 2019. The SLAA Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137-0072. OMB approved the SLAA Survey collection on 01/15/2020, and it expires 01/31/2023. Due to the addition of COVID-19-related questions in the FY 2020 SLAA Survey, this action is to request a new three-year approval.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Agency: Institute of Museum and Library Services.

Title: State Library Administrative Agencies Survey, FY 2020-FY 2022.

OMB Number: 3137-0072.

Agency Number: 3137.

Affected Public: Federal, State and local governments, State library administrative agencies, libraries, general public.

Number of Respondents: 51.

Frequency: Biennially.

Burden Hours per Respondent: 30.4.

Total Burden Hours: 1,550.4.

Total Annual Costs: \$44,015.86.

Total Annual Federal Costs:

\$311,371.20.

Dated: July 31, 2020.

Kim Miller,

*Senior Grants Management Specialist,
Institute of Museum and Library Services.*

[FR Doc. 2020-17025 Filed 8-4-20; 8:45 am]

BILLING CODE 7026-01-P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 5, 2020.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail, First-Class Package Service, and Parcel Select Service Contract 1 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-204, CP2020-231.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-17104 Filed 8-4-20; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 5, 2020.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 116 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-206, CP2020-233.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-17105 Filed 8-4-20; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 5, 2020.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 24, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 643 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2020-205, CP2020-232.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020-17103 Filed 8-4-20; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES: July 28, 2020, at 5 p.m.

PLACE: Washington, DC.

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On July 28, 2020, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant

Plaza SW, Washington, DC 20260–1000.
Telephone: (202) 268–4800.

Michael J. Elston,
Secretary.

[FR Doc. 2020–17137 Filed 8–3–20; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89426; File No. SR–
NYSEAMER–2020–59]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 904 To Increase Position Limits for Options on Certain Exchange-Traded Funds

July 30, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on July 24, 2020, NYSE American 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 904 (Position Limits) to increase the position limits for options on certain exchange-traded funds (“ETFs”). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Commentary .07(f) to Rule 904 to increase the position limits for options on the following ETFs: Standard and Poor’s Depository Receipts Trust (“SPY”), iShares MSCI EAFE ETF (“EFA”), iShares China Large-Cap ETF (“FXI”), iShares iBoxx High Yield Corporate Bond Fund (“HYG”), and Financial Select Sector SPDR Fund (“XLF”). Although the proposed change does not amend the text of Rule 905 (Exercise Limits), when the proposed rule is effective and operative, the exercise limits for the options that are subject to this proposed rule change would increase, because Rule 905 provides that the exercise limits for index options and ETF options, respectively, are equivalent to their position limits. This is a competitive filing that is based on a proposal recently submitted by the Chicago Board Options Exchange Incorporated (“Cboe”) and approved by the Commission.⁴

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

According to Cboe, market participants have increased their demand for options on SPY, EFA, FXI, HYG, and XLF (collectively, the “Underlying ETFs”) for both trading

and hedging purposes. Cboe noted that although the demand for these options appears to have increased, position limits for options on the Underlying ETFs, have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (e.g., buy-write or put-write), and the ability of a Market Maker⁵ to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (“OTC”) markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets.

Based on the foregoing, the Exchange believes that the proposed increases in position limits (and exercise limits) for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and enable other market participants to transfer their liquidity demands from OTC markets to the Exchange (or other options exchanges on which they participate). As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs and ETF component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits (and corresponding exercise limits).

Proposed Position and Exercise Limits for Options on the Underlying ETFs

Position limits for options on ETFs are determined pursuant to Rule 904, and vary according to the number of outstanding shares and the trading volumes of the underlying stocks or ETFs over the past six months. Pursuant to Rule 904, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have

⁵ The term “Market Maker” refers to a Remote Market Maker, a Floor Market Maker, a Specialist, or an e-Specialist, collectively. See Rule 920NY. A Market Maker has the rights and responsibilities set forth in Rules 925NY through Rule 926NY.

⁴ See Securities Exchange Act Release No. 88768 (April 29, 2020) 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and Indexes) (the “Cboe Approval Order”). Cboe also increased position limits for options overlying the MSCI Emerging Markets Index (“MXEF”) and the MSCI EAFE Index (“MXEA”), however, because the Exchange does not list options on the MXEF or MXEA indexes this proposal does not include them.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

position limits of 200,000, 75,000, 50,000, or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on HYG and XLF are currently subject to the standard position limit of 250,000 contracts as set forth in Rule 904. Commentary .07(f) to Rule 904 sets forth separate position limits for options on specific ETFs, including SPY, FXI and EFA. In addition, Rule 905 (which is not being amended by this filing), establishes exercise limits for the aforementioned ETFs.

The Exchange proposes to amend Rule 904 Commentary .07(f) to double the position limits and, as a result, exercise limits, for options on the Underlying ETFs, *i.e.*, for each of HYG, XLF, FXI, EFA and SPY. By virtue of Rule 905, the exercise limits for EFA, FXI, HYG, XLF, and SPY would similarly increase.

The table below represents the current and proposed position limits for options on the Underlying ETFs, including the addition to the table of HYG and XLF, with new text signified by italics and to-be-deleted text signified in brackets.⁶

Options	Position limits
PowerShares QQQ TrustSM, Series 1 (QQQ).	1,800,000 contracts
SPDR® S&P 500® ETF (SPY).	[1,800,000] 3,600,000 contracts
iShares® Russell 2000® ETF (IWM).	1,000,000 contracts
SPDR®Dow Jones Industrial AverageSM ETF Trust (DIA).	300,000 contracts
iShares MSCI Emerging Markets ETF (EEM).	1,000,000 contracts
iShares China Large-Cap ETF (FXI).	[500,000] 1,000,000 contracts
iShares MSCI EAFE ETF (EFA).	[500,000] 1,000,000 contracts
iShares MSCI Brazil Capped ETF (EWZ).	500,000 contracts
iShares 20+ Year Treasury Bond Fund ETF (TLT).	500,000 contracts
iShares MSCI Japan ETF (EWJ).	500,000 contracts
iShares iBoxx High Yield Corporate Bond Fund (“HYG”).	500,000 contracts
Financial Select Sector SPDR Fund (“XLF”).	500,000 contracts

The Exchange notes that the proposed position limits for options on EFA and FXI are consistent with existing position

limits for options on the iShares® Russell 2000 ETF (“IWM”) and the iShares® MSCI Emerging Markets ETF (“EEM”), while the proposed limits for options on XLF and HYG are consistent with current position limits for options on the iShares® MSCI Brazil Capped ETF (“EWZ”), iShares® 20+ Year Treasury Bond Fund ETF (“TLT”), and iShares® MSCI Japan ETF (“EWJ”). The Exchange represents that the Underlying ETFs qualify for either:

(1) The initial listing criteria set forth in Rule 915, Commentary .06 for ETFs holding non-U.S. component securities, or

(2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (“CSA”) is not required, as well as the continued listing criteria in Rule 916.⁷

In compliance with its listing rules, the Exchange also represents that non U.S. component securities that are not subject to a CSA do not, in the aggregate, represent more than 50% of the weight of any of the Underlying ETFs.⁸

Cboe’s Composition and Growth Analysis for Underlying ETFs

As stated above, position limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Securities and Exchange Commission (the “Commission”) has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.⁹ The Underlying ETFs as well as the ETF components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated by the trading statistics collected by Cboe.¹⁰

⁷ The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Rule 915, Commentary .06(a)(ii) and Rule 916, Commentary .07.

⁸ See Rule 915, Commentary .06(a)(ii).

⁹ See Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR-NYSEAmex-2012-29).

¹⁰ See *supra* note 4.

Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.¹¹

To support its proposed position limit increases, Cboe conducted an analysis in support of its proposal. The Exchange agrees with Cboe’s trading statistics and analysis. In support of its proposal, Cboe considered both liquidity of the Underlying ETFs and the component securities of the Underlying ETFs, as well as the availability of economically equivalent products to the overlying options and their respective position limits. For instance, some of the Underlying ETFs are based upon broad-based indices that underlie cash-settled options, and therefore the options on the Underlying ETFs are economically equivalent to the options on those indices, which have no position limits. Other Underlying ETFs are based upon broad-based indices that underlie cash-settled options with position limits reflecting notional values that are larger than current position limits for options on the ETFs based on the same indices. For indexes that are tracked by an Underlying ETF but on which there are no options listed, the Exchange believes, based on the liquidity, depth and breadth of the underlying market of the components of the indexes, that each of the indexes referenced by the applicable ETFs would be considered a broad-based index under the Exchange’s Rules. Additionally, if in some cases certain position limits are appropriate for the options overlying comparable indexes or basket of securities that the Underlying ETFs track, then those economically equivalent position limits should be appropriate for the options overlying the Underlying ETFs.

The Exchange notes that the following trading statistics regarding shares of and options on the Underlying ETFs, as well as the component securities have been collected by Cboe:¹²

¹¹ See *supra* note 9 (Order approving the Exchange’s; implementation of the pilot program that ran through 2017, during which there were no position limits for options on SPY). See also Securities Exchange Act Release No. 83417 (June 12, 2018) 83 FR 28279 (June 18, 2018) (SR-NYSEAMER-2018-26). The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as a result of the pilot program.

¹² See Securities Exchange Act Release No. 34-88350 (March 10, 2020), 85 FR 15003 (March 16, 2020) (SR-CBOE-2020-015).

⁶ See proposed Rule 904, Commentary .07(f).

Product	ADV ¹³ (ETF Shares)	ADV (option contracts)	Shares outstanding (ETFs) ¹⁴	Fund market cap (USD)	Total market cap of ETF components ¹⁵
SPY	70.3 million	2.8 million	968.7 million	312.9 billion	29.3 trillion
FXI	26.1 million	196,600	106.8 million	4.8 billion	28.0 trillion
EFA	25.1 million	155,900	928.2 million	64.9 billion	19.3 trillion
HYG	20.0 million	193,700	216.6 million	19.1 billion	906.4 billion ¹⁶
XLF	48.8 million	102,100	793.6 million	24.6 billion	3.8 trillion

In addition, Cboe also collected the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current

position limits for options on such ETFs, in order to draw comparisons in support of their proposed position limit increases for options on a number of

Underlying ETFs (see further discussion below):

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2 million	670,200	410.3 million	88.7 billion	10.1 trillion	1,800,000
EWZ	26.7 million	186,500	233 million	11.3 billion	234.6 billion	500,000
TLT	9.6 million	95,200	128.1 million	17.5 billion	N/A	500,000
EWJ	7.2 million	5,700	236.6 million	14.2 billion	3 trillion	500,000

The following analysis, which the Exchange agrees with, was conducted by Cboe in support of its proposal. Cboe noted that, overall, the liquidity in the shares of the Underlying ETFs and in the component securities of the Underlying ETFs and in their overlying options, as well as the large market capitalization and structure of each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity and capitalization in the Underlying ETFs and in the component securities of the Underlying ETFs the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the applicable index or reference asset are large enough to adequately absorb potential price movements that may be caused by large trades.

Specifically, the Exchange notes that SPY tracks the performance of the S&P 500® Index, which is an index of diversified large cap U.S. companies.¹⁷ It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500® is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs.

In support of its proposal to increase position limits for SPY to 3,600,000 contracts, Cboe compared SPY's ADV from 2017 to the end of 2019, and found that SPY's ADV has increased from

approximately 64.6 million shares to 70.3 million shares.¹⁸ Similarly, Cboe noted SPY's ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.¹⁹ Cboe's data shows the demand for options trading on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. In addition, Cboe notes that SPY shares are more liquid than PowerShares QQQ TrustSM ("QQQ") shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, according to Cboe's statistical comparison, SPY currently experiences over twice the ADV in shares and over four times the ADV in options than that of QQQ.²⁰

EFA tracks the performance of MSCI EAFE Index ("MXEA"), which is comprised of over 900 large and mid-cap securities across 21 developed markets, including countries in Europe, Australia and the Far East, excluding the U.S. and Canada.²¹ In support of its proposal to increase the position limit for EFA, Cboe's proposal specifies, ADV

has grown significantly in shares of EFA and in options on EFA, from approximately 19.4 million shares in 2017 to 25.1 million through 2019, and from approximately 98,800 options contracts in 2017 to 155,900 through 2019. Further, Cboe compared the notional value of EFA's share price of \$69.44 and MXEA's index level of 2036.94, and calculated that approximately 29 EFA option contracts equal one MXEA option contract. Based on the above comparison of notional values, Cboe concluded that a position limit for EFA options would be economically equivalent to that of MXEA options which equates to 725,000 contracts (prior to Cboe's recent change) and 1,450,000 for Cboe's current 50,000 contract position limit for MXEA options.²²

Cboe also noted that MXEA index options have an ADV of 594 options contracts, which equates to an ADV of 17,226 EFA option contracts (as that is 29 times the size of 594). The Exchange believes the significantly higher actual ADV (155,900 contracts), economically equivalent ADV (17,226 contracts), notional value, and economically equivalent position limits for EFA as compared to MXEA options, supports an increase in position limits for EFA options from 500,000 contracts to 1,000,000 contracts.

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.²³ According to Cboe, FXI shares and options have also experienced

¹⁸ See Securities Exchange Act Release 83065 (April 19, 2018) 83 FR 18093 (April 25, 2018) (SR-NYSEAMER-2018-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 904, Commentary .07 To Expand Position Limits for Options on Certain Exchange-Traded Funds).

¹⁹ See Securities Exchange Act Release No. 83417 (June 12, 2018) 83 FR 28279 (June 18, 2018) (SR-NYSEAMER-2018-26) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .07 to Rule 904).

²⁰ The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

²¹ See iShares MSCI EAFE ETF, available at: <https://www.ishares.com/us/products/239623/ishares-msci-eafe-etf> (April 30, 2020).

²² The Exchange notes that it does not list options on foreign indexes.

²³ See iShares China Large-Cap ETF, available at: <https://www.ishares.com/us/products/239536/ishares-china-largecap-etf> (April 30, 2020).

¹⁷ See SPDR S&P 500 ETF Trust, available at: <https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy> (January 21, 2020).

increased liquidity since 2017, as ADV has grown from approximately 15.1 million shares in 2017 to 26.1 million through 2019, as well as approximately 71,900 options contracts in 2017 to 196,600 through 2019. Cboe notes that although there are currently no options on the FTSE China 50 Index listed for trading, the components of the FTSE China 50 Index, which can be used to create a basket of stocks that equate to the FXI ETF, currently have a market capitalization of approximately \$28 trillion and FXI has a market capitalization of \$4.8 billion (as indicated above), which the Exchange believes are both large enough to absorb potential price movements caused by a large trade in FXI.

XLF invests in a wide array of financial service firms with diversified business lines ranging from investment management to commercial and investment banking. It generally corresponds to the price and yield performance of publicly traded equity securities of companies in the SPDR Financial Select Sector Index.²⁴ In support of its proposal, Cboe compared XLF's ADV to the ADV in shares and options for EWZ (26.7 million shares and 186,500 options contracts), TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). According to Cboe, XLF experiences significantly greater ADV in shares and options than EWZ, TLT, and EWJ, which already have a position limit of 500,000 contracts—the proposed position limit for XLF options. According to Cboe, although there are no options listed on the SPDR Financial Select Sector Index listed for trading, the components of the index, which can be used to create a basket of stocks that equate to the XLF ETF, currently have a market capitalization of \$3.8 trillion (indicated above). Additionally, XLF has a market capitalization of \$24.6 billion. The Exchange believes that both of these are large enough to absorb potential price movements caused by a large trade in XLF.

Finally, HYG attempts to track the investment results of Markit iBoxx[®] USD Liquid High Yield Index, which is composed of U.S. dollar-denominated, high-yield corporate bonds and is one of the most widely used high-yield bond ETFs.²⁵ To support its proposed position limit increase on HYG, Cboe

compared the HYG's ADV in share and options to that of both TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). The Exchange agrees with Cboe's comparison and following analysis. Cboe found that HYG experiences significantly higher ADV in shares and options than both TLT and EWJ, which are currently subject to a position limit of 500,000 options contracts—the proposed limit for options on HYG. According to Cboe, while HYG does not have an index option analogue listed for trading, Cboe believes that its market capitalization of \$19.1 billion, and of \$906.4 billion in component securities, is adequate to absorb a potential price movement that may be caused by large trades in HYG.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the

Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each Member²⁶ that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s).

Market Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market Maker position information.²⁷ Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as

²⁶ The term "Member" means an individual or organization approved to exercise the trading rights associated with an ATP. ATP Holders are deemed "members" under the Exchange Act. See Rule 900.2NY(5).

²⁷ The Options Clearing Corporation ("OCC") through the Large Option Position Reporting ("LOPR") system acts as a centralized service provider for Member compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. ("FINRA"), acting as its agent pursuant to a regulatory services agreement ("RSA").

²⁴ See Select Sector SPDR ETFs, XLF, available at: <http://www.sectorspdr.com/sectorspdr/sector/xlf> (April 30, 2020).

²⁵ See iShares iBoxx \$ High Yield Corporate Bond ETF, available at: <https://www.ishares.com/us/products/239565/ishares-iboxx-high-yield-corporatebond-etf> (April 30, 2020).

an important part of the Exchange's surveillance efforts.²⁸

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.²⁹

The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,³⁰ which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by itself or by its customer.³¹ In addition, Rule 15c3-1 imposes a capital charge on Members to the extent of any margin deficiency resulting from the higher margin requirement.³²

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,³³ in general, and Section 6(b)(5) of the Act,³⁴ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (e.g., there are Exchange-Traded Products ("ETPs") that use options on the Underlying ETFs as part of their investment strategy, and the applicable position limits as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds, underlying component securities, and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities tend to deter manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and

liquidity in shares of the Underlying ETFs, and the components of the Underlying ETFs (as described above), the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.³⁶ More specifically, the Commission recently approved Cboe's proposal to increase the position limits for the Underlying ETFs in this filing.³⁷

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. For example, the Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.³⁸ Additionally, the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on highly liquid, actively traded ETFs.³⁹ In approving increases in position (and exercise limits) for such options in the past, the Commission relied heavily upon the exchanges' surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that exchanges took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

Furthermore, as described more fully above, the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on IWM and EEM, and the proposed limits for options on XLF and HYG are consistent with current position limits for options on EWZ, TLT, and EWJ.

The Exchange believes that its surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. Lastly, the Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially

²⁸ See Rule 906.

²⁹ The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

³⁰ 17 CFR 240.13d 1

³¹ See Exchange Rules, Section 9

³² 17 CFR 240.15c3-1.

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ *Id.*

³⁶ See Securities Exchange Act Release No. 62147 (October 28, 2005) (SR-CBOE-2005-41), at 62149.

³⁷ See *supra* note 4.

³⁸ See *supra* notes 9 and 11.

³⁹ See *supra* note 19.

large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders. The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. Further, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was recently approved by the Commission.⁴⁰ 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁴¹ and Rule 19b-4(f)(6) thereunder.⁴²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁴³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁴⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for Exchange participants that are also members at Cboe where these increased position limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.⁴⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

⁴¹ 15 U.S.C. 78s(b)(3)(A).

⁴² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴³ 17 CFR 240.19b-4(f)(6).

⁴⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁵ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2020-59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2020-59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

⁴⁰ See *supra* note 4.

submissions should refer to File Number SR–NYSEAMER–2020–59, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–16994 Filed 8–4–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89434; File No. SR–NYSENAT–2020–24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6.6800 Series

July 30, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on July 27, 2020, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange’s compliance rule (“Compliance Rule”) regarding the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)⁴ to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission. 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 purpose of this proposed rule change is to amend the Rule 6.6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁵ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the “FDID Amendment”). As a result, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6.6810(r) defines the term “Firm Designated ID” to mean “a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.”

(1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of “Firm Designated ID” in

Rule 6.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the definition of a Firm Designated ID: “provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.”

(2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of “Firm Designated ID” in Rule 6.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.⁶ To effect this change, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6.6810(r) to add “and persistent” after “unique” and delete “for each business date” so that the definition of “Firm Designated ID” would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

(3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client’s trading relationship is available. In these limited instances, the Industry

⁶ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

⁴⁶ 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 Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

⁵ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a

trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 6.6810(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6.6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked."

(4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and/or execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment to the CAT NMS Plan, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6.6810(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 6.6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination."

2. Statutory Basis

NYSE National believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁷ which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,⁸ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

⁷ 15 U.S.C. 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(8).

NYSE National believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”⁹ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

NYSE National does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE National notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE National also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the

⁹ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁶ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.¹⁷

At any time within 60 days of the filing of this 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2020-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2020-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and 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-2020-24, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-16999 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33960]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

July 31, 2020.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2020. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on August 25, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission:
Secretaries-Office@sec.gov.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

AGL Separate Account A [File No. 811-01491]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account D. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

AG Separate Account A of AGL [File No. 811-08862]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account D. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

AGL Separate Account VA-1 [File No. 811-07781]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account D. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

AGL Separate Account VA-2 [File No. 811-01990]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account D. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

AGL Separate Account VUL [File No. 811-05794]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account VL-R. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

AGL Separate Account VUL-2 [File No. 811-06366]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account VL-R. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

Blackstone Alternative Alpha Fund [File No. 811-22634]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 28, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$70,017 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on June 11, 2020.

Applicant's Address: sarah.clinton@ropesgray.com.

Blackstone Alternative Alpha Fund II [File No. 811-22792]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 28, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$53,258 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on June 11, 2020.

Applicant's Address: sarah.clinton@ropesgray.com.

¹⁸ 17 CFR 200.30-3(a)(12).

Blackstone Alternative Alpha Master Fund [File No. 811-22635]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 28, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$536,956 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained \$8,898,918 for the purpose of paying certain outstanding liabilities.

Filing Date: The application was filed on June 11, 2020.

Applicant's Address: sarah.clinton@ropesgray.com.

Global Governments Variable Account [File No. 811-05450]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to MFS Global Governments Portfolio, a series of MFS Variable Insurance Trust II and on December 2, 2011, made a final distribution to its shareholders based on net asset value. Expenses of \$37,479.43 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on October 17, 2019, and amended on March 10, 2020 and June 23, 2020.

Applicant's Address: Legal@mfs.com.

Government Securities Variable Account/MA [File No. 811-04009]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to MFS Global Government Securities Portfolio, a series of MFS Variable Insurance Trust II and on December 2, 2011, made a final distribution to its shareholders based on net asset value. Expenses of \$43,194.90 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on October 17, 2019, and amended on March 10, 2020 and June 23, 2020.

Applicant's Address: Legal@mfs.com.

Hartford Funds Master Fund [File No. 811-23232]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 4, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$22,652.74 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on May 15, 2020.

Applicant's Address: alexander.karampatsos@dechert.com.

High Yield Variable Account/MA [File No. 811-03562]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to MFS High Yield Portfolio, a series of MFS Variable Insurance Trust II and on December 2, 2011, made a final distribution to its shareholders based on net asset value. Expenses of \$40,400.34 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on October 17, 2019, and amended on March 10, 2020 and June 23, 2020.

Applicant's Address: Legal@mfs.com.

Oppenheimer ETF Trust [File No. 811-21993]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Exchange-Traded Fund Trust II and Invesco Exchange-Traded Self-Indexed Fund Trust, and, on May 24, 2019, made a final distribution to its shareholders based on net asset value. Expenses of \$1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

Filing Date: The application was filed on May 4, 2020.

Applicant's Address: Taylor.Edwards@invesco.com.

Oppenheimer Global Opportunities Fund [File No. 811-06001]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AIM International Mutual Funds (Invesco International Mutual Funds), and on May 24, 2019, made a final distribution to its shareholders based on net asset value. Expenses of \$1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

Filing Date: The application was filed on May 4, 2020.

Applicant's Address: Taylor.Edwards@invesco.com.

Oppenheimer Global Strategic Income Fund [File No. 811-05724]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has

transferred its assets to AIM Investment Funds (Invesco Investment Funds), and, on May 24, 2019, made a final distribution to its shareholders based on net asset value. Expenses of \$1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

Filing Date: The application was filed on May 4, 2020.

Applicant's Address: Taylor.Edwards@invesco.com.

Oppenheimer Quest For Value Funds [File No. 811-05225]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AIM Investment Funds (Invesco Investment Funds) and AIM Growth Series (Invesco Growth Series), and, on May 24, 2019, made a final distribution to its shareholders based on net asset value. Expenses of \$1,300,306.94 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser, and/or their affiliates.

Filing Date: The application was filed on May 4, 2020.

Applicant's Address: Taylor.Edwards@invesco.com.

Separate Account II of AGL [File No. 811-04867]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to AGL Separate Account VL-R. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by American General Life Insurance Company.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

Total Return Variable Account [File No. 811-05448]

Summary: Applicant, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to MFS Total Return Portfolio, a series of MFS Variable Insurance Trust II and on December 2, 2011, made a final distribution to its shareholders based on net asset value. Expenses of \$51,512.77 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on October 17, 2019, and amended on March 10, 2020 and June 23, 2020.

Applicant's Address: Legal@mfs.com.

USL Separate Account USL B [File No. 811-04865-01]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to USL Separate Account USL VL-R. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by The United States Life Insurance Company in the City of New York.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

USL Separate Account USL VA-R [File No. 811-09007]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to USL Separate Account USL A. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by The United States Life Insurance Company in the City of New York.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

Variable Annuity Account One of First SunAmerica Life Insurance Company [File No. 811-06313]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to FS Variable Separate Account. Expenses of less than \$10,000 incurred in connection with the reorganization were paid by The United States Life Insurance Company in the City of New York.

Filing Dates: The application was filed on December 19, 2019, and amended on June 26, 2020.

Applicant's Address: lucia.williams@aig.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17106 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-94, OMB Control No. 3235-0085]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

Rule 17a-11

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17a-11, Notification Provisions for Brokers and Dealers (17 CFR 240.17a-11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a-11 (17 CFR 240.17a-11) under the Exchange Act on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority ("DEA"), and the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a-11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a-11 also requires over-the-counter ("OTC") derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3-1 to notify the Commission when their tentative net capital drops below certain levels.

To ensure the provision of these types of notices to the Commission, Rule 17a-11 requires every national securities exchange or national securities association to notify the Commission when it learns that a member broker-

dealer has failed to send a notice or transmit a report required under the Rule.

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notices or reports received pursuant to Rule 17a-11. The Commission believes that information obtained under Rule 17a-11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

The Commission expects to receive 343 notices from broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems and eleven notices each year from national securities exchange or national securities association notifying it that a member broker-dealer has failed to send the Commission a notice or transmit a report required under the Rule. The Commission expects that it will take approximately one hour to prepare and transmit each notice. Therefore, the Commission estimates the total annual reporting burden arising from this section of the rule will be approximately 354 hours.¹

Rule 17a-11 also requires broker-dealers engaged in securities lending or repurchase activities to either: (1) File a notice with the Commission and their DEA whenever the total money payable against all securities loaned, subject to a reverse repurchase agreement or the contract value of all securities borrowed or subject to a repurchase agreement, exceeds 2,500% of tentative net capital; or, alternatively, (2) report monthly their securities lending and repurchase activities to their DEA in a form acceptable to their DEA.

The Commission estimates that, annually, six broker-dealers will submit the monthly stock loan/borrow report. The Commission estimates each firm will spend, on average, approximately one hour per month (or twelve hours per year) of employee resources to prepare and send the report or to prepare the information for the FOCUS report (as required by the firm's DEA, if applicable). Therefore, the Commission estimates the total annual reporting burden arising from this section of the rule will be approximately 72 hours.²

Therefore, the total annual reporting burden associated with Rule 17a-11 is approximately 426 hours.³

¹ 343 hours + 11 hours = 354 hours.

² 6 broker-dealers × 12 hours per year = 72 hours.

³ 343 hours + 11 hours + 72 hours = 426 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 30, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17010 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89432; File No. SR-NYSEArca-2020-71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Rule 11.6800 Series

July 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 July 27, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 11.6800 Series, the Exchange's compliance rule (“Compliance Rule”) regarding the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)³ to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission. 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 purpose of this proposed rule change is to amend the Rule 11.6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁴ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

⁴ See Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register publication pending).

of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the “FDID Amendment”). As a result, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 11.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 11.6810(r) defines the term “Firm Designated ID” to mean “a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.”

(1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of “Firm Designated ID” in Rule 11.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the definition of a Firm Designated ID: “provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.”

(2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of “Firm Designated ID” in Rule 11.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.⁵ To effect this change, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 11.6810(r) to add “and persistent” after “unique” and delete “for each business date” so that the definition of “Firm Designated ID” would read, in relevant part, as follows:

A unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to

⁵ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

¹ 15 U.S.C. 78a.

² 17 CFR 240.19b-4.

the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

(3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (*e.g.*, certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (*e.g.*, a facilitation or average price account) until they are allocated to the proper subaccount(s), *i.e.*, the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all

identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 11.6810(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked."

(4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and/or execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment to the CAT NMS Plan, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 11.6810(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 11.6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts

and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.”

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁶ which require, among other things, that the Exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,⁷ which requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate.

NYSE Arca believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”⁸ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Arca notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Arca also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a

competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁵ Accordingly, the Commission hereby waives the 30-day operative delay and

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

designates the proposal operative as of July 31, 2020.¹⁶

At any time within 60 days of the filing of this 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-NYSEArca-2020-71 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-2020-71. 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

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(6).

⁷ 15 U.S.C. 78f(b)(8).

⁸ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

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-2020-71, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-16997 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-559, OMB Control No. 3235-0621]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:
Form 15F.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 15F (17 CFR 249.324) is filed by a foreign private issuer when terminating its Exchange Act reporting obligations pursuant to Exchange Act Rule 12h-6 (17 CFR 240.12h-6). Form 15F requires a foreign private issuer to disclose information that helps investors understand the foreign private issuer’s decision to terminate its Exchange Act reporting obligations and assists the Commission staff in determining whether the filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h-6. Rule 12h-6 provides a process for a foreign private issuer to exit the Exchange Act registration and reporting regime when there is relatively little U.S. investor interest in its securities. Rule 12h-6 is intended to remove a

disincentive for foreign private issuers to register their securities with the Commission by lessening concerns that the Exchange Act registration and reporting system would be difficult to exit once an issuer enters it. The information provided to the Commission is mandatory and all information is made available to the public upon request. We estimate that Form 15F takes approximately 30 hours to prepare and is filed by approximately 30 foreign private issuers. We estimate that 25% of the 30 hours per response (7.5 hours per response) is prepared by the filer for a total annual reporting burden of 225 hours (7.5 hours per response × 30 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: July 31, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89425; File No. SR-NYSE-2020-63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Period for Specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and Temporary Rule Relief in Rule 36.30

July 30, 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 July 28, 2020, the 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and temporary rule relief in Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMS or after the Exchange closes on September 30, 2020. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and temporary rule relief to Rule 36.30, to end on the earlier of a full reopening of the Trading Floor facilities to DMMS or after the Exchange closes on September 30, 2020. The current temporary period that these Rules are in effect ends on the earlier of a full reopening of the Trading Floor facilities to DMMS or after the Exchange closes on July 31, 2020.

Background

To slow the spread of COVID-19 through social-distancing measures, on

¹⁷ 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.

March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID-19.⁵ On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID-19.⁶

Proposed Rule Change

The Exchange has modified its rules to add Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and rule relief in Rule 36.30⁷ that are in effect until the

earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020.⁸

The first and second phases of the reopening of the Trading Floor are subject to safety measures designed to prevent the spread of COVID-19. To meet these safety measures, Floor brokers and DMM units that have chosen to return to the Trading Floor are operating with reduced staff. The Exchange is therefore proposing to extend the following temporary rules until such time that there is a full reopening of the Trading Floor facilities to DMMs:

- Commentary .01 to Rule 7.35;⁹
- Commentaries .01, .02, .03, .04, .05, and .06 to Rule 7.35A;
- Commentaries .01 and .03 to Rule 7.35B;
- Commentaries .01, .02, .03, and .04 to Rule 7.35C; and
- Amendments to Rule 36.30.

The Exchange is not proposing any substantive changes to these Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID-19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street

in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. On June 15, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, DMM units may choose to return a subset of staff to the Trading Floor.

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 because the Trading Floor has not yet reopened in full to DMMs or Floor brokers. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and amendments to Rule 36.30, which are intended to be in effect during the temporary period while the Trading Floor has not yet opened in full to DMMs, should be extended until such time that there is a full reopening of the Trading Floor facilities to DMMs. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on September 30, 2020, market participants will have advance notice of the temporary period during which the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and amendments to Rule 36.30 will be in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, .04, .05, and .06 to Rule 7.35A; Commentaries .01 and .03 to Rule 7.35B; Commentaries .01, .02, .03, and .04 to Rule 7.35C; and amendments to Rule 36.30 will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor has not yet been opened in full to DMMs and Floor brokers and currently expire on July 31, 2020. Because the Trading Floor has not been opened in full to DMMs, the Exchange proposes to

⁴ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

⁵ See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

⁶ See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

⁷ See Securities Exchange Act Release Nos. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR-NYSE-2020-19) (amending Rule 7.35C to add Commentary .01); 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR-NYSE-2020-22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02); 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28) (amending Rule 7.35A to add Commentary .03); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR-NYSE-2020-29) (amending Rule 7.35C to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR-NYSE-2020-35) (amending Rule 7.35A to add Commentary .04); 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR-NYSE-2020-37) (amending Rule 7.35 to add Commentary .01); 88950 (May 26, 2020), 85 FR 33252 (June 1, 2020) (SR-NYSE-2020-48) (amending Rule 7.35A to add Commentary .05); 89059 (June 12, 2020), 85 FR 36911 (June 18, 2020) (SR-NYSE-2020-50) (amending Rule 7.35C to add Commentary .04); and 89086 (June 17, 2020) (SR-NYSE-2020-52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material .20, and Supplementary Material .30 to Rule 36).

⁸ See Securities Exchange Act Release No. 89199 (June 30, 2020), 85 FR 40718 (July 7, 2020) (SR-NYSE-2020-56) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020). See also Securities Exchange Act Release No. 89368 (July 21, 2020), 85 FR 45272 (July 27, 2020) (SR-NYSE-2020-61) (Notice of filing and immediate effectiveness of proposed rule change to lift the temporary suspension to Rule 76 and delete Supplementary Material .20 to Rule 76).

⁹ Because DMMs are not obligated to return to a Floor, an IPO Auction may still be conducted by a DMM remotely as provided for in Commentary .04 to Rule 7.35A. If a DMM chooses to conduct an IPO Auction remotely, Floor brokers on the Trading Floor will not have access to IPO Auction imbalance information.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

extend the temporary period for these temporary rules to end on the earlier of a full reopening of the Trading Floor facilities to DMMS or after the Exchange closes on September 30, 2020.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect immediately. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the rules discussed above to remain in effect during the temporary period during which the Trading Floor has not yet been reopened in full to DMMS. Accordingly, the Commission hereby waives the 30-day

operative delay and designates the proposal operative upon filing.¹⁸

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)¹⁹ 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-2020-63 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-2020-63. 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

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2020-63 and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-16993 Filed 8-4-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89431; File No. SR-NYSE-2020-62]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Rule 6800 Series

July 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 July 27, 2020, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

Trail (the “CAT NMS Plan” or “Plan”)³ to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission. 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 purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁴ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the “FDID Amendment”). As a result, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6810 to reflect the changes to the

CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6810(r) defines the term “Firm Designated ID” to mean “a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.”

(1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the definition of a Firm Designated ID: “provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.”

(2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of “Firm Designated ID” in Rule 6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.⁵ To effect this change, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6810(r) to add “and persistent” after “unique” and delete “for each business date” so that the definition of “Firm Designated ID” would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

(3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier

that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client’s trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client’s trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

⁴ See Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register publication pending).

⁵ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 6810(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked."

(4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the

time of order placement. In this workflow, the Industry Member's order handling and execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment to the CAT NMS Plan, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6810(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 6810(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination."

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the provisions

of Section 6(b)(5) of the Act,⁶ which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,⁷ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."⁸ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

⁶ 15 U.S.C. 78f(b)(6).

⁷ 15 U.S.C. 78f(b)(8).

⁸ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁵ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.¹⁶

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register publication pending).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the

At any time within 60 days of the filing of this 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-NYSE-2020-62 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-2020-62. 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

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-62, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-16996 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89435; File No. SR-MIAX-2020-27]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Chapter XVII, Consolidated Audit Trail Compliance Rule.

July 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 July 29, 2020, Miami International Securities Exchange, LLC ("MIAX Options" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Chapter XVII, MIAX's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")³

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) ("Adopting Release"). Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Chapter XVII, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁴ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the "FDID Amendment"). As a result, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 1701 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 1701(r) defines the term "Firm Designated ID" to mean "a unique identifier for each trading account designated by Industry Members for

purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date."

(1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of "Firm Designated ID" in Rule 1701(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the definition of a Firm Designated ID: "provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account."

(2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of "Firm Designated ID" in Rule 1701(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.⁵ To effect this change, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 1701(r) to add "and persistent" after "unique" and delete "for each business date" so that the definition of "Firm Designated ID" would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

(3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional

⁵ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm

⁴ Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register pending).

Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 1701(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 1701(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked."

(4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the

execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 1701(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a "Firm Designated ID" in Rule 1701(r) to state that a Firm Designated ID means, in relevant part, "a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁶ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

investors and the public interest, and Section 6(b)(8) of the Act,⁷ which requires that MIAX rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."⁸ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

⁷ 15 U.S.C. 78f(b)(8).

⁸ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

⁶ 15 U.S.C. 78f(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁵ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.¹⁶

At any time within 60 days of the filing of this 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-MIAX-2020-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2020-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2020-27, and

should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-17000 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89433; File No. SR-NYSECHX-2020-23]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rule 6.6800 Series

July 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 July 27, 2020, NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange's compliance rule ("Compliance Rule") regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan")³ to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission. 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

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78a.

² 17 CFR 240.19b-4.

³ Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6.6800 Series, the Compliance Rule regarding the CAT NMS Plan, to be consistent with an amendment to the CAT NMS Plan recently approved by the Commission.⁴ The Commission approved an amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances (the "FDID Amendment"). As a result, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6.6810(r) defines the term "Firm Designated ID" to mean "a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date."

(1) Prohibit Use of Account Numbers

The Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Exchange proposes to add the following to the

definition of a Firm Designated ID: "provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account."

(2) Persistent Firm Designated ID

The Exchange also proposes to amend the definition of "Firm Designated ID" in Rule 6.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.⁵ To effect this change, the Exchange proposes to amend the definition of "Firm Designated ID" in Rule 6.6810(r) to add "and persistent" after "unique" and delete "for each business date" so that the definition of "Firm Designated ID" would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository . . . where each such identifier is unique among all identifiers from any given Industry Member.

(3) Relationship Identifiers

The FDID Amendment also permits an Industry Member to provide a relationship identifier as the Firm Designated ID, rather than an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (e.g., certain institutional accounts, managed accounts, accounts for individuals). In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients,

the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (e.g., a facilitation or average price account) until they are allocated to the proper subaccount(s), i.e., the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as "BFM1." When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm

⁴ See Securities Exchange Act Release No. 89397 (July 24, 2020) (Federal Register publication pending).

⁵ If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (e.g., if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

Designated ID would involve an individual in place of the Big Fund Manager in the above example.

In accordance with the FDID Amendment, the Exchange proposes to amend the definition of a “Firm Designated ID” in Rule 6.6810(r) to permit Industry Members to provide a relationship identifier as the Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6.6810(r) to state that a Firm Designated ID means, in relevant part, “a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked.”

(4) Entity Identifiers

The FDID Amendment also permits Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member’s order handling and execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. Each Industry Member must

make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

In accordance with the FDID Amendment to the CAT NMS Plan, the Exchange proposes to amend the definition of “Firm Designated ID” in Rule 6.6810(r) to permit the use of an entity identifier as a Firm Designated ID as described above. Specifically, the Exchange proposes to amend the definition of a “Firm Designated ID” in Rule 6.6810(r) to state that a Firm Designated ID means, in relevant part, “a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.”

2. Statutory Basis

NYSE Chicago believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁶ which require, among other things, that the Exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,⁷ which requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate.

NYSE Chicago believes that this proposal is consistent with the Act because it is consistent with, and implements, a recent amendment to the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In

approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”⁸ To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

NYSE Chicago does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Chicago notes that the proposed rule changes are consistent with a recent amendment to the CAT NMS Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Chicago also notes that the FDID Amendment will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

⁸ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

⁶ 15 U.S.C. 78f(b)(6).

⁷ 15 U.S.C. 78f(b)(8).

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁵ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.¹⁶

At any time within 60 days of the filing of this 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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2020-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2020-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2020-23, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-16998 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89427; File No. SR-NYSEArca-2020-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.8-O To Increase Position Limits for Options on Certain Exchange-Traded Funds

July 30, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 24, 2020, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.8-O (Position Limits) to increase the position limits for options on certain exchange-traded funds ("ETFs"). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Commentary .06(f) to Rule 6.4-O to

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

increase the position limits for options on the following ETFs: Standard and Poor’s Depository Receipts Trust (“SPY”), iShares MSCI EAFE ETF (“EFA”), iShares China Large-Cap ETF (“FXI”), iShares iBoxx High Yield Corporate Bond Fund (“HYG”), and Financial Select Sector SPDR Fund (“XLF”). Although the proposed change does not amend the text of Rule 6.9–O (Exercise Limits), when the proposed rule is effective and operative, the exercise limits for the options that are subject to this proposed rule change would increase, because Rule 6.9–O provides that the exercise limits for index options and ETF options, respectively, are equivalent to their position limits. This is a competitive filing that is based on a proposal recently submitted by the Chicago Board Options Exchange Incorporated (“Cboe”) and approved by the Commission.⁴

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

According to Cboe, market participants have increased their demand for options on SPY, EFA, FXI, HYG, and XLF (collectively, the “Underlying ETFs”) for both trading

and hedging purposes. Cboe noted that although the demand for these options appears to have increased, position limits for options on the Underlying ETFs, have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (e.g., buy-write or put-write), and the ability of a Market Maker⁵ to make liquid markets with tighter spreads in these options resulting in the transfer of volume to over-the-counter (“OTC”) markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets.

Based on the foregoing, the Exchange believes that the proposed increases in position limits (and exercise limits) for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and enable other market participants to transfer their liquidity demands from OTC markets to the Exchange (or other options exchanges on which they participate). As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs and ETF component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase

in position limits (and corresponding exercise limits).

Proposed Position and Exercise Limits for Options on the Underlying ETFs

Position limits for options on ETFs are determined pursuant to Rule 6.8–O, and vary according to the number of outstanding shares and the trading volumes of the underlying stocks or ETFs over the past six months. Pursuant to Rule 6.8–O, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000, or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on HYG and XLF are currently subject to the standard position limit of 250,000 contracts as set forth in Rule 6.8–O. Commentary .06(f) to Rule 6.8–O sets forth separate position limits for options on specific ETFs, including SPY, FXI and EFA. In addition, Rule 6.9–O (which is not being amended by this filing), establishes exercise limits for the aforementioned ETFs.

The Exchange proposes to amend Rule 6.8–O Commentary .06(f) to double the position limits and, as a result, exercise limits, for options on the Underlying ETFs, *i.e.*, for each of HYG, XLF, FXI, EFA and SPY. By virtue of Rule 6.9–O, the exercise limits for EFA, FXI, HYG, XLF, and SPY would similarly increase.

The table below represents the current and proposed position limits for options on the Underlying ETFs, including the addition to the table of HYG and XLF, with new text signified by italics and to-be-deleted text signified in brackets.⁶

Options	Position limits
PowerShares QQQ TrustSM, Series 1 (QQQ)	1,800,000 contracts
SPDR® S&P 500® ETF (SPY)	[1,800,000]3,600,000 contracts
iShares® Russell 2000® ETF (IWM)	1,000,000 contracts
SPDR®Dow Jones Industrial AverageSM ETF Trust (DIA)	300,000 contracts
iShares MSCI Emerging Markets ETF (EEM)	1,000,000 contracts
iShares China Large-Cap ETF (FXI)	[500,000]1,000,000 contracts
iShares MSCI EAFE ETF (EFA)	[500,000]1,000,000 contracts
iShares MSCI Brazil Capped ETF (EWZ)	500,000 contracts
iShares 20+ Year Treasury Bond Fund ETF (TLT)	500,000 contracts
iShares MSCI Japan ETF (EWJ)	500,000 contracts
iShares iBoxx High Yield Corporate Bond Fund (“HYG”)	500,000 contracts
Financial Select Sector SPDR Fund (“XLF”)	500,000 contracts

⁴ See Securities Exchange Act Release No. 88768 (April 29, 2020) 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and

Indexes) (the “Cboe Approval Order”). Cboe also increased position limits for options overlying the MSCI Emerging Markets Index (“MXEF”) and the MSCI EAFE Index (“MXEA”), however, because the Exchange does not list options on the MXEF or MXEA indexes this proposal does not include them.

⁵ The term “Market Maker” refers to Market Makers and Lead Market Makers, collectively. See Rule 6.32–O. A Market Maker has the rights and responsibilities set forth in Rules 6.37–O through 6.30–O.

⁶ See proposed Rule 6.8–O, Commentary .06(f).

The Exchange notes that the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on the iShares[®] Russell 2000 ETF (“IWM”) and the iShares[®] MSCI Emerging Markets ETF (“EEM”), while the proposed limits for options on XLF and HYG are consistent with current position limits for options on the iShares[®] MSCI Brazil Capped ETF (“EWZ”), iShares[®] 20+ Year Treasury Bond Fund ETF (“TLT”), and iShares[®] MSCI Japan ETF (“EWJ”). The Exchange represents that the Underlying ETFs qualify for either:

(1) The initial listing criteria set forth in Rule 5.3–O(g)(2) for ETFs holding non-U.S. component securities, or

(2) the generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (“CSA”) is not required, as well as the continued listing criteria in Rule 5.4–O.7 In compliance with its listing rules, the Exchange also represents that non U.S. component securities that are not subject to a CSA do not, in the aggregate, represent more than 50% of the weight of any of the Underlying ETFs.⁸

Cboe’s Composition and Growth Analysis for Underlying ETFs

As stated above, position limits are intended to prevent the establishment of

options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Securities and Exchange Commission (the “Commission”) has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.⁹ The Underlying ETFs as well as the ETF components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated by the trading statistics collected by Cboe.¹⁰ Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.¹¹

To support its proposed position limit increases, Cboe conducted an analysis in support of its proposal. The Exchange agrees with Cboe’s trading statistics and analysis. In support of its proposal, Cboe considered both liquidity of the Underlying ETFs and the component securities of the Underlying ETFs, as well as the availability of economically equivalent products to the overlying options and their respective position limits. For instance, some of the Underlying ETFs are based upon broad-

based indices that underlie cash-settled options, and therefore the options on the Underlying ETFs are economically equivalent to the options on those indices, which have no position limits. Other Underlying ETFs are based upon broad-based indices that underlie cash-settled options with position limits reflecting notional values that are larger than current position limits for options on the ETFs based on the same indices. For indexes that are tracked by an Underlying ETF but on which there are no options listed, the Exchange believes, based on the liquidity, depth and breadth of the underlying market of the components of the indexes, that each of the indexes referenced by the applicable ETFs would be considered a broad-based index under the Exchange’s Rules. Additionally, if in some cases certain position limits are appropriate for the options overlying comparable indexes or basket of securities that the Underlying ETFs track, then those economically equivalent position limits should be appropriate for the options overlying the Underlying ETFs.

The Exchange notes that the following trading statistics regarding shares of and options on the Underlying ETFs, as well as the component securities have been collected by Cboe:¹²

Product	ADV ¹³ (ETF Shares)	ADV (option contracts)	Shares outstanding (ETFs) ¹⁴	Fund market cap (USD)	Total market cap of ETF components ¹⁵
SPY	70.3 million	2.8 million	968.7 million	312.9 billion	29.3 trillion
FXI	26.1 million	196,600	106.8 million	4.8 billion	28.0 trillion
EFA	25.1 million	155,900	928.2 million	64.9 billion	19.3 trillion
HYG	20.0 million	193,700	216.6 million	19.1 billion	906.4 billion ¹⁶
XLF	48.8 million	102,100	793.6 million	24.6 billion	3.8 trillion

In addition, Cboe also collected the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current

position limits for options on such ETFs, in order to draw comparisons in support of their proposed position limit increases for options on a number of

Underlying ETFs (see further discussion below):

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2 million	670,200	410.3 million	88.7 billion	10.1 trillion	1,800,000

⁷ The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Rules 5.3(g)(2) and 5.4–O(k).

⁸ See Rule 5.3–O(g)(2)(B).

⁹ See Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (SR–NYSEArca–2012–112).

¹⁰ See *supra* note 4.

¹¹ See *supra* note 9 (Order approving the Exchange’s; implementation of the pilot program that ran through 2017, during which there were no

position limits for options on SPY). See also Securities Exchange Act Release No. 83413 (June 12, 2018) 83 FR 28277 (June 18, 2018) (SR–NYSEArca–2018–44). The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as a result of the pilot program.

¹² See Securities Exchange Act Release No. 34–88350 (March 10, 2020), 85 FR 15003 (March 16, 2020) (SR–CBOE–2020–015).

¹³ Cboe’s average daily volume (“ADV”) data for ETF shares and options contracts are for all of 2019. Additionally, reference to ADV in ETF shares, and

ETF options in this proposal are for all of 2019, unless otherwise indicated.

¹⁴ Shares Outstanding and Fund Market Capitalization Data in the tables presented in this filing were sourced from Bloomberg and the Cboe’s internal data on January 2, 2020.

¹⁵ Total Market Capitalization of the ETF Components presented in the tables in this filing were sourced from Bloomberg on January 3, 2020, as well as directly from the issuers’ websites.

¹⁶ Total Market Capitalization of HYG was sourced from IHS Markit, which sends daily constituent information to Cboe.

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
EWZ	26.7 million	186,500	233 million	11.3 billion	234.6 billion	500,000
TLT	9.6 million	95,200	128.1 million	17.5 billion	N/A	500,000
EWJ	7.2 million	5,700	236.6 million	14.2 billion	3 trillion	500,000

The following analysis, which the Exchange agrees with, was conducted by Cboe in support of its proposal. Cboe noted that, overall, the liquidity in the shares of the Underlying ETFs and in the component securities of the Underlying ETFs and in their overlying options, as well as the large market capitalization and structure of each of the Underlying ETFs support the proposal to increase the position limits for each option class. Given the robust liquidity and capitalization in the Underlying ETFs and in the component securities of the Underlying ETFs the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the applicable index or reference asset are large enough to adequately absorb potential price movements that may be caused by large trades.

Specifically, the Exchange notes that SPY tracks the performance of the S&P 500® Index, which is an index of diversified large cap U.S. companies.¹⁷ It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500® is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs.

In support of its proposal to increase position limits for SPY to 3,600,000 contracts, Cboe compared SPY's ADV from 2017 to the end of 2019, and found that SPY's ADV has increased from approximately 64.6 million shares to 70.3 million shares.¹⁸ Similarly, Cboe noted SPY's ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.¹⁹ Cboe's data shows the demand for options trading

on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. In addition, Cboe notes that SPY shares are more liquid than PowerShares QQQ TrustSM ("QQQ") shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, according to Cboe's statistical comparison, SPY currently experiences over twice the ADV in shares and over four times the ADV in options than that of QQQ.²⁰

EFA tracks the performance of MSCI EAFE Index ("MXEA"), which is comprised of over 900 large and mid-cap securities across 21 developed markets, including countries in Europe, Australia and the Far East, excluding the U.S. and Canada.²¹ In support of its proposal to increase the position limit for EFA, Cboe's proposal specifies, ADV has grown significantly in shares of EFA and in options on EFA, from approximately 19.4 million shares in 2017 to 25.1 million through 2019, and from approximately 98,800 options contracts in 2017 to 155,900 through 2019. Further, Cboe compared the notional value of EFA's share price of \$69.44 and MXEA's index level of 2036.94, and calculated that approximately 29 EFA option contracts equal one MXEA option contract. Based on the above comparison of notional values, Cboe concluded that a position limit for EFA options would be economically equivalent to that of MXEA options which equates to 725,000 contracts (prior to Cboe's recent change) and 1,450,000 for Cboe's current 50,000 contract position limit for MXEA options.²²

Cboe also noted that MXEA index options have an ADV of 594 options contracts, which equates to an ADV of 17,226 EFA option contracts (as that is 29 times the size of 594). The Exchange believes the significantly higher actual ADV (155,900 contracts), economically equivalent ADV (17,226 contracts), notional value, and economically

equivalent position limits for EFA as compared to MXEA options, supports an increase in position limits for EFA options from 500,000 contracts to 1,000,000 contracts.

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.²³ According to Cboe, FXI shares and options have also experienced increased liquidity since 2017, as ADV has grown from approximately 15.1 million shares in 2017 to 26.1 million through 2019, as well as approximately 71,900 options contracts in 2017 to 196,600 through 2019. Cboe notes that although there are currently no options on the FTSE China 50 Index listed for trading, the components of the FTSE China 50 Index, which can be used to create a basket of stocks that equate to the FXI ETF, currently have a market capitalization of approximately \$28 trillion and FXI has a market capitalization of \$4.8 billion (as indicated above), which the Exchange believes are both large enough to absorb potential price movements caused by a large trade in FXI.

XLFF invests in a wide array of financial service firms with diversified business lines ranging from investment management to commercial and investment banking. It generally corresponds to the price and yield performance of publicly traded equity securities of companies in the SPDR Financial Select Sector Index.²⁴ In support of its proposal, Cboe compared XLFF's ADV to the ADV in shares and options for EWZ (26.7 million shares and 186,500 options contracts), TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). According to Cboe, XLFF experiences significantly greater ADV in shares and options than EWZ, TLT, and EWJ, which already have a position limit of 500,000 contracts—the proposed position limit for XLFF options. According to Cboe, although there are no options listed on the SPDR Financial Select Sector Index listed for trading, the components of the index, which can be used to create a

¹⁷ See SPDR S&P 500 ETF Trust, available at: <https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy> (January 21, 2020).

¹⁸ See Securities Exchange Act Release 83066 (April 19, 2018) 83 FR 18099 (April 25, 2018) (SR-NYSEArca-2018-23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.8-O, Commentary .06 To Expand Position Limits for Options on Certain Exchange-Traded Funds).

¹⁹ See Securities Exchange Act Release No. 83413 (June 12, 2018) 83 FR 28277 (June 18, 2018) (SR-NYSEArca-2018-44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .06 to Rule 6.8-O).

²⁰ The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

²¹ See iShares MSCI EAFE ETF, available at: <https://www.ishares.com/us/products/239623/ishares-msci-eafe-etf> (April 30, 2020).

²² The Exchange notes that it does not list options on foreign indexes.

²³ See iShares China Large-Cap ETF, available at: <https://www.ishares.com/us/products/239536/ishares-china-largecap-etf> (April 30, 2020).

²⁴ See Select Sector SPDR ETFs, XLFF, available at: <http://www.sectorspdr.com/sectorspdr/sector/xlff> (April 30, 2020).

basket of stocks that equate to the XLF ETF, currently have a market capitalization of \$3.8 trillion (indicated above). Additionally, XLF has a market capitalization of \$24.6 billion. The Exchange believes that both of these are large enough to absorb potential price movements caused by a large trade in XLF.

Finally, HYG attempts to track the investment results of Markit iBoxx® USD Liquid High Yield Index, which is composed of U.S. dollar-denominated, high-yield corporate bonds and is one of the most widely used high-yield bond ETFs.²⁵ To support its proposed position limit increase on HYG, Cboe compared the HYG's ADV in share and options to that of both TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). The Exchange agrees with Cboe's comparison and following analysis. Cboe found that HYG experiences significantly higher ADV in shares and options than both TLT and EWJ, which are currently subject to a position limit of 500,000 options contracts—the proposed limit for options on HYG. According to Cboe, while HYG does not have an index option analogue listed for trading, Cboe believes that its market capitalization of \$19.1 billion, and of \$906.4 billion in component securities, is adequate to absorb a potential price movement that may be caused by large trades in HYG.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits.

²⁵ See iShares iBoxx \$ High Yield Corporate Bond ETF, available at: <https://www.ishares.com/us/products/239565/ishares-iboxx-high-yield-corporatebond-etf> (April 30, 2020).

This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each Member²⁶ that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s).

Market Makers would continue to be exempt from this reporting requirement,

²⁶ The term "Member" means an individual or organization approved to exercise the trading rights associated with an OTP. OTP Holders and OTP Firms are deemed "members" under the Exchange Act. See Rule 1.

however, the Exchange may access Market Maker position information.²⁷ Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.²⁸

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.²⁹

The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,³⁰ which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by itself or by

²⁷ The Options Clearing Corporation ("OCC") through the Large Option Position Reporting ("LOPR") system acts as a centralized service provider for Member compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. ("FINRA"), acting as its agent pursuant to a regulatory services agreement ("RSA").

²⁸ See Rule 6.6–O.

²⁹ The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

³⁰ 17 CFR 240.13d–1.

its customer.³¹ In addition, Rule 15c3–1 imposes a capital charge on Members to the extent of any margin deficiency resulting from the higher margin requirement.³²

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,³³ in general, and Section 6(b)(5) of the Act,³⁴ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.*, there are Exchange-Traded Products (“ETPs”) that use options on the Underlying ETFs as part of their investment strategy, and the applicable position limits as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from OTC markets onto the Exchange, which will enhance the

process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds, underlying component securities, and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities tend to deter manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and liquidity in shares of the Underlying ETFs, and the components of the Underlying ETFs (as described above), the Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.³⁶ More specifically, the Commission recently approved Cboe’s proposal to increase the position limits for the Underlying ETFs in this filing.³⁷

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. For example, the Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.³⁸ Additionally, the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on highly liquid, actively traded ETFs.³⁹ In approving increases in position (and exercise limits) for such options in the past, the Commission relied heavily upon the exchanges’ surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that exchanges took in order to detect

and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

Furthermore, as described more fully above, the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on IWM and EEM, and the proposed limits for options on XLF and HYG are consistent with current position limits for options on EWZ, TLT, and EWJ.

The Exchange believes that its surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. Lastly, the Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders. The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened

³¹ See Rule 4–O, Section 3.

³² 17 CFR 240.15c3–1.

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ *Id.*

³⁶ See Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

³⁷ See *supra* note 4.

³⁸ See *supra* notes 9 and 11.

³⁹ See *supra* note 19.

contra-party creditworthiness due to the role of OCC as issuer and guarantor. Further, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was recently approved by the Commission.⁴⁰ 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁴¹ and Rule 19b-4(f)(6) thereunder.⁴²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁴³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁴⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to immediately increase the position limits for the products subject to this proposal, which the Exchange believes will provide consistency for

Exchange participants that are also members at Cboe where these increased position limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.⁴⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2020-70 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-2020-70. 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

⁴⁵ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-70, and should be submitted on or before August 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-16995 Filed 8-4-20; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 11175]

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 under section 22 U.S.C. 4305(b) that to protect the interests of the United States, it is necessary to require the People's Republic of China to forego use of the following real properties as of the times and dates listed below:

1. 3417 Montrose Boulevard, Houston, TX, beginning 4:00 p.m. Central Daylight Time on July 24, 2020;
2. 811 Holman Street, Houston, TX, beginning 4:00 p.m. Central Daylight Time on July 24, 2020;
3. 7600 Alameda Road, Houston, TX, beginning 4:00 p.m. Central Daylight Time on August 23, 2020.

For purposes of this determination the real property locations listed above include any buildings and/or

⁴⁶ 17 CFR 200.30-3(a)(12).

⁴⁰ See *supra* note 4.

⁴¹ 15 U.S.C. 78s(b)(3)(A).

⁴² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴³ 17 CFR 240.19b-4(f)(6).

⁴⁴ 17 CFR 240.19b-4(f)(6)(iii).

improvements thereon and the land ancillary thereto.

Use of the specified properties after the above-listed dates is subject to terms and conditions as specified by the Department's Office of Foreign Missions, until such time as arrangements are made for their final disposition.

Clifton C. Seagroves,

Principal Deputy Director, Office of Foreign Missions, Department of State.

[FR Doc. 2020-17051 Filed 8-4-20; 8:45 am]

BILLING CODE 4710-43-P

DEPARTMENT OF STATE

[Public Notice 11162]

30-Day Notice of Proposed Information Collection: State Assistance Management System (SAMS) Domestic Results Monitoring Module and NEA/AC Online Performance Reporting System (ACPRS)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to September 4, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be made to Sarah Tajalli, Accenture Federal Services Contractor, U.S. Department of State, Bureau of Administration, Office of Logistics Management (A/LM), Suite 3150—1800 N. Kent Street Arlington, VA. She may be reached by phone at (571) 551-4511 or by email at EngelSM@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* State Assistance Management System (SAMS) Domestic Results Monitoring Module.

- *OMB Control Number:* 1405-0183.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* A/LM.
- *Form Number:* DS-4127.
- *Respondents:* Recipients of Department of State grants.
- *Estimated Number of Respondents:* 240.

- *Estimated Number of Responses:* 960.

- *Average Time Per Response:* 20 hours.

- *Total Estimated Burden Time:* 19,200 hours.

- *Frequency:* Quarterly.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In compliance with OMB Guidelines contained in 2 CFR 200, recipient organizations are required to provide, and the U.S. Department of State is required to collect, periodic program and financial performance reports. The responsibility of the Department to track and monitor the programmatic and financial performance necessitates a database that can help facilitate this in a consistent and standardized manner. The SAMS Domestic Results Monitoring Module and ACPRS enables enhanced monitoring and evaluation of grants through standardized collection and storage of relevant award elements, such as quarterly progress reports, workplans, results monitoring plans, grant agreements, and other business information related to implementers. The SAMS Domestic Results Monitoring

Module streamlines communication with implementers and allows for rapid identification of information gaps for specific projects.

Methodology

Information will be electronically entered into SAMS Domestic and ACPRS by respondents.

Jennifer Gorkowski,

SAMS Deputy Program Manager.

[FR Doc. 2020-17053 Filed 8-4-20; 8:45 am]

BILLING CODE 4710-31-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for San Carlos Airport under the provisions of the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act," by the County of San Mateo. This program was submitted subsequent to a determination by FAA that associated noise exposure maps for San Carlos Airport were in compliance with applicable requirements, effective April 23, 2019. The proposed 2019 noise compatibility program will be approved or disapproved on or before January 26, 2021.

DATES: The effective date of the start of FAA's review of the noise compatibility program 2019 is July 30, 2020. The public comment period ends September 28, 2020.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, SFO-613, Federal Aviation Administration, San Francisco Airports District Office, 1000 Marina Boulevard, Suite 220, Brisbane, California 94005-1835; or by telephone at (650) 827-7613. Comments on the proposed noise compatibility program 2019 should be emailed to 9-awp-sfo-ado-communications@faa.gov or mailed to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed 2019 noise compatibility program for San Carlos Airport, which will be approved or disapproved on or before January 26, 2021. This notice also announces the

availability of the San Carlos Airport noise compatibility program 2019 for public review and comment. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA has formally received the noise compatibility program 2019 for San Carlos Airport, effective on July 30, 2020. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material for the proposed 2019 indicates that it conforms to 14 CFR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 26, 2021.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed noise compatibility program 2019 with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, and the noise compatibility program 2019 are available for examination at the following locations:

<http://sancarlosnoise.airportstudy.com/noise-study-documents/>

San Mateo County Airports

San Carlos Airport, 620 Airport Drive, Suite 10, San Carlos, CA 94070-2714

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in El Segundo, California on July 30, 2020.

Mark A. McClardy,

Director, Office of Airports, Western-Pacific Region, AWP-600.

[FR Doc. 2020-17014 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0093]

Hours of Service of Drivers: Turfgrass Producers International; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption as moot.

SUMMARY: FMCSA announces its decision to deny as moot the application of Turfgrass Producers International (TPI) to extend the hours-of-service (HOS) exemption for "agricultural commodities" to drivers transporting turfgrass sod. FMCSA has analyzed the application, public comments, and applicable law and has determined that turfgrass sod is an agricultural commodity already subject to the HOS exemption.

DATES: FMCSA denies this application for exemption effective August 5, 2020.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the U.S. Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to help 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.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact La Tonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle; 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-2019-0093" 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., ET, Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain 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, and provide an opportunity for public comment on the request.

The Agency reviews the safety analyses, if any, and public comments submitted 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 Agency publishes its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Turfgrass Producers International (TPI) represents natural grass seed and sod farmers throughout the United States and abroad. TPI says it has promoted the benefits of natural grass for 51 years and has members in over 46 States and 25 countries that produce natural grass seed and sod. The natural grass product that farming members produce is delivered to urban and suburban areas where it is used for landscape services, home construction, and recreational industries, among others.

TPI requests an exemption that would allow drivers transporting turfgrass sod to operate under the same HOS exemption provided for drivers transporting “agricultural commodities,” as defined in 49 CFR 395.2. The agricultural commodities exemption is codified in 49 CFR 395.1(k)(1).

TPI asserts that its sod-producing members are concerned that the definition of “agricultural commodity” in 49 CFR 395.2 does not include sod and that the motor carriers cannot take advantage of the HOS relief provided by 49 CFR 395.1(k)(1), despite the similarities between sod and the other commodities that are considered agricultural in nature.

According to TPI’s application, turfgrass sod is recognized as a perishable agricultural commodity by the U.S. Department of Agriculture and, like many other agricultural commodities, is planted and harvested annually. Sod is cultivated and managed with techniques and equipment similar to those used for other agricultural crops and is subject to the same impacts of weather, weed infestations, insect pests, and plant disease. Similarly, once harvested for sale, it is also subject to perishing in transport. Specifically, sod often loses its color, moisture, and vigor due to transplant shock and can die if palleted too long. Sod’s perishability depends on many of the same factors that impact the transportation of other agricultural commodities, including temperature, desiccation, oxygen and light deprivation, increased respiration, carbon starvation, etc., all of which negatively impact the quality of turfgrass sod.

TPI asserts that the lack of the HOS exemption available to drivers transporting other agricultural commodities will heavily impact sod haulers’ business. Their inability to deliver their perishable product to market in a timely manner will result in a decrease in the amount of product

they can ship and an increase in the amount of product that either perishes in transport or is damaged in transport, resulting in customers who refuse delivery or are otherwise not satisfied with sod quality at delivery. If granted, TPI estimates that the exemption would cover between 2,400 drivers (400 farm baseline) and 10,428 drivers (1,738 farm maximum).

IV. Public Comment

On June 19, 2019, FMCSA published notice of this application and requested public comment (84 FR 28621). Forty-six comments were received, all favoring the exemption. The commenters argued that because sod is a perishable product it requires flexibility when being transported and for that reason should be classified as an agricultural commodity. Commenter Preston Cavanaugh stated that “Grass sod is considered an agricultural commodity by the U.S. Department of Agriculture, U.S. Environmental Protection Agency, Internal Revenue Service, Social Security Administration, Occupational Safety and Health Administrations, U.S. Department of Labor, and many [S]tate departments of agriculture.” Commenter Kim Allen Boling stated, “Employees on sod farms are considered to be agricultural workers under the Federal Wage & Hour rules. . . .”

V. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, TPI proposes to educate natural grass sod haulers on the existing safety regulations regarding the operation of commercial motor vehicles. TPI contends that nothing about its weight, stacking configuration, etc., makes natural grass sod any less safe to haul than other agricultural commodities, as demonstrated by the proven safety record of drivers hauling sod grass.

VI. FMCSA Analysis

FMCSA has analyzed the TPI application, public comments, and applicable law and has determined that turfgrass sod is an agricultural commodity already subject to the HOS exemption. We therefore deny as moot TPI’s request for an exemption.

Congress adopted the current definition of “agricultural commodity” in 2007, as currently restated in 49 CFR 395.2: “*Agricultural commodity* means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).”

The Agricultural Trade Act of 1978 defines *Agricultural commodity* as “any agricultural commodity, food, feed, fiber, or livestock (including livestock as it is defined in [the Emergency Livestock Feed Assistance Act of 1988] *and any product thereof*” (emphasis added). In 49 CFR 395.2, “*Agricultural commodity*” is defined, in part, as “any agricultural commodity.” The term “any agricultural commodity” is facially quite broad, and FMCSA concludes that that breadth encompasses sod grass. The Agency notes the common characteristics of sod and other agricultural commodities as further evidenced by arguments from commenters who point out that grass sod is considered an agricultural commodity by the U.S. Department of Agriculture, U.S. Environmental Protection Agency, Internal Revenue Service, Social Security Administration, Occupational Safety and Health Administrations, U.S. Department of Labor, and many State departments of agriculture.

Because FMCSA has determined that sod is an agricultural commodity and an exemption is not required, FMCSA does not address other statutory requirements for the grant of an exemption application.

FMCSA acknowledges its ongoing rulemaking to determine whether, and, if so, to what extent the definitions of “agricultural commodity” and “livestock” should be revised or otherwise clarified. *See* Hours of Service of Drivers; Definition of Agricultural Commodity Advance Notice of Proposed Rulemaking (ANPRM) [84 FR 36559, July 29, 2019]. The July 2019 ANPRM was prompted by indications that the current definitions of these terms may not be understood or enforced consistently. The Agency’s decision today to interpret agricultural commodity as already including sod grass for purposes of resolving TPI’s exemption request is thus interim in nature and does not foreclose a revised or even contrary conclusion as a result of the related rulemaking.

VII. FMCSA Decision

The FMCSA has evaluated TPI’s application for exemption, and the public comments, and made the decision to deny the application. The exemption is denied as moot because sod grass is already an agricultural commodity for purposes of the HOS exemption at 49 CFR 395.1(k)(1).

James A. Mullen,
Deputy Administrator.

[FR Doc. 2020–17087 Filed 8–4–20; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket Number FRA–2020–0059]****Petition for Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 10, 2020, the Association of American Railroads (AAR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 213, 214, 217, 218, 220, 228, 232, 236, 240, 242, and 243. FRA assigned the petition Docket Number FRA–2020–0059.

AAR, on behalf of itself and its member railroads, requests to renew temporary social-distancing related emergency relief FRA previously granted by letter dated May 22, 2020, in its emergency relief docket (Docket Number FRA–2020–0002). See <https://www.regulations.gov/document?D=FRA-2020-0002-0073>. FRA renewed this relief for an additional 60 days on July 20, 2020. See <https://www.regulations.gov/document?D=FRA-2020-0002-0093>.

AAR also requests that FRA amend the conditions associated with the relief previously granted from 49 CFR 240.127(c)(5) in the emergency relief docket (FRA–2020–0002). As currently in effect, the relief from section 240.127(c)(5) allows railroads to use locomotive event recorder downloads to meet the requirements for periodic locomotive engineer skills rides to support the recertification of locomotive engineers, provided certain conditions are met. First, the relief is limited to situations where all other recertification activities are complete (e.g., vision and hearing screening). The waiver is also limited to situations where a locomotive engineer's recertification becomes due during the waiver period. AAR asserts that these two conditions limit "the ability of railroads to use event recorder data to comply with" section 240.127(c)(5). Accordingly, AAR asks FRA to eliminate these two conditions in any relief granted.

In support of its petition, AAR references the recommendations from the U.S. Centers for Disease Control and Prevention (CDC) and State and local governments to practice social distancing to reduce the spread of coronavirus disease 2019 (COVID–19). AAR further states that the granted relief would help railroads provide their employees with a safe working environment, which allows the Nation's

essential railroad network to continue operations. Additionally, AAR asserts that the relief has not jeopardized the safety of railroad operations. AAR explains it anticipates needing such relief so long as CDC guidance recommending social distancing remains in place.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov (Docket Number FRA–2020–0059).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by September 4, 2020 will be considered by FRA before final action is taken.

Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,*Associate Administrator for Railroad Safety
Chief Safety Officer.*

[FR Doc. 2020–17029 Filed 8–4–20; 8:45 am]

BILLING CODE 4910–06–P**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****[Docket Number FRA–2020–0060]****Petition for Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 13, 2020, the American Public Transportation Association (APTA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 213, 214, 217, 218, 220, 225, 228, 229, 232, 234, 236, 238, 239, 240, 242, and 243. FRA assigned the petition Docket Number FRA–2020–0060.

APTA, on behalf of its member railroads, requests to renew the emergency relief FRA previously granted by letter dated May 22, 2020, in its emergency relief docket (Docket Number FRA–2020–0002). See <https://www.regulations.gov/document?D=FRA-2020-0002-0074>. FRA renewed this relief for an additional 60 days on July 20, 2020. See <https://www.regulations.gov/document?D=FRA-2020-0002-0094>.

APTA states that the requested emergency relief allows for modifications in operations that are necessary to maintain public and railroad employee health and safety, and it enables commuter and passenger railroads to operate consistently with recommendations from the Centers for Disease Control and Prevention concerning reducing the spread of coronavirus disease 2019 (COVID–19). Additionally, APTA states that its member railroads are currently only utilizing a small portion of the relief to prioritize safety, but it expects that the changing dynamics of COVID–19 may require use of relief not currently being applied. Given the uncertain nature of the COVID–19 public health emergency and its effect on railroad operations, APTA requests to renew the relief for one year.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov (Docket Number FRA–2020–0060).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by September 4, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2020-17028 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2016-0018]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 8, 2020, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices. In addition, UP requests an exemption from the requirements of title 49, United States Code (U.S.C.), section 20303, which prohibits the movement of a rail vehicle with defective or insecure equipment beyond the nearest available place at which the repairs can be made. See 49 U.S.C. 20306. FRA assigned the petition to existing Docket Number FRA-2016-0018.

Specifically, UP seeks a waiver of compliance from 49 CFR 232.213, *Extended haul trains*; 49 CFR 232.15, *Movement of defective equipment*; and 49 CFR 232.103(f), *General requirements for all train brake systems*. UP is requesting a 5-year waiver from these requirements for intermodal trains (and other train types as permitted and authorized by FRA) to demonstrate that the use of wheel temperature detectors (WTD) to determine brake effectiveness improves safety and eliminates unnecessary costs to the industry.

UP has collected performance data for approximately two years of the five-year pilot period granted by FRA in this docket for unit coal trains between the Powder River Basin in Wyoming and White Bluff, Arkansas. UP states that this pilot waiver has demonstrated significant positive trends in the expected areas of observation. See Petition, Appendix 2, <https://www.regulations.gov/document?D=FRA-2016-0018-0015>. UP further states that while the White Bluffs pilot is limited in scope, expansion of operations with a similar type of pilot program at this juncture, given the favorable observations, would advance operating safety and improve other fleet conditions.

UP explains that wayside WTDs offer an alternative means to verify good braking performance. WTDs directly measure the rise in wheel temperature as a result of a brake application. Such a measure of performance is objective and quantifiable, and is independent of conditions that can impair a visual inspection; such as weather, lighting and human fatigue, inexperience, or error. A monitoring system using WTD data as an alternative to the intermediate brake inspections, whether Class IA or extended haul, while still retaining all other brake system safety assurance procedures, is expected to substantially improve the reliability of brake inspections, and thus the safety performance of brake systems.

For the White Bluff pilot test waiver trains to date, UP reports WTD alerts per million miles has reduced by 74% from October 2018 through May 2020, indicating significant improvement in the overall condition of train braking systems. Wayside alerts have driven 1.5 times more “bad orders” for brakes to the repair track than have non-waivered cars operating outside of cold wheel alert allowances. As a result, cold wheel alerts have driven attention to “key” repairs (which include control valves, miscellaneous valve subsystems, air components, brake rigging, and slack adjusters) to 25% higher than other cars.

UP also requested an exemption from 49 U.S.C. 20303. FRA may grant an exemption from the requirements of § 20303 only based on (1) evidence developed at a hearing; or (2) an agreement between national railroad labor representatives and the developer of the equipment or technology at issue. See 49 U.S.C. 20306. FRA notes that the public hearing previously held to address UP’s similar request for exemption in this docket addresses substantially the same issues as its current request. See <https://www.regulations.gov/document?D=FRA-2016-0018-0011>. In considering UP’s present request, FRA intends to rely on the findings of the hearing conducted in this docket.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 4, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2020-17057 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2020-0063]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 14, 2020, the American Short Line and Regional Railroad Association (ASLRRA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 213, 214, 217, 218, 220, 228, 232, 236, 240, 242, and 243. FRA assigned the petition Docket Number FRA-2020-0063.

ASLRRA, on behalf of itself and its member railroads, requests to renew emergency relief to allow for social distancing and workforce shortages, which was previously granted by FRA by letter dated May 22, 2020, in its emergency relief docket (Docket Number FRA-2020-0002). See <https://www.regulations.gov/document?D=FRA-2020-0002-0072>. FRA renewed this relief for an additional 60 days on July 20, 2020. See <https://www.regulations.gov/document?D=FRA-2020-0002-0095>.

ASLRRA also requests relief from the annual continuous welded rail training requirement at 49 CFR 213.7(c)(2). Short lines have postponed in-person training due to social distancing requirements, but based on the rise of coronavirus disease 2019 (COVID-19), it is unlikely that training will be possible. Additionally, ASLRRA requests clarification regarding refresher/recurrent training requirements for roadway workers under 49 CFR 214.343-214.357.

In support of its petition, ASLRRA states that continuing the relief to comply with guidance on social

distancing from the Centers for Disease Control and Prevention (CDC) is necessary to protect railroad employees. ASLRRA further states that extending the relief will enable railroads and their employees to maintain safe workplace practices. ASLRRA explains it anticipates needing such relief so long as CDC guidance recommending social distancing remains in place.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov (Docket Number FRA-2020-0063).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by September 4, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. 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 <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2020-17027 Filed 8-4-20; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Health Services Research and Development Service Scientific Merit Review Board will be held September 3, 2020, by teleconference. The meeting will be held between 12:00 p.m. and end at 1:00 p.m. EST. The meeting will be partially closed to the public from 12:15-1:00 p.m. EST for the discussion, examination, and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92-463 subsection 10(d), as amended by Public Law 94-409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure the high quality and mission relevance of VA's legislatively mandated Health Services Research and Development program. Board members advise the Director, Health Services Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human subjects of Health Services Research and Development proposals. The Board does not consider grants, contracts, or other forms of extramural research.

Members of the public who wish to attend the open portion of the teleconference session from 12-12:15 p.m. EST may dial 1-800-767-1750, participant code 27960#.

Written comments from the public must be sent to Liza Catucci, Designated Federal Officer, Health Services Research and Development Service,

Department of Veterans Affairs (10X2H), 810 Vermont Avenue NW, Washington, DC 20420, or to *Liza.Catucci@va.gov* prior to the meeting. Those who plan to attend the open portion of the meeting

must contact Ms. Catucci at least 5 days before the meeting. For further information, please call Ms. Catucci at 202-443-5797.

Dated: July 31, 2020.

LaTonya L. Small,
Federal Advisory Committee Management Officer.

[FR Doc. 2020-17092 Filed 8-4-20; 8:45 am]

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Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Part 431****[EERE-2017-BT-STD-0016]****RIN 1904-AD89****Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), directs DOE to determine whether standards for metal halide lamp fixtures (“MHLFs”) should be amended. In this notice of proposed determination (“NOPD”), DOE has initially determined that the energy conservation standards for metal halide lamp fixtures do not need to be amended and also asks for comment on this proposed determination and associated analyses and results.

DATES:

Meeting: DOE will hold a webinar on Thursday, August 27, 2020, from 10:00 a.m. to 3:00 p.m. See section VII, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar than it will be cancelled. DOE will hold a public meeting on this proposed determination if one is requested by August 19, 2020.

Comments: DOE will accept comments, data, and information regarding this NOPD no later than October 19, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2017-BT-STD-0016, by any of the following methods:

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

2. *Email:* MHLF2017STD0016@ee.doe.gov. Include the docket number EERE-2017-BT-STD-0016 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121.

Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII 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, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0016>. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, “Public Participation,” for further 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, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1604. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-2002. Email: Kathryn.McIntosh@hq.doe.gov.

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

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I. Synopsis of the Proposed Determination

Title III, Part B¹ of EPCA,² established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include metal halide lamp fixtures (“MHLFs”), the subject of this notice of proposed determination (“NOPD”). (42 U.S.C. 6292(a)(19))

EPCA established initial standards for MHLFs. (42 U.S.C. 6295(hh)(1)(A)) EPCA directed the U.S. Department of Energy (“DOE”) to conduct a review of the statutory standards to determine whether they should be amended, and a subsequent review to determine if the standards then in effect should be amended. (42 U.S.C. 6295(hh)(2) and (3)) DOE conducted the first review of MHLF energy conservation standards and published a final rule amending standards on February 10, 2014. 79 FR 7746.³ DOE is issuing this NOPD

pursuant to the EPCA requirement that DOE conduct a second review of MHLF energy conservation standards. (42 U.S.C. 6295(hh)(3)(A))

For this proposed determination, DOE analyzed MHLFs subject to standards specified in 10 CFR 431.326(c). DOE first analyzed the technological feasibility of more efficient MHLFs. For those MHLFs for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that could result from potential energy conservation standards by conducting a national impacts analysis (“NIA”). DOE evaluated whether higher standards would be cost effective by conducting life-cycle cost (“LCC”) and payback period (“PBP”) analyses, and estimated the net present value (“NPV”) of the total costs and benefits experienced by consumers.

Based on the results of these analyses, summarized in section V of this document, DOE has tentatively determined that current standards for metal halide lamp fixtures do not need to be amended because more stringent standards would not have significant energy savings and would not be economically justified.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the relevant historical background related to the establishment of standards for MHLFs.

A. Authority and Background

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes MHLFs that are the subject of this proposed determination. (42 U.S.C. 6292(a)(19)) EPCA, as amended by the Energy Independence and Security Act of 2007 (Pub. L. 110–140, EISA 2007), prescribed energy conservation standards for this equipment. (42 U.S.C. 6295(hh)(1)) EPCA directed DOE to conduct two rulemaking cycles to determine whether

to amend these standards. (42 U.S.C. 6295(hh)(2)(A) and (3)(A)) DOE published a final rule amending the standards on February 10, 2014 (“2014 MHLF final rule”). 79 FR 7746. Under 42 U.S.C. 6295(hh)(3)(A), the agency must conduct a second review to determine whether current standards should be amended and publish a final rule. This second MHLF standards rulemaking was initiated through the publication of a request for information (“RFI”) document in the **Federal Register**. 84 FR 31231 (“July 2019 RFI”)

Pursuant to EPCA, DOE’s energy conservation program for covered products, which as noted includes MHLFs, consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product, including MHLFs. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for MHLFs appear at 10 CFR 431.324.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, which

¹ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

² All references to EPCA in this document refer to the statute as amended through America’s Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

³ DOE notes that because of the codification of the MHLF provisions in 42 U.S.C. 6295, MHLF energy conservation standards and the associated test procedures are subject to the requirements of the consumer products provisions of Part B of Title III

of EPCA. However, because MHLFs are generally considered to be commercial equipment, DOE established the requirements for MHLFs in 10 CFR part 431 (“Energy Efficiency Program for Certain Commercial and Industrial Equipment”) for ease of reference. DOE notes that the location of the provisions within the CFR does not affect either the substance or applicable procedure for MHLFs. Based upon their placement into 10 CFR part 431, MHLFs are referred to as “equipment” throughout this document, although covered by the consumer product provisions of EPCA.

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

- (1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;
- (3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;
- (4) Any lessening of the utility or the performance of the covered products likely to result from the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
- (6) The need for national energy and water conservation; and
- (7) Other factors the Secretary of Energy (“Secretary”) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the

consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

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

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

Pursuant to the amendments contained in the EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered products, including MHLFs, after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use. (42 U.S.C.

6295(gg)(3)(A)–(B)) DOE’s current test procedure for MHLFs addresses standby mode energy use. However, in the 2014 MHLF final rule, DOE stated that it had yet to encounter an MHLF that used energy in standby mode and therefore concluded that it could not establish a standard that incorporated standby mode energy consumption. Regarding off mode, DOE concluded in the same final rule that it is not possible for MHLFs to meet off mode criteria because there is no condition in which the components of a MHLF are connected to the main power source and are not already in a mode accounted for in either active or standby mode. 79 FR 7757.

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)). This NOPD also satisfies the 6-year review provision of EPCA.

1. Current Standards

In the 2014 MHLF final rule, DOE prescribed the current energy conservation standards for MHLFs manufactured on and after February 10, 2017. 79 FR 7746. These standards are set forth in DOE’s regulations at 10 CFR 431.326 and are repeated in Table II.1.

TABLE II.1—CURRENT ENERGY CONSERVATION STANDARDS FOR MHLFS

Designed to be operated with lamps of the following rated lamp wattage	Tested input voltage *	Minimum standard equation * (%)
≥50W and ≤100W	480 V	$(1/(1+1.24 \times P^{(-0.351)})) - 0.0200$.**
≥50W and ≤100W	All others	$1/(1+1.24 \times P^{(-0.351)})$.
>100W and <150W †	480 V	$(1/(1+1.24 \times P^{(-0.351)})) - 0.0200$.
>100W and <150W †	All others	$1/(1+1.24 \times P^{(-0.351)})$.
≥150W ‡ and ≤250W	480 V	0.880.
≥150W ‡ and ≤250W	All others	For ≥150W and ≤200W: 0.880. For >200W and ≤250W: $1/(1+0.876 \times P^{(-0.351)})$.

TABLE II.1—CURRENT ENERGY CONSERVATION STANDARDS FOR MHLFs—Continued

Designed to be operated with lamps of the following rated lamp wattage	Tested input voltage *	Minimum standard equation * (%)
>250W and ≤500W	480 V	For >250W and <265W: 0.880. For ≥265W and ≤500W: $(1/(1+0.876 \times P^{(-0.351)})) - 0.0100$.
>250W and ≤500W	All others	$1/(1+0.876 \times P^{(-0.351)})$.
>500W and ≤1,000W	480 V	>500W and ≤750W: 0.900. >750W and ≤1,000W: $0.000104 \times P + 0.822$. For >500W and ≤1,000W: may not utilize a probe-start ballast.
>500W and ≤1,000W	All others	For >500W and ≤750W: 0.910. For >750W and ≤1,000W: $0.000104 \times P + 0.832$. For >500W and ≤1,000W: may not utilize a probe-start ballast.

* Tested input voltage is specified in 10 CFR 431.324.

** P is defined as the rated wattage of the lamp the fixture is designed to operate.

† Includes 150 watt (W) fixtures specified in paragraph (b)(3) of this section, that are fixtures rated only for 150W lamps; rated for use in wet locations, as specified by the National Fire Protection Association (“NFPA”) 70 (incorporated by reference, see § 431.323), section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by Underwriters Laboratory (UL) 1029 (incorporated by reference, see § 431.323).

‡ Excludes 150W fixtures specified in paragraph (b)(3) of this section, that are fixtures rated only for 150W lamps; rated for use in wet locations, as specified by the NFPA 70, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029.

2. History of Standards Rulemaking for MHLFs

As described in section II.A, EPCA, as amended by Public Law 110–140, EISA 2007, prescribed energy conservation standards for MHLFs. (42 U.S.C. 6295(hh)(1)) EPCA directed DOE to conduct two rulemaking cycles to determine whether to amend these standards. (42 U.S.C. 6295(hh)(2)(A) and (3)(A)) DOE completed the first of these

rulemaking cycles in 2014 by adopting amended performance standards for MHLFs manufactured on or after February 10, 2017. 79 FR 7746. The current energy conservation standards are located in 10 CFR part 431. See 10 CFR 431.326 (detailing the applicable energy conservation standards for different classes of MHLFs). The currently applicable DOE test procedures for MHLFs appear at 10 CFR 431.324. Under 42 U.S.C.

6295(hh)(3)(A), the agency is instructed to conduct a second review of its energy conservation standards for MHLFs and publish a final rule to determine whether to amend those standards. DOE initiated the second MHLF standards rulemaking process on July 1, 2019, by publishing the July 2019 RFI.

DOE received five comments in response to the July 2019 RFI from the interested parties listed in Table II.2.

TABLE II.2—JULY 2019 RFI WRITTEN COMMENTS

Organization(s)	Reference in this NOPD	Organization type
National Electrical Manufacturers Association	NEMA	Trade Association.
Edison Electric Institute	EEL	Utility Association.
The Institute for Policy Integrity at New York University School of Law	IPI	Think Tank.
Pacific Gas and Electric, Southern California Edison, San Diego Gas and Electric	CA IOUs	Utilities.
Signify North America Corporation	Signify	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁴

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

⁴ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for metal halide lamp fixtures. (Docket No. EERE–2017–BT–STD–0016, which is maintained at www.regulations.gov/#/docketDetail;D=EERE-2017-BT-STD-0016). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

A. Product/Equipment Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered product into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) This proposed determination covers metal halide lamp fixtures defined as light fixtures for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp. 42 U.S.C. 6291(64); 10 CFR 431.322. The scope of coverage is discussed in further

detail in section IV.B.1 of this document.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE’s adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered product must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE will finalize a test procedure establishing methodologies used to evaluate proposed energy conservation standards at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d) of appendix A to 10 CFR part 430 subpart C (“Process Rule”). DOE’s current energy conservation standards for MHLFs are

expressed in terms of the efficiency of the ballast contained within the fixture. (10 CFR 431.326)

DOE established an active mode and standby mode power test method in a final rule published on March 9, 2010. 75 FR 10950. The current test procedure for MHLFs appears in 10 CFR 431.324 and specifies the ballast efficiency calculation as lamp output power divided by the ballast input power.

DOE has since published an RFI to initiate a data collection process to consider whether to amend DOE's test procedure for MHLFs. 83 FR 24680 (May 30, 2018).

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available equipment, or in working prototypes to be technologically feasible. Section 7(b)(1) of the Process Rule.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on equipment utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. Section 7(b)(2)–(5) of the Process Rule. Section IV.B.5 of this document discusses the results of the screening analysis for MHLFs, particularly the designs DOE considered, those it screened out, and those that are considered in this proposed determination. For further details on the screening analysis for this proposed determination, see chapter 4 of the NOPD technical support document (“TSD”).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in

energy use that is technologically feasible for such equipment. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (“max-tech”) improvements in energy efficiency for MHLFs, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.C.4 and in chapter 5 of the NOPD TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (“TSL”), DOE projected energy savings from application of the TSL to MHLFs purchased in the 30-year period that begins in the year of compliance with the potential standards (2025–2054).⁵ The savings are measured over the entire lifetime of MHLFs purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet model to estimate national energy savings (“NES”) from potential amended or new standards for MHLFs. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by equipment at the location where it is used. For electricity, DOE reports national energy savings in terms of site energy savings and source energy savings, the latter of which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of full-fuel-cycle (“FFC”) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.⁶ DOE's approach is based on the calculation of

⁵ Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPD are described in section V.A. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

⁶ The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.1 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) The term “significant” is not defined in EPCA. DOE has established a significance threshold for energy savings. Section 6(b) of the Process Rule. In evaluating the significance of energy savings, DOE conducts a two-step approach that considers both an absolute site energy savings threshold and a threshold that is percent reduction in the covered energy use. *Id.* DOE first evaluates the projected energy savings from a potential max-tech standard over a 30-year period against a 0.3 quads of site energy threshold. Section 6(b)(2) of the Process Rule. If the 0.3 quad-threshold is not met, DOE then compares the max-tech savings to the total energy usage of the covered equipment to calculate a percentage reduction in energy usage. Section 6(b)(3) of the Process Rule. If this comparison does not yield a reduction in site energy use of at least 10 percent over a 30-year period, DOE proposes that no significant energy savings would likely result from setting new or amended standards. Section 6(b)(3) of the Process Rule. The two-step approach allows DOE to ascertain whether a potential standard satisfies EPCA's significant energy savings requirements in 42 U.S.C. 6295(o)(3)(B) to ensure that DOE avoids setting a standard that “will not result in significant conservation of energy.”

EPCA defines “energy efficiency” as the ratio of the useful output of services from a product to the *energy use* of such product, measured according to the Federal test procedures. (42 U.S.C. 6291(5), *emphasis added*) EPCA defines “energy use” as the quantity of energy directly consumed by a consumer product at point of use, as measured by the Federal test procedures. (42 U.S.C. 6291(4)) Further, EPCA uses a household energy consumption metric as a threshold for setting standards for new covered products (42 U.S.C. 6295(l)(1)). Given this context, DOE relies on site energy as the appropriate metric for evaluating the significance of energy savings.

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (“MIA”). DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) industry net present value, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in the LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

DOE has concluded amended standards for MHLFs would not result in significant energy savings and, as discussed further in section V.D of this document, would not be economically justified for the potential standard levels evaluated based on the PBP analysis. Therefore, DOE did not conduct an MIA

analysis or LCC subgroup analysis for this NOPD.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE’s LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D, DOE uses

the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) The Secretary may not prescribe an amended or new standard if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially similar in the United States at the time of the Secretary’s finding. (42 U.S.C. 6295(o)(4))

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) Because DOE is not proposing standards for MHLFs, DOE did not transmit a copy of its proposed determination to the Attorney General.

f. Need for National Energy Conservation

In evaluating the need for national energy conservation, 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE expects that energy savings from amended standards would likely provide improvements to the security and reliability of the nation’s energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation’s electricity system. Energy savings from amended standards also would likely result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases primarily associated with fossil-fuel based energy production. Because DOE has tentatively concluded amended

standards for MHLFs would not be economically justified, DOE did not conduct a utility impact analysis or emissions analysis for this NOPD.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII))

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. 42 U.S.C. 6295(o)(2)(B)(iii) DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.2 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed determination with regard to MHLFs. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. These spreadsheet tools are

available on the DOE website for this proposed determination (see DOCKET section at the beginning of this proposed determination).

A. Overall

DOE received several comments from stakeholders in response to the July 2019 RFI stating that DOE should not amend standards for MHLFs. NEMA stated that MHLF technology has reached its practical limits in terms of performance. NEMA noted that further investment in efficiency for MHLF products is no longer justified given substantial market decline and the inability for relevant manufacturers and distributors to recover investments in relatively minor efficiency gains. NEMA pointed out that DOE has previously declined to amend standards for a product when it was deemed that no new investments in higher efficiency products is likely. (NEMA, No. 3 at pp. 2, 6)

NEMA also stated that a transition to light-emitting diode ("LED") products is largely responsible for the declining market for MHLF products, and as a result, there is limited opportunity to recapture investments in new designs through sales of MHLF products. (NEMA, No. 3 at p. 2–3) NEMA noted that the decline of the MHLF market means relevant efficiency regulations have reached their end-states. (NEMA, No. 3 at p. 6) According to NEMA, the most likely outcome of strengthened efficiency standards for MHLFs is accelerated obsolescence of products unable to meet new standards and an accelerated decline of a market already in decline. (NEMA, No. 3 at p. 6–7) NEMA asserted that DOE does not need to further accelerate the decline of the MHLF market by further strengthening MHLF efficiency requirements. (NEMA, No. 3 at p. 9)

EEL and Signify both argue that the best course of action is for DOE to issue a "no new standard" determination for MHLFs. EEL and Signify identified the significant decline in the MHLF market as a reason DOE should not consider standards for MHLFs. (EEL, No. 2 at p. 3, Signify, No. 6 at p. 1) EEL added that the market for lighting products has outpaced the relevant regulatory framework and market forces alone have pushed customers away from MHLF products, so there is no need for further regulations. EEL commented that amending standards for MHLFs could be an inefficient and ineffective expenditure of DOE's resources. (EEL, No. 2 at p. 3).

As discussed in section II.A, DOE is required to conduct two rulemaking cycles to determine whether to amend

standards for MHLFs. (42 U.S.C. 6295(hh)(2)(A) and (3)(A)) DOE completed the first rulemaking cycle by publishing a final rule amending MHLF standards on February 10, 2014. 79 FR 7746. This determination represents the second rulemaking cycle for MHLFs. DOE discusses the methodology used to analyze potential standards in section IV and the results of the analysis in section V.

Commenting on the analyses conducted by DOE to evaluate standards for MHLFs, IPI stated that DOE should (1) continue to monetize the full climate benefits of greenhouse gas emissions reductions, using the best estimates, which were derived by the Interagency Working Group; (2) continue to use the global estimate of the social cost of greenhouse gases; and (3) rely only on the best available science and economics, and not on any "interim" estimates that do not include a range of discount rates or global climate impacts. They stated that DOE should factor these benefits into its choice of the maximum efficiency level that is economically justified, consistent with its statutory requirement to assess the national need to conserve energy. (IPI, No. 4, pp. 1–5)

In response, DOE notes that it has not conducted an analysis of emissions impacts that may result from amended standards for MHLFs. As discussed further in the document, DOE has tentatively concluded that imposition of a standard at any of the TSLs considered is not economically justified because the operating costs of the covered product are insufficient to recover the upfront cost. DOE continues to be of the view that failure to meet one aspect of the seven factors in EPCA's consideration of economic justification means that a revised standard is not economically justified without considering all of the other factors. For example, on October 17, 2016, DOE published in the **Federal Register** a final determination that more stringent energy conservation standards for direct heating equipment ("DHE") would not be economically justified, and based this determination solely on manufacturer impacts, the first EPCA factor that DOE is required to evaluate in 42 U.S.C. 6295(o)(2)(B)(i)(I). 81 FR 71325. Specifically, due to the lack of advancement in the DHE industry in terms of product offerings, available technology options and associated costs, and declining shipment volumes, DOE concluded that amending the DHE energy conservation standards would impose a substantial burden on manufacturers of DHE, particularly to small manufacturers. *Id.* at 81 FR 71328. Notably, DOE received no stakeholder

comments in opposition to its conclusions regarding economic justification in the DHE standards rulemaking.

In this NOPD, DOE remains consistent with its approach in the DHE rule, and finds no economic justification for amending standards based on one of the seven factors in 42 U.S.C.

6295(o)(2)(B)(i), namely, that the energy savings in operating costs of the covered product are insufficient to recover the upfront cost.

B. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPD TSD for further discussion of the market and technology assessment.

1. Scope of Coverage

MHLF is defined as a light fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp. 42 U.S.C. 6291(64); 10 CFR 431.322. Any equipment meeting the definition of MHLF is included in DOE's scope of coverage, though all equipment within the scope of coverage may not be subject to standards.

In the July 2019 RFI, DOE requested comments on whether definitions related to MHLFs in 10 CFR 431.322 require any revisions or whether additional definitions are necessary for DOE to clarify or otherwise implement its regulatory requirements related to MHLFs. 84 FR 31234. NEMA commented that the MHLF technology is mature and noted that no relevant definitions have emerged since the last rulemaking. (NEMA, No. 3 at p. 4–5) DOE agrees with NEMA and is not proposing to add any new definitions or update any existing definitions for MHLFs in this determination.

In response to the July 2019 RFI, CA IOUs argued that DOE should consider adopting a technology-agnostic approach that groups together all products used for the same application. CA IOUs pointed out the transition away from MHLF products and toward LED products and suggested that DOE establish a class of products based on lumen output that would include all

technologies that serve the same application. (CA IOUs, No. 5 at p. 1–2)

DOE agrees with CA IOUs that a technology-agnostic approach that groups together all products used for the same application could potentially have benefits with regards to energy savings. However, DOE notes that this proposed determination addresses only metal halide lamp fixtures defined as light fixtures for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp. 42 U.S.C. 6291(64); 10 CFR 431.322. DOE is not authorized to consider any product not meeting this definition, such as LED fixtures, as a part of this determination.

CA IOUs also urged DOE to consider agricultural applications when developing an updated technology-agnostic standard for MHLFs. CA IOUs noted that in agricultural applications, there are limitations with LED technology for certain indoor growing operations that demand the use of high-intensity discharge (“HID”) products, and DOE should ensure that any new standards will not eliminate these HID products from the market (metal halide products are a type of HID product). (CA IOUs, No. 5 at p. 1–2)

DOE reviewed commercially available MHLFs and found about 50 products marketed for use in agricultural applications (compared to 3,521 products in DOE's compliance certification database). The agricultural MHLFs range in wattage from 175 watts (“W”) to 1000 W. DOE did not find any performance characteristics or features of the agricultural MHLFs that would prevent them from being used in general lighting applications (*i.e.*, providing an interior or exterior area with overall illumination). DOE reviewed available agricultural MHLFs in light of the efficiency levels discussed in section IV.C.4 and determined that agricultural MHLFs already meet or could meet the efficiency levels considered in this determination.

EISA 2007 established energy conservation standards for MHLFs with ballasts designed to operate lamps with rated wattages between 150 W and 500 W and excluded three types of fixtures within that wattage range from energy conservation standards: (1) MHLFs with regulated-lag ballasts; (2) MHLFs that use electronic ballasts and operate at 480 volts; and (3) MHLFs that are rated only for 150 watt lamps, are rated for use in wet locations as specified by the National Fire Protection Association (“NFPA”) in NFPA 70, “National

Electrical Code 2002 Edition,”⁷ and contain a ballast that is rated to operate at ambient air temperatures above 50 degrees Celsius (“°C”) as specified by Underwriters Laboratory (“UL”) in UL 1029, “Standard for Safety High-Intensity-Discharge Lamp Ballasts.” (42 U.S.C. 6295(hh)(1))

In the 2014 MHLF final rule, DOE promulgated standards for the group of MHLFs with ballasts designed to operate lamps rated 50 W–150 W and 501 W–1,000 W. DOE also promulgated standards for one type of previously excluded fixture: A 150 W MHLF rated for use in wet locations and containing a ballast that is rated to operate at ambient air temperatures greater than 50 °C—*i.e.*, those fixtures that fall under 42 U.S.C. 6295(hh)(1)(B)(iii). DOE continued to exclude from standards MHLFs with regulated-lag ballasts and 480 volt (“V”) electronic ballasts. In addition, due to a lack of applicable test method for high-frequency electronic (“HFE”) ballasts, in the 2014 MHLF final rule, DOE did not establish standards for MHLFs with HFE ballasts. 79 FR 7754–7756 (February 10, 2014).

In this analysis, based on a review of manufacturer catalogs DOE again found a range of efficiencies for MHLFs with ballasts designed to operate lamps with rated wattages >1000 W to ≤2000 W. Hence, in this determination, DOE assesses potential standards for this equipment.

In summary, this proposed determination evaluates MHLFs with ballasts designed to operate lamps with rated wattages ≥50 W to ≤2000 W with the exception of MHLFs with regulated-lag ballasts and MHLFs that use electronic ballasts that operate at 480 volts.

In response to the July 2019 RFI, EEI suggested that DOE adopt a more accurate description of the regulatory category for which it is issuing standards for MHLFs. EEI noted that DOE is specifically reviewing standards for metal halide ballasts, and not for metal halide fixtures. (EEI, No. 2 at p. 2) EEI also noted that the focus on metal halide ballasts and not fixtures during the 2014 MHLF rulemaking produced arguably flawed conclusions regarding the payback period for the MHLF efficiency standard adopted. (EEI, No. 2 at p. 2) In a comment on the previous

⁷ DOE notes that although the exclusion in 42 U.S.C. 6295(hh)(1)(B)(iii)(II) identifies those fixtures that are rated for use in wet locations as specified by the National Electrical Code 2002 section 410.4(A), the NFPA is responsible for authoring the National Electrical Code, which is identified as NFPA 70. Accordingly, DOE's use of NFPA 70 under the MHLF-related provision in 10 CFR 431.326(b)(3)(iii) is identical to the statutory exclusion set out by Congress.

rulemaking, EEI stated that it is unclear whether manufacturers will devote resources to make new ballasts to meet the standard *and* keep producing replacement ballasts. EEI noted that replacement costs increase substantially if the entire fixture needs to be replaced after ballast failure rather than just the ballast. (EEI, No. 53 at pp. 3–4)⁸

DOE prescribes efficiency standards for MHLFs but, as noted by EEI, standards for MHLFs are applicable to the ballast contained within the MHLF and not replacement metal halide ballasts sold separately. In this proposed determination DOE only has the authority to evaluate amended standards for MHLFs, not metal halide ballasts sold outside of MHLFs. In section IV.B.2, DOE considers other metrics for MHLFs that pertain to the performance of the fixture rather than the ballast contained within the fixture. In section IV.F.6, DOE discusses the lifetime of ballasts and fixtures and in section IV.F.9, DOE discusses the payback period analysis.

2. Metric

Current energy conservation standards for MHLFs are based on minimum allowable ballast efficiencies. The ballast efficiency for the fixture is calculated as the measured ballast output power divided by the measured ballast input power. The measurement of ballast output power (approximated in the test procedure as lamp output power) and ballast input power and the calculation of ballast efficiency for MHLFs is included in the current test procedure at 10 CFR 431.324.

In response to the July 2019 RFI, CA IOUs recommended that DOE adopt a new standard for MHLFs based on a lumens-per-watt metric to align with standards for other lighting products. In addition, regarding agricultural MHLFs, CA IOUs suggested that DOE evaluate the metrics developed by the American National Standards Institute (“ANSI”) and the American Society of Agricultural and Biological Engineers for evaluating performance related to agricultural operations. (CA IOUs, No. 5 at p. 1–2) CA IOUs noted that the current ballast efficiency metric for MHLFs does not promote more efficient fixture designs, more efficient lamps, or higher efficiency technologies such as LEDs. CA IOUs also pointed out that EISA 2007 gives DOE permission to expand the scope of regulation for MHLFs and to propose not only

performance requirements, but also design requirements. CA IOUs noted that a fixture-level metric could save up to 50 percent more energy than the current approach that only considers ballast efficiency and provide a standardized metric to assess and compare the performance of a product. (CA IOUs, No. 5 at p. 2–3)

DOE agrees that a fixture metric effectively accounts for the efficiency of a fixture in different applications, provides more technological flexibility, and has the potential to yield overall higher performance and energy savings. DOE notes that metrics for agricultural MHLFs focus on performance characteristics that affect the photosynthesis of plants and therefore are not appropriate for MHLFs used in general lighting applications. Instead, as part of this determination, DOE evaluated several alternative fixture performance metrics, including lumens per watt (“lm/W”), luminaire efficacy rating (“LER”), target efficacy rating (“TER”), and fitted target efficacy (“FTE”).

A lumens-per-watt metric reflects the light produced and energy consumed for a lamp-and-ballast pairing. An increase in lm/W could reflect the use of a more efficacious lamp, a more efficient ballast, or both. Although DOE’s current test procedure does not measure lm/W, ANSI C82.6–2015⁹ and IES LM–51–2013¹⁰ provide a test method that could be used to determine lm/W for lamp-and-ballast pairings. The inclusion of lumen output in the metric necessitates photometric measurements as part of the test procedure whereas the measurement of ballast efficiency requires only electrical measurements. Photometric measurements are more expensive to conduct than electrical measurements because of the equipment and time required. While a lumens-per-watt metric is based on more than just ballast performance, lm/W still does not account for directionality of a fixture (*i.e.*, the fixture’s effectiveness in delivering light to a specific target). Because the covered product is a fixture, DOE evaluated metrics that captured the performance of the lamp, ballast, and optics of a fixture.

DOE next considered the LER metric, developed by NEMA in 1998. LER is

expressed in units of lm/W but in addition to the lamp-and-ballast pairing described in the previous paragraph, LER includes a factor that accounts for luminaire efficiency, which is the ratio of the lumens emitted from a luminaire to the lumens emitted by the lamps alone. LER is used to establish minimum requirements for the Federal Energy Management Program (“FEMP”) for industrial luminaires.¹¹ NEMA has developed a test procedure for LER in NEMA LE 5B–1998.¹² The inclusion of lumen output and luminaire efficiency in the metric necessitates photometric measurements. As stated previously, photometric measurements are more expensive to conduct than electrical measurements. NEMA has since developed a TER metric which is similar to LER, but better accounts for directionality. DOE determined that TER would be a more applicable alternative metric to measure the performance of MHLFs.

The TER metric was developed by NEMA’s luminaire division to succeed the LER rating. TER calculates fixture efficacy by multiplying the lamp lumens by the coefficient of utilization (“CU”), which factors in the percentage of rated lumens reaching a specific target (that varies based on the type of fixture). The inclusion of lumen output and CU in the metric necessitates photometric measurements, which are more expensive to conduct than electrical measurements. NEMA developed the NEMA LE–6–2014 standard¹³ to provide a test procedure for determining the TER of commercial, industrial, and residential luminaires. TER has 22 different types of luminaire classifications, each with a different CU. Despite the variety of luminaire classifications available, TER explicitly excludes fixtures intended to be aimed, accent luminaires, rough or hazardous use luminaires, and emergency lighting. In the 2014 MHLF final rule, DOE considered the TER metric but ultimately chose not to adopt it out of concern that certain fixtures could fall within multiple luminaire classifications due to their designs. DOE

¹¹ FEMP provides guidance for purchasing Energy-Efficient Industrial Luminaires (High/Low Bay) with specifications in LER available here: <https://www.energy.gov/eere/femp/purchasing-energy-efficient-industrial-luminaires-highlow-bay>.

¹² National Electrical Manufacturers Association. *LE 5B—Procedure for Determining Luminaire Efficacy Ratings for High-Intensity Discharge Industrial Luminaires*. Published January 1998 available at www.nema.org.

¹³ National Electrical Manufacturers Association. *LE 6—Procedure for Determining Target Efficacy Ratings for Commercial, Industrial, and Residential Luminaires*. Published June 10, 2015 available at www.nema.org.

⁸ The full written comment in response to the Notice of Proposed Rulemaking for MHLFs published at 78 FR 51164 (August 20, 2013) can be found in Docket No. EERE–2009–BT–STD–0018.

⁹ American National Standards Institute. *American National Standard for lamp ballasts—Ballasts for High-Intensity Discharge Lamps—Methods of Measurement*. Approved September 17, 2015 available at www.ansi.org.

¹⁰ Illuminating Engineering Society. *IES Approved Method—The Electrical and Photometric Measurement of High-Intensity Discharge Lamps*. Approved January 7, 2013 available at <https://webstore.iec.ch/home>.

also determined that the exclusion of certain fixture types such as fixtures designed to be aimed does not allow all MHLFs to be measured using TER. 79 FR 7757. DOE has not found any new information since the 2014 MHLF final rule regarding the TER metric. Therefore, DOE considers these reasons to still be valid and tentatively concludes that TER is not a suitable metric for measuring the performance of MHLFs.

The FTE metric was developed by DOE to quantify outdoor pole-mounted fixture performance for ENERGY STAR qualification purposes.¹⁴ In the FTE approach, fixture performance is measured by the amount of light hitting a specified target. The target is defined as the rectangle enclosing the uniform “pool” of light produced by the unique intensity distribution of each luminaire. FTE is calculated by multiplying the luminous flux landing in this pool by the percent coverage of the rectangular target, and then dividing by input power to the fixture. The inclusion of lumen output in the metric necessitates photometric measurements. As stated previously, photometric measurements are more expensive to conduct than electrical measurements. In the 2014 MHLF final rule, DOE considered the FTE metric but ultimately chose not to adopt it because FTE is calculated using a rectangular area. 79 FR 7757.

Therefore, fixtures designed to light non-rectangular areas, produce a large amount of unlighted area within the rectangle, or produce specific light patterns that light both a horizontal plane and a vertical plane, or even above the fixture would be at a disadvantage. DOE continues to find this rationale to be valid today. In addition, currently, there is no industry standard for determining FTE. For these reasons, DOE determined that FTE is not suitable for measuring the performance of MHLFs.

In summary, DOE reviewed several alternative metrics to ballast efficiency in this proposed determination. Changing metrics would impose a significant burden on manufacturers. A change in metric would require retesting all MHLFs. While industry test procedures exist for many of the metrics, an industry-accepted test procedure does not exist for the FTE metric. Further, all metrics would require photometric testing in addition to the electrical measurements currently required. Photometric measurements are more expensive to conduct than

electrical measurements. While some fixture manufacturers provide photometric data, the information is not available for all fixtures, all lamp-and-ballast pairings within fixtures, and all performance characteristics required to calculate the metrics described in this section. For example, the CU needed to calculate the TER metric is not available publicly. Finally, because the metrics account for the performance of both the lamp and ballast components of the fixture, adopting one of the metrics described in this section would require manufacturers to ship fixtures with lamps in addition to ballasts. Therefore, for the reasons described in this paragraph, DOE has tentatively concluded to maintain the current ballast efficiency metric for MHLFs.

In addition to a metric that represents fixture-level performance, CA IOUs stated that DOE should consider the benefits of fixtures with good lumen maintenance because this will enable lighting designers avoid over-lighting spaces in anticipation of lumen depreciation. (CA IOUs, No. 5 at p. 3) DOE notes that lumen maintenance is the ratio of lumen output at a certain period in time during the life of a lamp to the initial lumen output. Because lumen maintenance requires conducting photometric testing, and because the testing must be conducted more than once and with a potentially significant period of time between tests, DOE tentatively concludes that lumen maintenance represents a significant test burden for manufacturers. For this reason, DOE did not consider adopting a metric based on lumen maintenance in this determination.

3. Equipment Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

In describing which MHLFs are included in current equipment classes, DOE incorporates by reference the 2002 version of NFPA 70 and the 2007 version of UL 1029 in DOE’s regulations. NFPA 70 is a national safety standard for electrical design, installation, and inspection, and is also known as the 2002 National Electrical Code. UL 1029 is a safety standard

specific to HID lamp ballasts; a metal halide lamp ballast is a type of HID lamp ballast. Both NFPA 70 and UL 1029 are used to describe the applicable equipment class for MHLFs that EISA 2007 excluded from the statutory standards enacted by Congress but that were later included as part of the 2014 MHLF final rule. In the July 2019 RFI, DOE found that a 2017 version of NFPA 70 (NFPA 70–2017) “NFPA 70 National Electrical Code 2017 Edition”¹⁵ and a 2014 version of UL 1029 (UL 1029–2014) “Standard for Safety High-Intensity-Discharge Lamp Ballasts”¹⁶ are now available.

In response to the July 2019 RFI, NEMA commented that updating the industry standards incorporated by reference in DOE’s regulations, NFPA 70 and UL 1029, to the newer versions, NFPA 70–2017 and UL 1029–2014, is unlikely to have any impact on MHLFs included in each equipment class. However, NEMA pointed out that any updates could impose financial and administrative burdens on manufacturers, especially given the general market decline of MHLF technology. (NEMA, No. 3 at p. 3–4)

DOE agrees with NEMA that there is unlikely to be any impact on MHLFs included in each equipment class. Consequentially, DOE has not been able to identify any additional financial or administrative burden as testing requirements and equipment classes will remain unaffected. However, as discussed in section V.D, because DOE is not proposing to amend standards for MHLFs, DOE is not proposing to incorporate by reference the updated industry standards NFPA 70–2017 and UL 1029–2014 in this determination.

In this analysis, DOE reviewed metal halide lamp fixtures and the ballasts contained within them to identify performance-related features that could potentially justify a separate equipment class. In the following sections, DOE discusses the equipment classes considered in this analysis.

a. Existing Equipment Classes

The current equipment classes are based on input voltage, rated lamp wattage, and designation for indoor versus outdoor application. NEMA commented in response to the July 2019 RFI that the current equipment classes for MHLFs remain viable and do not need to be changed. NEMA also noted that there are no new products that will benefit from an additional equipment class. (NEMA, No. 3 at p. 3; NEMA, No. 3 at p. 5)

¹⁵ Approved August 24, 2016.

¹⁶ Approved December 6, 2013.

¹⁴ Overview of FTE metric available at: <http://www.illinoislighting.org/resources/FTEoverview01Jul09.pdf>.

Regarding input voltage, MHLFs are available in a variety of input voltages (most commonly 120 V, 208 V, 240 V, 277 V, and 480 V), and the majority of fixtures are equipped with ballasts that are capable of operating at multiple input voltages (for example, quad-input-voltage ballasts are able to operate at 120 V, 208 V, 240 V, and 277 V). DOE determined in the 2014 MHLF final rule that the input voltage at which a MHLF is capable of operating represents a performance-related feature that affects consumer utility as certain applications demand specific input voltages. 79 FR 7762. In the 2014 MHLF final rule, DOE’s ballast testing did not indicate a prevailing relationship between discrete input voltages and ballast efficiencies (e.g., higher voltages are not always more efficient), with one exception. DOE found that ballasts tested at 480 V were less efficient on average than ballasts tested at 120 V or 277 V. 79 FR 7781. NEMA stated that it remains appropriate to include separate classes for 480 V products given the differences in how those products perform in testing. (NEMA, No. 3 at p. 6) Because dedicated 480 V ballasts have a distinct utility in that certain applications require 480 V operation and a difference in efficiency relative to ballasts tested at 120 V and 277 V, DOE maintains separate equipment classes for ballasts tested at 480 V in this determination. See chapter 3 of the NOPD TSD for further details.

As lamp wattage increases, lamp-and-ballast systems generally produce

increasing amounts of light (lumens). Because certain applications require more light than others, wattage often varies by application. For example, low-wattage (less than 150 W) lamps are typically used in commercial applications. Medium-wattage (150 W–500 W) lamps are commonly used in warehouse, street, and commercial lighting. High-wattage (greater than 500 W) lamps are used in searchlights, stadiums, and other applications that require powerful white light. Because different applications require different amounts of light and the light output of lamp-and-ballast systems is typically reflected by the wattage, wattage represents consumer utility. The wattage operated by a ballast is correlated with the ballast efficiency; ballast efficiency generally increases as lamp wattage increases. Therefore, DOE maintains separation of equipment classes by wattage. See chapter 3 of the NOPD TSD for further details.

DOE determined in the 2014 MHLF final rule that indoor and outdoor MHLFs are subject to separate cost-efficiency relationships at electronic ballast levels. 79 FR 7763–7764. First, as outdoor applications can be subject to large voltage transients, MHLFs in such applications require 10 kV voltage transient protection. Magnetic metal halide ballasts are typically resistant to voltage variations of this magnitude, while electronic metal halide ballasts are generally not as resilient. Therefore, in order to address large voltage transients, electronic ballasts in outdoor

MHLFs would need either (1) an external surge protection device or (2) internal transient protection of the ballast using metal-oxide varistors (“MOVs”) in conjunction with other inductors and capacitors. Second, DOE noted that indoor fixtures can require the inclusion of a 120 V auxiliary tap. 79 FR 7763. This output is used to operate emergency lighting after a temporary loss of power while the metal halide lamp is still too hot to restart. These taps are generally required for only one out of every ten indoor lamp fixtures. A 120 V tap is easily incorporated into a magnetic ballast due to its traditional core and coil design, and incurs a negligible incremental cost. Electronic ballasts, however, require additional design to add this 120 V auxiliary power functionality. These added features impose an incremental cost to the ballast or fixture (further discussed in section IV.C.7 of this NOPD). As these incremental costs could affect the cost-effectiveness of fixtures for indoor versus outdoor applications, DOE maintains separate equipment classes for indoor and outdoor fixtures. See chapter 3 of the NOPD TSD for further details.

b. Summary

In summary, for the purpose of this proposed determination DOE considered equipment classes using three class-setting factors: Input voltage, rated lamp wattage, and fixture application. DOE presents the resulting equipment classes in Table IV.1.

TABLE IV.1—EQUIPMENT CLASSES

Designed to be operated with lamps of the following rated lamp wattage	Indoor/outdoor	Input voltage type ‡
≥50 W and ≤100 W	Indoor	Tested at 480 V.
≥50 W and ≤100 W	Indoor	All others.
≥50 W and ≤100 W	Outdoor	Tested at 480 V.
≥50 W and ≤100 W	Outdoor	All others.
>100 W and <150 W*	Indoor	Tested at 480 V.
>100 W and <150 W*	Indoor	All others.
>100 W and <150 W*	Outdoor	Tested at 480 V.
>100 W and <150 W*	Outdoor	All others.
≥150 W** and ≤250 W	Indoor	Tested at 480 V.
≥150 W** and ≤250 W	Indoor	All others.
≥150 W** and ≤250 W	Outdoor	Tested at 480 V.
≥150 W** and ≤250 W	Outdoor	All others.
>250 W and ≤500 W	Indoor	Tested at 480 V.
>250 W and ≤500 W	Indoor	All others.
>250 W and ≤500 W	Outdoor	Tested at 480 V.
>250 W and ≤500 W	Outdoor	All others.
>500 W and ≤1000 W	Indoor	Tested at 480 V.
>500 W and ≤1000 W	Indoor	All others.
>500 W and ≤1000 W	Outdoor	Tested at 480 V.
>500 W and ≤1000 W	Outdoor	All others.
>1000 W and ≤2000 W	Indoor	Tested at 480 V.
>1000 W and ≤2000 W	Indoor	All others.
>1000 W and ≤2000 W	Outdoor	Tested at 480 V.

TABLE IV.1—EQUIPMENT CLASSES—Continued

Designed to be operated with lamps of the following rated lamp wattage	Indoor/outdoor	Input voltage type ‡
>1000 W and ≤2000 W	Outdoor	All others.

* Includes 150 W MHLFs initially exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W MHLFs initially exempted by EISA 2007, which are MHLFs rated only for 150 W lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

‡ Input voltage for testing would be specified by the test procedures. Ballasts rated to operate lamps less than 150 W would be tested at 120 V, and ballasts rated to operate lamps ≥150 W would be tested at 277 V. Ballasts not designed to operate at either of these voltages would be tested at the highest voltage the ballast is designed to operate.

4. Technology Options

In the technology assessment, DOE identifies technology options that would be expected to improve the efficiency of MHLFs, as measured by the DOE test procedure. The energy conservation standard requirements and DOE test procedure for MHLFs are based on the efficiency of the metal halide ballast contained within the fixture. Hence DOE identified technology options that would improve the efficiency of metal halide ballasts. To develop a list of technology options, DOE reviewed manufacturer catalogs, recent trade publications and technical journals, and consulted with technical experts.

In response to the July 2019 RFI, NEMA commented that there are no new technology options for MHLFs given the maturity of MHLF technology. NEMA added that technology options such as “increased stack height” and “increased conductor cross sections” lead to an increase in the size of the ballast and have been implemented in accordance with 2014 MHLF final rule to the limit of their practicality. (NEMA, No. 3 at p. 4)

DOE’s review of technology options for this determination indicates that the technology options identified in the 2014 MHLF final rule remain valid with certain clarifications and additional detail. Specifically, DOE is revising “increased stack height” to be “improved steel laminations.” As described for the 2014 MHLF final rule, increased stack height is adding steel laminations to increase the core cross-section and thereby lower the flux density and losses.¹⁷ Hence the mechanism for efficiency improvement is the addition of steel laminations. The 2014 MHLF final rule also noted that use of thinner laminations allows for maintaining the stack height and thereby ballast footprint.¹⁸ In addition

thinner laminations and well insulated will reduce eddy current losses.¹⁹ To more appropriately reflect the technology in this document, DOE refers to this option as “improved steel laminations” and describes it as adding steel laminations to lower core losses by using thin and insulated laminations.

In the 2014 MHLF final rule “increased conductor cross section” was described as reducing winding losses through use of larger wire gauges, multiple strands of wire operating in parallel as well use of litz wire for electronic ballasts.²⁰ In this analysis, DOE notes that improvements in windings can also be achieved by using multiple smaller coils to increase the number of turns and thereby increase the induced voltage. Additionally, optimizing the shape of the wires by wrapping them close together makes transfer of power through the core more efficient. Hence, to more appropriately reflect the technology, in this document DOE refers to this option as “improved windings” and describes it as use of optimized-gauge copper wire; multiple, smaller coils; shape-optimized coils to reduce winding losses for magnetic and electronic ballasts; and in addition, for electronic ballasts, the use of litz wire.

NEMA commented that technology options such as improved core steel, and copper winding have been implemented in accordance with the 2014 MHLF final rule and reached the limit of their practicality. (NEMA, No. 3 at p. 4) In this determination, DOE found magnetic ballasts with varying levels of efficiency in its compliance certification database. Therefore, DOE has tentatively determined that technology options, such as a higher grade of steel could still be used to improve the efficiency of magnetic ballasts. DOE’s research has not indicated any technological issues with utilizing higher-grade steel in magnetic ballasts. In addition, based on

teardowns conducted in 2019, DOE determined that magnetic ballast manufacturers still utilize aluminum wiring in their ballasts. DOE determined that incorporating copper wiring in all magnetic ballasts can still be considered a technology option to improve the efficiency of magnetic ballasts. DOE has tentatively determined that it will continue to consider improved core steel and copper wiring as technology options to improve the efficiency of magnetic ballasts.

NEMA noted that the use of electronic ballasts in new metal halide fixtures has declined significantly and at the same pace as magnetic ballasts and provided data to illustrate this. (NEMA, No. 3 at p. 4)

DOE agrees that there has been a decline in the use of metal halide technology as whole affecting both electronic and magnetic metal halide ballasts. However, DOE determined that electronic ballast technology remains a viable technology option to improve the efficiency of MHLFs with magnetic ballasts, therefore, DOE considered electronic ballasts as a technology option in its analysis.

DOE is removing the technology option of laminated grain-oriented silicon steel and amorphous steel for electronic ballasts. In the context of this determination, DOE has tentatively determined that using laminated sheets of steel (silicon or amorphous) to create the core of the inductor may not minimize losses in ballasts that operate at high frequencies.²¹ Because electronic ballasts operate at high frequencies, DOE is not considering improved steel laminations or amorphous steel laminations as technology options for improving the efficiency of these ballasts.

¹⁷ See chapter 3 of 2014 MHLF final rule TSD, available at <https://www.regulations.gov/docket?D=EERE-2009-BT-STD-0018>.

¹⁸ See chapter 3 of 2014 MHLF final rule TSD, available at <https://www.regulations.gov/docket?D=EERE-2009-BT-STD-0018>.

¹⁹ AK Steel, *Selection of Electrical Steels for Magnetic Cores*.

²⁰ See chapter 3 of 2014 MHLF final rule TSD.

²¹ DOE came to the same conclusion for fluorescent lamp ballasts. See notice of proposed determination for fluorescent lamp ballasts at 84 FR 56540, 56552 (October 22, 2019); available at <https://www.regulations.gov/document?D=EERE-2015-BT-STD-0006-0019>.

A complete list of technology options DOE considered for this analysis appears in Table IV.2.

TABLE IV.2—TECHNOLOGY OPTIONS

Ballast type	Design option		Description	
Magnetic	Improved Core Steel		Use a higher grade of electrical steel, including grain-oriented silicon steel, to lower core losses.	
	Copper Wiring		Use copper wiring in place of aluminum wiring to lower resistive losses.	
	Improved Steel Laminations		Add steel laminations to lower core losses by using thin and insulated laminations.	
	Improved Windings		Use of optimized-gauge copper wire; multiple, smaller coils; shape-optimized coils to reduce winding losses.	
	Electronic Ballast		Replace magnetic ballasts with electronic ballasts.	
	Amorphous Steel		Create the core of the inductor from laminated sheets of amorphous steel insulated from each other.	
Electronic	Improved Components	Magnetics	Improved Windings: Use of optimized-gauge copper wire; multiple, smaller coils; shape-optimized coils; litz wire to reduce winding losses.	
		Diodes		Use diodes with lower losses.
		Capacitors		Use capacitors with a lower effective series resistance and output capacitance.
	Improved Circuit Design	Transistors	Use transistors with lower drain-to-source resistance.	
		Integrated Circuits	Substitute discrete components with an integrated circuit.	

5. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.*

Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

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

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

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant

adverse impacts on health or safety, it will not be considered further.

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

Sections 6(c)(3) and 7(b) of the Process Rule.

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. DOE only considers potential efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique pathway to achieve that efficiency level (*i.e.*, if there are other non-proprietary technologies capable of achieving the same efficiency level).

The subsequent sections include comments from interested parties pertinent to the screening criteria and whether DOE determined that a technology option should be excluded (“screened out”) based on the screening criteria.

a. Screened-Out Technologies

For magnetic ballasts, DOE is screening out the technology option of using laminated sheets of amorphous steel. Due to the random arrangement of molecules allowing for an easier switch from magnetization to de-magnetization of the material, amorphous steel results

in lower core losses than the commonly-used silicon steel. In the 2014 MHLF final rule, DOE screened out amorphous steel technology because it failed to pass the “practicable to manufacture, install, and service” criterion. Additionally, DOE determined that using amorphous steel could have adverse impacts on consumer utility because increasing the size and weight of the ballast may limit the places a customer could use the ballast. 79 FR 7766.

In response to the July 2019 RFI, NEMA commented that amorphous steel technology was screened out in the 2014 MHLF final rule because it increases the size and weight of metal halide ballasts, which remains true today. NEMA added that the current cost of amorphous steel ribbon that is used as a raw material for making magnetic cores is 20 to 30 times higher than the cost of other higher-grade steel used in magnetic ballasts. (NEMA, No. 3 at p. 4)

In its assessment for this analysis, DOE found that brittleness remained an issue in using amorphous steel in metal halide ballasts.²² Further amorphous steel is implemented as laminations to ensure losses due to eddy currents do not offset efficiency gains. Typically, amorphous steel laminations have a larger cross-sectional area, which increases the overall size of the ballast, when compared to silicon steel

²²Technical Editor, “Advantages and disadvantages of an amorphous metal transformer.” *Polytechnic Hub*, March 8, 2018, available at <https://www.polytechnichub.com/advantages-disadvantages-amorphous-metal-transformer/>.

laminations. Hence, in this analysis, DOE continues to screen out the use of amorphous steel due to practicability to manufacture and adverse impacts on equipment utility.

b. Remaining Technologies

DOE tentatively concludes that all of the other identified technologies listed in section IV.B.4 meet all five screening criteria to be examined further as design options. In summary, DOE did not screen out the following technology options:

- Magnetic Ballasts
 - Improved Core Steel
 - Copper Wiring
 - Improved Steel Laminations
 - Improved Windings
 - Electronic Ballast
- Electronic Ballasts
 - Improved Components
 - Improved Circuit Design

For additional details, see chapter 4 of the NOPD TSD.

C. Engineering Analysis

In the engineering analysis, DOE develops cost-efficiency relationships characterizing the incremental costs of achieving increased ballast efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers and the nation. The methodology for the engineering analysis consists of the following steps: (1) Selecting representative equipment classes; (2) selecting baseline metal halide ballasts; (3) identifying more efficient substitutes; (4) developing efficiency levels; and (5) scaling efficiency levels to non-representative equipment classes. The details of the engineering analysis are discussed in chapter 5 of the NOPD TSD.

1. Representative Equipment Classes

DOE selects certain equipment classes as “representative” to focus its analysis. DOE chooses equipment classes as

representative primarily because of their high market volumes and/or unique characteristics. DOE established 24 equipment classes based on input voltage, rated lamp wattage, and indoor/outdoor designation. DOE did not directly analyze the equipment classes containing only fixtures with ballasts tested at 480 V due to low shipment volumes. DOE determined that only 19 percent of fixtures in its compliance certification database are fixtures with ballasts tested at 480 V. DOE selected all other equipment classes as representative, resulting in a total of 12 representative classes covering the full range of lamp wattages, as well as indoor and outdoor designations.

In summary, DOE directly analyzed the equipment classes shown in gray in Table IV.3 of this document. See chapter 5 of the NOPD TSD for further discussion.

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Table IV.3 Equipment Classes

Representative Equipment Class	Indoor/Outdoor	Input Voltage Type
≥50 W and ≤100 W	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others
>100 W and <150 W*	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others
≥150 W and ≤250 W**	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others
>250 W and ≤500 W	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others
>500 W and ≤1000 W	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others
>1000 W and ≤2000 W	Indoor	Tested at 480 V
		All others
	Outdoor	Tested at 480 V
		All others

*Includes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50°C, as specified by UL 1029–2007.

**Excludes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50°C, as specified by UL 1029–2007.

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Metal halide lamp fixtures are designed to be operated with lamps of certain rated lamp wattages and contain ballasts that can operate lamps at these wattages. To further focus the analysis, DOE selected a representative rated wattage in each equipment class. Each representative wattage was the most common wattage within each equipment class. DOE found that common wattages within each equipment class were the same for outdoor and indoor fixtures. Specifically, DOE selected 70 W, 150 W, 250 W, 400 W, 1000 W and 1500 W as representative wattages to analyze.

The >100 W and <150 W equipment class includes fixtures designed to operate 150 W lamps that are rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A) and contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007. These fixtures were initially exempted by EISA 2007. (42 U.S.C. 6295(hh)(1)(B)(iii)) In the 2014 MHLF final rule, DOE included 150 W MHLFs previously exempted by EISA 2007 in the >100 W and <150 W equipment class. 79 FR 7754–7755. In this analysis, DOE found that 150 W was the most common wattage in this

equipment class and selected it as the representative wattage.

The representative wattages for each equipment class are summarized in Table IV.4 of this document. See chapter 5 of the NOPD TSD for further discussion.

TABLE IV.4—REPRESENTATIVE WATTAGES

Representative equipment class	Representative wattage
≥50 W and ≤100 W	70 W
>100 W and <150 W*	150 W
≥150 W and ≤250 W**	250 W
>250 W and ≤500 W	400 W
>500 W and ≤1000 W	1000 W

TABLE IV.4—REPRESENTATIVE WATTAGES—Continued

Representative equipment class	Representative wattage
>1000 W and ≤2000 W	1500 W

* Includes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

2. Baseline Ballasts

For each representative equipment class, DOE selected baseline ballasts to serve as reference points against which DOE measured changes from potential amended energy conservation standards. Typically, the baseline ballast is the most common, least efficient ballast that meets existing energy conservation standards. In this analysis, DOE selected as baselines the least efficient ballast meeting standards

that have common attributes for ballasts in each equipment class such as circuit type, input voltage and ballast type.

DOE used the efficiency values of ballasts contained in MHLFs certified in DOE’s compliance certification database to identify baseline ballasts for all equipment classes except the >1000 W and ≤2000 W equipment class. Because fixtures in this equipment class are not currently subject to standards, and therefore do not have DOE certification data, DOE determined ballast efficiency values by using catalog data. In summary, DOE directly analyzed the baseline ballasts shown in Table IV.5 of this document. See chapter 5 of the NOPD TSD for more detail.

TABLE IV.5—BASELINE MODELS

Representative equipment class	Wattage	Ballast type	Circuit type	Starting method	Input voltage	System input power	Ballast efficiency
≥50 W and ≤100 W	70	Magnetic	HX–HPF	Pulse	Quad	89.5	0.782
>100 W and <150 W *	150	Magnetic	HX–HPF	Pulse	Quad	182.0	0.824
≥150 W and ≤250 W **	250	Magnetic	CWA	Pulse	Quad	281.5	0.888
>250 W and ≤500 W	400	Magnetic	CWA	Pulse	Quad	443.0	0.903
>500 W and ≤1000 W	1000	Magnetic	CWA	Pulse	Quad	1068.4	0.936
>1000 W and ≤2000 W	1500	Magnetic	CWA	Probe	Quad	1625.0	0.923

* Includes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

3. More-Efficient Ballasts

DOE selected more-efficient ballasts as replacements for each of the baseline ballasts by considering commercially available ballasts. DOE also selected more-efficient ballasts with similar attributes as the baseline ballast when possible (e.g., circuit type, input voltage). As with the baseline ballasts, DOE used the ballast efficiency values from the compliance certification database to identify more efficient ballasts for all equipment classes except the >1000 W and ≤2000 W equipment class which does not have certification data available. For this equipment class, DOE determined ballast efficiency values by first gathering and analyzing catalog data. DOE then tested the ballasts to verify the ballast efficiency reported by the manufacturer. For instances where the catalog data did not align with the tested data, DOE selected more-efficient ballasts based on the tested ballast efficiency.

As noted in section IV.C.1, the representative wattage for the >100 W and <150 W equipment class is 150 W. This equipment class includes 150 W MHLFs that are rated for wet-location and high-temperature. All other 150 W MHLFs are included in the ≥150 W and ≤250 W equipment class. In the 2014 MHLF final rule, based on test data of wet-location and high-temperature 150

W ballasts, DOE identified two efficiency levels for electronic ballasts in the >100 W and <150 W equipment class. 79 FR 7777. In this analysis, based on its review of the compliance certification database DOE was unable to identify 150 W MHLFs rated for wet-location and high-temperature that contain electronic ballasts. DOE then assessed the efficiencies of 150 W electronic ballasts not rated for wet-location and high temperature that are certified in the compliance certification database. DOE found these electronic ballast efficiencies to be similar to those identified in the 2014 MHLF final rule for the >100 W and <150 W equipment class. Hence, for the >100 W and <150 W equipment class, DOE selected more-efficient electronic ballasts based on compliance-certification-database efficiencies of 150 W MHLFs not rated for wet-locations and high temperatures.

In response to the July 2019 RFI, EEI commented that there is minimal energy savings potential for MHLF technology. EEI also expressed concerns about whether the metal halide ballasts reported in the RFI to be 0.8 percent to 3.3 percent more efficient than the maximum efficiency levels from the 2014 MHLF final rule are commercially available for all lamp wattages. EEI also raised questions about the possibility of these more efficient metal halide

ballasts including proprietary technology or being exclusively manufactured by one company. (EEI, No. 2 at p. 2–3)

DOE agrees with EEI that commercially available metal halide ballasts are not up to 0.8 percent to 3.3 percent more efficient than the maximum efficiency levels analyzed in the 2014 MHLF final rule. Since the July 2019 RFI, DOE updated its analysis and found that metal halide ballasts that were more efficient than the maximum efficiency levels analyzed in the 2014 MHLF final rule no longer appear in its compliance certification database. (See section IV.C.4 for further details.)

4. Efficiency Levels

Based on the more-efficient ballasts selected for analysis, DOE developed ELs for the representative equipment classes. DOE identified one magnetic EL in every equipment class. The more-efficient magnetic EL represents a magnetic ballast with a higher grade of steel compared to the baseline. DOE identified one electronic EL for the ≥150 W and ≤250 W and >250 W and ≤500 W equipment classes. The standard electronic level represents a ballast with standard electronic circuitry. DOE identified a more efficient electronic EL in the ≥50 W and ≤100 W and >100 W and <150 W equipment classes. The

more-efficient electronic EL represents an electronic ballast with an improved circuit design and/or more efficient

components compared to the standard electronic level.

The characteristics of the more-efficient representative units are

summarized in Table IV.6 through Table IV.11 of this document. See chapter 5 of the NOPD TSD for more detail.

TABLE IV.6—70 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
≥50 W and ≤100 W	EL1	More Efficient Magnetic	70	Pulse	Tri	88.3	0.793
	EL2	Standard Electronic	70	Pulse	Quad	0.814	0.860
	EL3	Electronic Max Tech	70	Pulse	Quad	77.7	0.901

TABLE IV.7—150 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
>100 W and <150 W *	EL1	More Efficient Magnetic	150	Pulse	Quad	178.6	0.84
	EL2	Standard Electronic	150	Pulse	Quad	166.7	0.9
	EL3	Electronic Max Tech	150	Pulse	Quad	162.2	0.925

* Includes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

TABLE IV.8—250 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
≥150 W and ≤250 W *	EL1	More Efficient Magnetic	250	Pulse	Quad	276.5	0.904
	EL2	Electronic Max Tech	250	Pulse	Tri	266.2	0.939

* Excludes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

TABLE IV.9—400 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
>250 W and ≤500 W	EL1	More Efficient Magnetic	400	Pulse	Quad	440.5	0.908
	EL2	Electronic Max Tech	400	Pulse	Tri	426.0	0.939

TABLE IV.10—1000 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
>500 W and ≤1000 W	EL1	More Efficient Magnetic	1000	Pulse	Quad	1063.8	0.94

TABLE IV.11—1500 W REPRESENTATIVE UNITS

Equipment class	EL	Technology	Rated wattage	Starting method	Input voltage	System input power	Ballast efficiency
>500 W and ≤1000 W	EL1	More Efficient Magnetic	1000	Pulse	Quad	1063.8	0.94

In the 2014 MHLF final rule, DOE determined that except in a few cases where the linear form was more appropriate, a power-law equation best captured the metal halide ballast efficiency data. 79 FR 7777. In this analysis, DOE determined that the power-law equation and in some cases

the linear equation remain valid representations of the metal halide ballast efficiency data. DOE ensured that equations best fit the more-efficient representative units identified in each equipment class while forming one continuous equation across equipment classes, where possible.

Table IV.12 summarizes the efficiency requirements and associated equations at each EL for the representative equipment classes. DOE requests comment on the ELs under consideration for the representative equipment classes, including the max-tech levels.

TABLE IV.12—SUMMARY OF ELS FOR REPRESENTATIVE EQUIPMENT CLASSES

Equipment class	EL	Technology	Minimum efficiency equation for ballasts not tested at 480 V *
≥50 W and ≤100 W	EL1	More Efficient Magnetic	$1/(1+1.16 \cdot P^{(-0.345)})\dagger$
	EL2	Standard Electronic	$1/(1+1 \cdot P^{(-0.42)})$
	EL3	Electronic Max Tech	$1/(1+0.4 \cdot P^{(-0.3)})$

TABLE IV.12—SUMMARY OF ELS FOR REPRESENTATIVE EQUIPMENT CLASSES—Continued

Equipment class	EL	Technology	Minimum efficiency equation for ballasts not tested at 480 V *
>100 W and <150 W	EL1	More Efficient Magnetic	$1/(1+1.16 \cdot P^{(-0.345)})$
	EL2	Standard Electronic	$1/(1+1 \cdot P^{(-0.42)})$
	EL3	Electronic Max Tech	$1/(1+0.4 \cdot P^{(-0.3)})$
≥150 W and ≤250 W	EL1	More Efficient Magnetic	$1/(1+0.5017 \cdot P^{(-0.26)})$
	EL2	Standard Electronic	$1/(1+1 \cdot P^{(-0.42)})$
	EL3	Electronic Max Tech	$1/(1+0.4 \cdot P^{(-0.3)})$
>250 W and ≤500 W	EL1	More Efficient Magnetic	$1/(1+0.5017 \cdot P^{(-0.26)})$
	EL2	Standard Electronic	$1/(1+1 \cdot P^{(-0.42)})$
	EL3	Electronic Max Tech	$1/(1+0.4 \cdot P^{(-0.3)})$
>500 W and ≤1000 W	EL1	More Efficient Magnetic	$0.000057 \cdot P + 0.881$
>1000 W and ≤2000 W	EL1	More Efficient Magnetic	$-0.000008 \cdot P + 0.946$

* P is defined as the rated wattage of the lamp the fixture is designed to operate.

CA IOUs recommended that DOE consider fixtures that include ballasts meeting the 90–92 percent efficiency California Appliance Efficiency Standards for fixtures between 13,050 and 43,500 lumens when determining new efficiency levels. (CA IOUs, No. 5 at p. 2–3) CA IOUs also commented that if DOE is unable to move toward a technology-agnostic standard that incorporates the entire fixture, DOE should at least adopt efficiency levels based on electronic ballast technology and not magnetic ballast technology. (CA IOUs, No. 5 at p. 3)

Table IV.6 through Table IV.11 in this section describe the more efficient ballasts analyzed at each EL, including the ballast efficiency of each unit. As described in this section, some ELs can only be met by electronic ballast technology. DOE considers the benefits and burdens of each level in section V.D of this document.

5. Design Standard

Under 42 U.S.C. 6295(hh)(4), DOE is permitted to establish a standard based on both design and performance requirements. Existing design standards for MHLFs relate to fixtures that contain probe-start ballasts. EISA 2007 required that MHLFs designed to operate lamps rated at or above 150 W but at or less than 500 W contain magnetic probe-start ballasts that are at least 94 percent efficient. (42 U.S.C. 6295(hh)(1)(A)(ii)) In the 2014 MHLF final rule, DOE adopted a design standard that prohibits the sale of probe-start ballasts in newly sold fixtures that are designed to operate rated lamp wattages from 501 W–1000 W. 79 FR 7778; 10 CFR 431.326(d). DOE reviewed MHLFs currently offered on

the market and did not find any ballast characteristics or other performance features of the fixtures during the analysis for this NOPD to lead it to conclude that a new design standard would result in significant energy savings. Therefore, in this analysis, DOE is not proposing any new design standards for MHLFs.

6. Scaling to Other Equipment Classes

DOE did not directly analyze MHLFs with ballasts that would be tested at an input voltage of 480 V. Thus, it was necessary to develop a scaling relationship to establish ELs for these equipment classes. To do so, for each representative wattage certified to DOE, DOE compared quad-voltage ballasts from the representative equipment classes to their 480 V ballast counterparts using information from the compliance certification database. Ballasts capable of operating 120 V or 277 V are predominantly quad-voltage ballasts, therefore, DOE chose to compare quad-voltage ballasts with 480 V ballasts to develop a scaling factor.

Based on its review of the compliance certification database, DOE determined that the average reduction in ballast efficiency for 480 V ballasts compared to quad ballasts is greater for ballasts designed to operate lamps rated less than 150 W compared to ballasts designed to operate lamps rated greater than or equal to 150 W. Hence, using the method described above, DOE developed two separate scaling factors, one for the 50 W–150 W range and the second for the 150 W–1000 W range. For non-representative equipment classes in the 50 W–150 W range, DOE found the average reduction in ballast efficiency to

be 3.0 percent, and for those in the 150 W–1000 W range, DOE found the average reduction in ballast efficiency to be 1.0 percent. DOE applied these scaling factors to the representative equipment class EL equations to develop corresponding EL equations for ballasts tested at an input voltage of 480V. Specifically, for the non-representative equipment classes in the 50 W–150 W range, DOE used a multiplier of 0.97, and for those in the 150 W–1000 W range, DOE used a multiplier of 0.99.

For ballasts greater than 1000 W, DOE determined the need for a scaling factor based on manufacturer catalog data. DOE determined that ballasts greater than 1000 W do not show a difference in efficiency between 480 V and non-480 V ballasts. DOE did not apply a scaling factor to develop efficiency levels for 480 V ballasts in this equipment class, however, DOE continues to consider the 480 V and non-480 V equipment classes separately for MHLFs greater than 1000 W for the purposes of this analysis.

Additionally, for the ≥150 W and ≤250 W non-representative equipment class, DOE adjusted the resulting scaled equations to ensure all ELs were equal to or more stringent than the EISA 2007 minimum ballast efficiency standard. See chapter 5 of the NOPD TSD for additional details.

Table IV.13 summarizes the efficiency requirements at each EL for the non-representative equipment classes. DOE requests comment on the ELs under consideration for the non-representative equipment classes, including the max-tech levels.

TABLE IV.13—SUMMARY OF ELS FOR NON-REPRESENTATIVE EQUIPMENT CLASSES

Equipment class	EL	Technology	Minimum efficiency equation for ballasts tested at 480 V
>50 W and ≤100 W	EL1	Improved magnetic	$0.97/(1+1.16 \cdot P^{(-0.345)})$

TABLE IV.13—SUMMARY OF ELS FOR NON-REPRESENTATIVE EQUIPMENT CLASSES—Continued

Equipment class	EL	Technology	Minimum efficiency equation for ballasts tested at 480 V
>100 W and <150 W *	EL2	Standard Electronic	$0.97/(1+1*P^{(-0.42)})$
	EL3	Electronic Max Tech	$0.97/(1+0.4*P^{(-0.3)})$
	EL1	Improved magnetic	$0.97*(0.0006*P+0.748)$
≥150 W and ≤250 W **	EL2	Standard Electronic	$0.97/(1+1*P^{(-0.42)})$
	EL3	Electronic Max Tech	$0.97/(1+0.4*P^{(-0.3)})$
	EL1	Improved magnetic	≥150 W and <210 W: 0.88 ≥210 W and ≤250 W: $0.99/(1+0.5017*P^{(-0.26)})$
>250 W and ≤500 W	EL2	Standard Electronic	$0.99/(1+1*P^{(-0.42)})$
	EL3	Electronic Max Tech	$0.99/(1+0.4*P^{(-0.3)})$
	EL1	Improved magnetic	$0.99/(1+0.5017*P^{(-0.26)})$
	EL2	Standard Electronic	$0.99/(1+1*P^{(-0.42)})$
>500 W and ≤1000W	EL3	Electronic Max Tech	$0.99/(1+0.4*P^{(-0.3)})$
>1000 W and ≤2000 W	EL1	Improved magnetic	$0.99*(0.0001*P+0.881)$
	EL1	Improved magnetic	$0.99*(-0.000008*P+0.946)$

* P is defined as the rated wattage of the lamp the fixture is designed to operate.

7. Manufacturer Selling Price

DOE develops manufacturer selling prices (“MSPs”) for covered equipment and applies markups to create end-user prices to use as inputs to the LCC analysis and NIA. The MSP of a MHLF comprises of the MSP of the fixture components including any necessary additional features and the MSP of the metal halide ballast contained in the fixture. For this analysis, DOE conducted teardown analyses on 31 commercially available MHLFs and the ballasts included in these fixtures. Using the information from these teardowns, DOE summed the direct material, labor, and overhead costs used to manufacture a MHLF or metal halide ballast, to calculate the manufacturing production cost (“MPC”).²³ The following sections describe the development of MSPs of fixture components and more-efficient MH

ballasts identified for each efficiency level considered in this analysis.

a. Fixtures

To determine the fixture components MSPs, DOE conducted fixture teardowns to derive MPCs of empty fixtures (*i.e.*, lamp enclosure and optics). The empty fixture does not include the ballast or lamp. DOE then added the other components required by the system (including ballast and any cost adders associated with electronically ballasted systems) and applied appropriate markups to obtain a final MSP for the entire fixture.

To calculate an empty fixture price, DOE identified the applications commonly served by the representative wattage in each equipment class. DOE recognizes that technological changes in the ballast, specifically moving from magnetic ballasts to electronic ballasts, can necessitate alterations to the fixture. These changes often incur additional

costs that are dependent on the price of the baseline fixture that is altered. DOE estimates a baseline empty fixture cost as well as incremental costs at ELs that require electronic ballasts. The cost adders to the fixtures are discussed later in this section.

DOE selected one to four representative fixture types for each rated wattage range based on the most common application(s) within that range. DOE determined the common application(s) by reviewing all fixtures in DOE’s compliance certification database, identifying the type of fixture for each basic model, and then using a product count to determine the most popular fixture types in each equipment class. DOE selected representative fixture types separately for indoor and outdoor applications. The representative fixture types for each equipment class, are shown in Table IV.14 below. See chapter 5 of the NOPD TSD for further discussion.

TABLE IV.14—REPRESENTATIVE FIXTURE TYPES

Representative equipment class	Representative wattage	Representative fixture types	
		Indoor	Outdoor
≥50 W and ≤100 W	70 W	Downlight	Bollard, Flood, Post Top, Wallpack.
>100 W and <150 W *	150 W	Downlight	Area, Flood, Post Top, Wallpack.
≥150 W and ≤250 W **	250 W	High-Bay	Area, Flood, Post Top, Cobrahead.
>250 W and ≤500 W	400 W	High-Bay	Area, Flood, Post Top, Cobrahead.
>500 W and ≤1000 W	1000 W	High-Bay	Area, Flood, Sports.
>1000 W and ≤2000 W	1500 W	Sports	Sports.

* Includes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

** Excludes 150 W fixtures initially exempted by EISA 2007, which are fixtures rated only for 150 watt lamps; rated for use in wet locations, as specified by the NFPA 70–2002, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029–2007.

²³ When viewed from the company-wide perspective, the sum of all material, labor, and

overhead costs equals the company’s sales cost, also referred to as the cost of goods sold.

The MPCs of empty fixtures were determined using teardowns. Teardowns were conducted for 31 fixtures that spanned the representative wattages and the applications identified for each representative wattage. The MPC of the empty fixture for each representative wattage was calculated by weighting the empty fixture cost for each application by the popularity of each application. DOE determined the weightings based on the number of fixtures for each application at each representative wattage in DOE's certification database. See chapter 5 of the NOPD TSD for further details.

While the empty fixture MPCs remain the same at each magnetic efficiency level, incremental costs are added when the fixture contains an electronic ballast. In the 2014 MHLF final rule DOE applied cost adders to fixtures that use electronic ballasts for (1) transient protection, (2) thermal management, and (3) 120 V auxiliary power functionality. 79 FR 7781. These costs varied based on whether the fixture application was indoor, indoor industrial, or outdoor.

Fixtures with electronic ballasts that are used in outdoor or indoor industrial applications must be able to withstand 10 kilovolt voltage transients. Therefore, in the 2014 MHLF final rule, DOE included the high-volume cost of a voltage transient protection device which it determined to be \$10.31. 79 FR 7781. In this analysis, based on market research, DOE determined the price of voltage transient protection to be \$9.03. DOE added \$9.03 to the empty fixture MPC for outdoor and indoor industrial fixtures at efficiency levels requiring an electronic ballast.

Compared to magnetic ballasts, electronic ballasts are more vulnerable to high ambient temperatures, which can cause premature ballast failure. Hence, in the 2014 MHLF final rule, DOE included the cost of thermal management and determined it to be a 20 percent increase in MPC based on manufacturer feedback and teardown analysis. 79 FR 7782. In this analysis, DOE determined that the 20 percent increase in the empty fixture cost for thermal management in metal halide fixtures containing electronic ballasts remains valid. Therefore, DOE applied a 20 percent increase to the empty fixture MPC at efficiency levels requiring an electronic ballast.

As discussed in the 2014 MHLF final rule, indoor applications may require a 120 V auxiliary tap used to operate emergency lighting, which can be easily incorporated into a magnetic ballast but requires additional design for an electronic ballast. 79 FR 7782. In the

2014 MHLF final rule, DOE included the cost of an auxiliary tap, determining that auxiliary taps cost about \$7.50 but because the tap is needed in only 10 percent of the ballasts in indoor fixtures DOE applied a cost of \$0.75. *Id.* In this determination, DOE conducted market research and found the average market price of the 120 V auxiliary tap to be \$7.38. Similarly, because the auxiliary tap is needed in only 10 percent of the ballasts in indoor fixtures, DOE added \$0.74 to the indoor empty fixture MPC for efficiency levels requiring an electronic ballast.

The manufacturer markup converts MPC to MSP. For this analysis, DOE maintained the manufacturer markup developed in the 2014 MHLF final rule. In that rule, DOE determined the fixture manufacturer markup to be 1.58 based on financial information from manufacturers' SEC 10-K reports, as well as feedback from manufacturer interviews. 79 FR 7783. Hence, in this analysis, DOE applied the fixture manufacturer markup of 1.58 to the empty fixture MPC to determine the MSP of the fixture at each efficiency level.

b. Ballasts

To determine the MPCs of the metal halide ballasts identified in this analysis, DOE used data from the teardown analysis which included cost data for magnetic ballasts at the baseline in each equipment class. To determine the ballast MPC at the higher efficiency levels, DOE developed a ratio between the average retail price of ballasts at the efficiency level under consideration and ballasts at the baseline. DOE collected retail prices from electrical distributors (e.g., Grainger, Graybar) as well as internet retailers to determine average retail prices for ballasts. For efficiency levels without retail prices available, DOE used a ratio between the same efficiency levels in a different wattage class or interpolated based on efficiency and ballast MPC.

The manufacturer markup converts MPC to MSP. For this analysis, DOE maintained the manufacturer markup developed in the 2014 MHLF final rule. In that rule, DOE determined the ballast manufacturer markup to be 1.47 based on financial information from manufacturers' SEC 10-K reports, as well as feedback from manufacturer interviews. 79 FR 7783. Hence, in this analysis, DOE applied the ballast manufacturer markup of 1.47 to the ballast MPC to determine the MSP of replacement ballasts at each efficiency level. If the ballast was sold within a new fixture, DOE applied the ballast manufacturer markup of 1.47 and the

fixture manufacturer markup of 1.58 to the ballast MPC.

The total empty fixture MSPs, replacement ballast MSPs, and fixture with ballast MSPs are detailed the NOPD TSD. DOE requests comment on the methodology and resulting MSPs developed for all equipment classes.

D. Markups Analysis

The markups analysis develops appropriate markups (e.g., retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to customer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. DOE used the same distribution channels and markups as in the 2014 MHLF final rule.

1. Distribution Channels

Before it could develop markups, DOE needed to identify distribution channels (i.e., how the equipment is distributed from the manufacturer to the end-user) for the MHLF designs addressed in this rulemaking. In an electrical wholesaler distribution channel, DOE assumed the fixture manufacturer sells the fixture to an electrical wholesaler (i.e., distributor), who in turn sells it to a contractor, who sells it to the end-user. In a contractor distribution channel, DOE assumed the fixture manufacturer sells the fixture directly to a contractor, who sells it to the end-user. In a utility distribution channel, DOE assumed the fixture manufacturer sells the fixture directly to the end-user (i.e., electrical utility). Indoor fixtures are all assumed to go through the electrical wholesaler distribution channel. Outdoor fixtures are assumed to go through all three distribution channels as follows: 60 percent electrical wholesaler, 20 percent contractor, and 20 percent utility.

2. Estimation of Markups

To estimate wholesaler and utility markups, DOE used financial data from 10-K reports of publicly owned electrical wholesalers and utilities. DOE's markup analysis developed both baseline and incremental markups to transform the fixture MSP into an end-user equipment price. DOE used the baseline markups to determine the price of baseline designs. Incremental markups are coefficients that relate the change in the MSP of higher-efficiency designs to the change in the wholesaler and utility sales prices, excluding sales tax. These markups refer to higher-efficiency designs sold under market

conditions with new and amended energy conservation standards.

In the 2014 MHLF final rule, DOE assumed a wholesaler baseline markup of 1.23 and a contractor markup of 1.13, yielding a total wholesaler distribution channel baseline markup of 1.49. The lower wholesaler incremental markup of 1.05 yields a lower total incremental markup through this distribution channel of 1.27. DOE also assumed a utility markup of 1.00 for the utility distribution channel in which the manufacturer sells a fixture directly to the end-user. DOE again assumed a

contractor markup of 1.13 for the utility distribution channel in which a manufacturer sells a fixture to a contractor who in turn sells it to the end-user yielding an overall markup of 1.21 for this channel. 79 FR 7783. DOE used these same markups for this NOPD analysis.

The sales tax represents state and local sales taxes applied to the end-user equipment price. DOE obtained state and local tax data from the Sales Tax Clearinghouse.²⁴ These data represent weighted averages that include state, county, and city rates. DOE then

calculated population-weighted average tax values for each census division and large state, and then derived U.S. average tax values using a population-weighted average of the census division and large state values. For this NOPD, this approach provided a national average tax rate of 7.2 percent.

3. Summary of Markups

Table IV.15 summarizes the markups at each stage in the distribution channels and the overall baseline and incremental markups, and sales taxes, for each of the three identified channels.

TABLE IV.15—SUMMARY OF FIXTURE DISTRIBUTION CHANNEL MARKUPS

	Wholesaler distribution		Utility distribution			
	Baseline	Incremental	Via wholesaler and contractor		Direct to end user	
			Baseline	Incremental	Baseline	Incremental
Electrical Wholesaler (Distributor)	1.23	1.05	N/A	N/A	N/A	N/A
Utility	N/A	N/A	1.00	1.00	1.00	1.00
Contractor or Installer	1.13	1.13	1.13	1.13	N/A	N/A
Sales Tax	1.07		1.07		1.07	
Overall	1.49	1.27	1.21	1.21	1.07	1.07

Using these markups, DOE generated fixture end-user prices for each EL it considered, assuming that each level represents a new minimum efficiency standard. Chapter 6 of the NOPD TSD provides details on DOE’s development of markups for MHLFs. DOE welcomes any relevant data and comments on the markups analysis methodology.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of MHLFs at different efficiencies in the commercial, industrial, and outdoor stationary sectors, and to assess the energy savings potential of increased MHLF efficiency. The energy use analysis estimates the range of energy use of MHLFs in the field (i.e., as they are actually used by customers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in operating costs that could result from adoption of amended or new standards.

To develop annual energy use estimates, DOE multiplied the lamp-and-ballast system input power (in

watts) by annual usage (in hours per year). DOE characterized representative lamp-and-ballast systems in the engineering analysis, which provided measured input power ratings. To characterize the country’s average usage of fixtures for a typical year, DOE developed annual operating hour distributions by sector, using data published in the 2015 U.S. Lighting Market Characterization (“LMC”).²⁵ For the ≥50 W and ≤100 W to >500 W and ≤1000 W equipment classes, DOE obtained weighted-average annual operating hours for the commercial, industrial, and outdoor stationary sectors of approximately 2,300 hours, 5,100 hours, and 5,000 hours, respectively. For the 1,500 W equipment class, DOE assigned annual operating hours of approximately 770 hours for all lamps according to the 2015 LMC estimate of 2.1 hours per day for sports field lighting, consistent with the methodology from the 2014 MHLF final rule.²⁶

All comments received in response to the July 2019 RFI regarding the methodology to develop annual operating hours and energy use from the 2014 MHLF final rule were supportive,

and DOE has continued to use the same methodology in this NOPD (with updated inputs as appropriate). (NEMA, No. 3 at pp. 7–8) Chapter 7 of the NOPD TSD provides details on DOE’s energy use analysis for MHLFs. DOE welcomes any relevant data and comments on the energy use analysis methodology.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual customers of potential energy conservation standards for MHLFs. The effect of new or amended energy conservation standards on individual customers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure customer impacts:

- The LCC is the total customer expense of equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts

²⁴ Sales Tax Clearinghouse, Inc. *The Sales Tax Clearinghouse*. (Last accessed December 5, 2019.) <https://thstc.com/STRates.stm>.

²⁵ Navigant Consulting, Inc. *2015 U.S. Lighting Market Characterization*. 2017. U.S. Department of Energy: Washington, DC Report No. DOE/EE-1719.

(Last accessed December 5, 2019.) <https://energy.gov/eere/ssl/downloads/2015-us-lighting-market-characterization>.

²⁶ U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. Technical Support Document: Energy Conservation Program

for Consumer Products and Certain Commercial and Industrial Equipment: Metal Halide Lamp Fixtures. January 2014. Washington, DC (Last accessed December 5, 2019.) <https://www.regulations.gov/document?D=EERE-2009-BT-STD-0018-0069>.

future operating costs to the time of purchase and sums them over the lifetime of the equipment.

- The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of a more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measured the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of MHLFs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of building types. As stated previously, DOE developed customer samples from the 2015 LMC. For each sample customer, DOE determined the energy consumption for the MHLF and the appropriate electricity price. By developing a representative sample of building types, the analysis captured the variability in energy consumption and energy prices associated with the use of MHLFs.

Inputs to the calculation of total installed cost include the cost of the equipment—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—

and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, and discount rates. DOE created distributions of values for operating hours, equipment lifetime, discount rates, electricity prices, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability. For example, DOE created a probability distribution of annual energy consumption in its energy use analysis, based in part on a range of annual operating hours. The operating hour distributions capture variations across building types, lighting applications, and metal halide systems for three sectors (commercial, industrial, and outdoor stationary). In contrast, fixture MSPs were specific to the representative designs evaluated in DOE’s engineering analysis, and price markups were based on limited, publicly available financial data. Consequently, DOE used discrete values instead of distributions for these inputs.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and MHLF user samples. The model calculated the LCC and PBP for equipment at each efficiency level for 10,000 customers per simulation run. The analytical results

include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all customers of MHLFs as if each were to purchase new equipment in the expected year of required compliance with new or amended standards. Any amended standards would apply to MHLFs manufactured three years after the date on which any new or amended standard is published. (42 U.S.C. 6295(hh)(3)(B)) At this time, DOE estimates publication of a final rule in the latter half of 2021. Therefore, for purposes of its analysis, DOE used 2025 as the first year of compliance with any amended standards for MHLFs.

Table IV.16 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPD TSD and its appendices.

TABLE IV.16—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS*

Inputs	Source/method
Equipment Cost	Derived by multiplying MSPs by distribution channel markups (taken from the 2014 MHLF final rule) and sales tax.
Installation Costs	Used the same installation costs as in the 2014 MHLF final rule, but inflated to 2018\$. The 2014 MHLF final rule costs were calculated using estimated labor times and applicable labor rates from “RS Means Electrical Cost Data” (2013), Sweets Electrical Cost Guide 2013, and the U.S. Bureau of Labor Statistics.
Annual Energy Use	The total annual energy use multiplied by the operating hours per year, which were determined separately for indoor and outdoor fixtures. Average number of hours based on the 2015 LMC.
Energy Prices	Electricity: Based on Edison Electric Institute data for 2018. Variability: Regional energy prices determined for 13 census divisions and large states.
Energy Price Trends	Based on AEO 2019 price projections.
Replacement Costs	Used the same labor and material costs for lamp and ballast replacements as in the 2014 MHLF final rule, but inflated to 2018\$.
Equipment Lifetime	Used the same lifetimes as in the 2014 MHLF final rule. Ballasts: Assumed an average of 50,000 hours for magnetic ballasts and 40,000 hours for electronic ballasts. Fixtures: Assumed an average of 20 years for indoor fixtures and 25 years for outdoor fixtures.
Discount Rates	Developed a distribution of discount rates for the commercial, industrial, and outdoor stationary sectors.
Compliance Date	2025.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPD TSD.

1. Equipment Cost

To calculate customer equipment costs, DOE multiplied the MSPs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment. See section IV.D for further details.

2. Installation Cost

Installation cost is the cost to install the fixture such as the labor, overhead, and any miscellaneous materials and parts needed. DOE used the installation costs from the 2014 MHLF final rule but inflated to 2018\$.

3. Annual Energy Consumption

For each sampled customer, DOE determined the energy consumption for an MHLF at different efficiency levels using the approach described previously in section IV.E of this document. For this NOPD, DOE based the annual energy use inputs on sectoral operating hour distributions (commercial, industrial, and outdoor stationary sectors), with the exception of a discrete value (approximately 770 hours per year) for the 1,500 W equipment class that is primarily limited to sports lighting. DOE used operating hour (and, by extension, energy use) distributions to better characterize the potential range of operating conditions faced by MHLF customers.

4. Energy Prices

DOE derived average and marginal annual commercial and industrial electricity prices for 13 regions (9 Census Divisions and 4 large states)

using 2018 data from Edison Electric Institute.²⁷

To estimate energy prices in future years, DOE multiplied the average regional energy prices by a projection of annual change in national-average commercial and industrial energy prices in the Reference case of *Annual Energy Outlook 2019 (AEO 2019)*.²⁸ *AEO 2019* has an end year of 2050. To estimate price trends after 2050, DOE used the compound annual growth rate of change in prices between 2035 and 2050.

5. Replacement Costs

Replacement costs include the labor and materials costs associated with replacing a ballast or lamp at the end of their lifetimes and are annualized across the years preceding and including the actual year in which equipment is replaced. The costs are taken from the 2014 MHLF final rule but inflated to 2018\$. For the LCC and PBP analysis, the analysis period corresponds with the fixture lifetime that is assumed to be longer than that of either the lamp or the ballast. For this reason, ballast and lamp prices and labor costs associated with lamp or ballast replacements are included in the calculation of operating costs.

6. Equipment Lifetime

DOE defined equipment lifetime as the age when a fixture, ballast, or lamp is retired from service. For fixtures in all equipment classes, DOE assumed average lifetimes for indoor and outdoor fixtures of 20 and 25 years, respectively. DOE also assumed that magnetic ballasts had a rated lifetime of 50,000 hours and electronic ballasts had a rated lifetime of 40,000 hours. DOE used manufacturer catalog data to obtain rated lifetime estimates (in hours) for lamps in each equipment class. DOE accounted for uncertainty in the fixture,

ballast, and lamp lifetimes by applying Weibull survival distributions to the components' rated lifetimes. Furthermore, DOE included a residual value calculation for lamps and ballasts to account for the residual monetary value associated with the remaining life in the lamp and ballast at the end of the fixture lifetime. All assumptions for estimating equipment lifetime are taken from the 2014 MHLF final rule. 79 FR 7787.

7. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. In this NOPD, DOE estimated separate discount rates for commercial, industrial, and outdoor stationary applications. DOE used discount rate data from a 2019 Lawrence Berkeley National Laboratory report.²⁹ The average discount rates, weighted by the shares of each rate value in the sectoral distributions, are 8.3 percent for commercial end-users, 8.8 percent for industrial end-users, and 3.2 percent for outdoor stationary end-users. For more information regarding discount rates, see chapter 8 of the NOPD TSD.

8. Energy Efficiency Distribution in the No-New-Standards Case

DOE developed a no-new-standards case efficiency distribution using model count data from the compliance certification database collected on October 10, 2019. The compliance certification database does not contain models in the >1000 W and ≤2000 W equipment class; therefore, DOE assumed 56 percent of the market is at the baseline and 44 percent of the market is at EL 1, based on MHLF catalog data. The complete efficiency distribution for 2025 is shown in Table IV.17.

TABLE IV.17—MHLF EFFICIENCY DISTRIBUTION BY EQUIPMENT CLASS FOR 2025

Efficiency level	Equipment class *					
	≥50 W and ≤100 W (%)	>100 W and <150 W (%)	≥150 W and ≤250 W (%)	>250 W and ≤500 W (%)	>500 W and ≤1000 W (%)	>1000 W and ≤2000 W (%)
0	83.1	88.1	73.6	87.6	99.5	56.0
1	0.3	6.0	18.9	0.3	0.5	44.0
2	9.2	0.0	7.5	12.2		
3	7.4	5.9				

* Columns may not sum to 100% due to rounding.

²⁷ Edison Electric Institute. *Typical Bills and Average Rates Report*. Winter 2017, Summer 2017: Washington, DC.

²⁸ U.S. Energy Information Administration. *Annual Energy Outlook 2019 with Projections to*

2050. 2019. Washington, DC Report No. AEO2019. (Last accessed May 13, 2019.) <https://www.eia.gov/outlooks/aeo/pdf/aeo2019.pdf>.

²⁹ Fujita, K.S. *Commercial, Industrial, and Institutional Discount Rate Estimation for Efficiency*

Standards Analysis: Sector-Level Data 1998–2018. 2019. Lawrence Berkeley National Laboratory: Berkeley, CA. (Last accessed January 15, 2020.) <https://eta.lbl.gov/publications/commercial-industrial-institutional>.

9. Payback Period Analysis

The payback period is the amount of time it takes the customer to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the equipment and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the customer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

DOE welcomes any relevant data and comments on the life-cycle cost and payback period analysis methodology.

G. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use and NPV.³⁰ The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year

depend on the age distribution of the stock.

The stock turnover model calculates demand for new MHLFs based on the expected demand for replacement MHLFs and the decrease in MHLF demand due to the adoption of out-of-scope LED alternatives. The model is initialized using a time series of historical shipments data compiled from the 2014 MHLF final rule and data from NEMA. The historical shipments for 2008 from the 2014 MHLF final rule were projected to 2018 using NEMA sales indices from 2008 to 2018. 79 FR 7788–7789.

NEMA commented in response to the July 2019 RFI that out-of-scope LED alternatives are now the preferred technology for traditional MHLF customers. (NEMA, No. 3 at pp. 2–3) DOE assumed an increasing fraction of the MHLF market will move to out-of-scope LED alternatives over the course of the shipments analysis period. DOE modelled the incursion of LED equipment in the form of a Bass diffusion curve.³¹ The parameters for the Bass diffusion curve are based on fitting a Bass diffusion curve to market share data for general service LED lamps based on data published by NEMA. This same approach was used in the final determination for general service incandescent lamps; see chapter 9 of the final determination TSD.³² 84 FR 71626, 71658 (December 27, 2019).

DOE apportioned the total shipments of MHLFs to each EL in the no-new-standards case using data downloaded from the compliance certification database³³ and data provided by NEMA in comments to the July 2019 RFI. (NEMA, No. 3 at pp.11–14). Equipment listed in the CCMS database were categorized by equipment class, efficiency level, and ballast type. The counts for each category were scaled based on ballast type by the NEMA market shares for magnetic and electronic ballasts reported in 2018.

For the standards cases, DOE used a “roll-up” approach to estimate market share for each EL for the year that standards are assumed to become effective (2025). For each standards case, the market shares of ELs in the no-new-standards case that do not meet the standard under consideration “roll up” to meet the new standard level, and the

market share of equipment above the standard remains unchanged.

For both the no-new-standards and standards cases, DOE assumed no efficiency trend over the analysis period. For a given case, market shares were held fixed to their 2025 distribution.

DOE typically includes the impact of price learning in its analysis. In a standard price learning model,³⁴ the price of a given technology is related to its cumulative production, as represented by total cumulative shipments. In response to the July 2019 RFI, NEMA indicated that MHLFs are a mature technology and are no longer a preferred technology. (NEMA, No. 3 at p. 2) DOE assumed MHLFs have reached a stable price point due to the high volume of total cumulative shipments and would not undergo price learning in this NOPD analysis. DOE welcomes any relevant data and comments on the shipments analysis methodology.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total customer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.³⁵ DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of customer benefits over the lifetime of MHLFs sold from 2025 through 2054.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and customer costs for each equipment class in the absence of new or amended energy conservation standards. DOE compares the no-new-standards case with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.*, the TSLs or standards cases) for that class. For the standards cases, DOE considers

³¹ Bass, F.M. A New Product Growth Model for Consumer Durables. *Management Science*. 1969. 15(5): pp. 215–227.

³² Chapter 9 of the GSIL final determination TSD is available at <https://www.regulations.gov/document?D=EERE-2019-BT-STD-0022-0116>

³³ See <https://www.regulations.doe.gov/certification-data/products.html> (Last accessed on January 21, 2020).

³⁴ Taylor, M. and S.K. Fujita. *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique*. 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL-6195E. (Last accessed January 7, 2020.) <https://eta.lbl.gov/publications/accounting-technological-change>.

³⁵ The NIA accounts for impacts in the 50 states and U.S. territories.

³⁰ DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national customer costs and savings

from each TSL. Interested parties can review DOE’s analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.18 summarizes the inputs and methods DOE used for the NIA analysis for this NOPD. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPD TSD for further details.

TABLE IV.18—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model for each considered TSL.
First Full Year of Standard Compliance	2025.
No-new-standards Case Efficiency Trend	No trend assumed.
Standards Case Efficiency Trend	No trend assumed.
Annual Energy Consumption per Unit	Calculated for each efficiency level based on inputs from the energy use analysis.
Total Installed Cost per Unit	MHLF prices and installation costs from the LCC analysis.
Repair and Maintenance Cost per Unit	Cost to replace lamp and ballast over the lifetime of the fixture.
Residual Value per Unit	The monetary value of remaining lamp and ballast lifetime at the end of the fixture lifetime.
Electricity Prices	Estimated marginal electricity prices from the LCC analysis.
Electricity Price Trends	AEO 2019 forecasts (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on AEO 2019.
Discount Rate	3 percent and 7 percent.
Present Year	2020.

1. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered equipment between each potential TSL and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each equipment type (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (i.e., the energy consumed by power plants to generate site electricity) using annual conversion factors derived from AEO 2019. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

DOE generally accounts for the direct rebound effect in its NES analyses. Direct rebound reflects the idea that as appliances become more efficient, customers use more of their service because their operating cost is reduced. In the case of lighting, the rebound effect could be manifested in increased hours of use or in increased lighting density (lumens per square foot). In response to the July 2019 RFI, NEMA commented that a rebound rate of 0 is appropriate. (NEMA, No. 3 at p. 9) DOE assumed no rebound effect for MHLFs in this NOPD.

In 2011, in response to the recommendations of a committee on “Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards” appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions to the extent that emissions analyses are conducted. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 proposal, DOE published a statement of amended policy in which DOE explained its determination that Energy Information Administration’s (EIA’s) National Energy Modeling System (“NEMS”) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector³⁶ that EIA uses to prepare its *Annual Energy Outlook*. The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPD TSD.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits

³⁶ For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009*, DOE/EIA-0581(2009), October 2009. Available at <http://www.eia.gov/forecasts/aeo/index.cfm>.

experienced by customers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of equipment shipped during the analysis period.

Energy cost savings, which are part of operating cost savings, are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average national marginal electricity prices by the forecast of annual national-average commercial or industrial electricity price changes in the Reference case from AEO 2019, which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2041 to 2050.

DOE includes the cost of replacing failed lamps and ballasts over the course of the lifetime of the fixture. DOE assumed that lamps and ballasts were replaced at their rated lifetime. When replacing a ballast, DOE assumed the lamp was also replaced at the same time, independent of the timing of the previous lamp replacement. For more details see chapter 10 of the NOPD TSD.

DOE also estimates the residual monetary value remaining in the lamp and ballast at the end of the fixture lifetime and applies it as a credit to

operating costs (*i.e.*, the residual value is deducted from operating costs). See chapter 10 of the NOPD TSD for more details on DOE’s calculation of the residual value.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPD, DOE estimated the NPV of customer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (“OMB”) to Federal agencies on the development of regulatory analysis.³⁷ The discount rates for the determination of NPV are in contrast to the discount rates used in the

LCC analysis, which are designed to reflect a customer’s perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the “social rate of time preference,” which is the rate at which society discounts future consumption flows to their present value.

V. Analytical Results and Conclusions

The following section addresses the results from DOE’s analyses with respect to the considered energy conservation standards for MHLFs. It addresses the ELs examined by DOE and the projected impacts of each of these levels. Additional details regarding

DOE’s analyses are contained in the NOPD TSD.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of three TSLs for MHLFs. TSL 1 is composed of EL 1 for all equipment classes. TSL 2 is composed of the efficiency levels corresponding to the least efficient electronic ballast level for each equipment class, if any efficiency levels corresponding to an electronic ballast exist. TSL 3 is composed of the max-tech level for each equipment class. Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for MHLFs.

TABLE V.1—TRIAL STANDARD LEVELS FOR MHLFS

	≥50 W and ≤100 W	>100 W and <150 W	≥150 W and ≤250 W	>250 W and ≤500 W	>500 W and ≤1000 W	>1000 W and ≤2000 W
TSL 0	0	0	0	0	0	0
TSL 1	1	1	1	1	1	1
TSL 2	2	2	2	2	1	1
TSL 3	3	3	2	2	1	1

B. Economic Impacts on Individual Customers

DOE analyzed the cost effectiveness (*i.e.*, any savings in operating costs compared to any increase in purchase price likely to result from the imposition of a standard) by considering the LCC and PBP. These analyses are discussed in the following sections.

1. Life-Cycle Cost and Payback Period

In general, higher efficiency equipment affects consumers in two ways: (1) Purchase price increases and (2) annual operating costs decrease.³⁸ Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, product price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends,

and replacement costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPD TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.13 show the LCC and PBP results for the ELs and TSLs considered for each equipment class, with indoor and outdoor installations aggregated together using equipment shipments in the analysis period start year (2025). Results for each equipment class are shown in two tables. In the first table, the simple payback is measured relative to the baseline product. For ELs having a higher first year’s operating cost than that of the baseline, the payback period is “Never,” because the additional

installed cost relative to the baseline is not recouped. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some customers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to customers who are affected by a standard at a given TSL. Those who already purchase equipment with efficiency at or above a given TSL are not affected. Customers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR THE ≥50 W AND ≤100 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year’s operating cost	Lifetime operating cost	LCC		
0	835.94	123.58	1,534.59	2,370.53	.....	24.1
1	848.48	123.51	1,532.13	2,380.61	182.0	24.1
2	878.81	124.20	1,549.40	2,428.21	Never	24.1

³⁷ United States Office of Management and Budget. *Circular A-4: Regulatory Analysis*. September 17, 2003. Section E. Available at <http://www.whitehouse.gov/omb/memoranda/m03-21.html>.

³⁸ While it is generally true that higher-efficiency equipment has lower operating costs, MHLF

operating costs in this analysis also incorporate the costs of lamp and ballast replacements. Due to these replacement costs, higher operating costs can be experienced at efficiency levels above the baseline.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR THE ≥50 W AND ≤100 W EQUIPMENT CLASS—Continued

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	895.39	123.51	1,538.46	2,433.85	893.2	24.1

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE ≥50 W AND ≤100 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(10.09)	83.2
2	2	(57.39)	62.7
3	3	(57.38)	72.1

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR THE >100 W AND <150 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	803.46	146.31	1,702.74	2,506.20	.....	23.5
1	817.04	145.35	1,690.07	2,507.11	14.2	23.5
2	853.41	143.65	1,678.31	2,531.72	18.8	23.5
3	970.98	147.00	1,706.26	2,677.25	Never	23.5

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE >100 W AND <150 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(0.87)	57.4
2	2	(25.22)	50.4
3	3	(170.66)	90.7

* The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR THE ≥150 W AND ≤250 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	963.46	181.07	2,089.02	3,052.48	.....	23.5
1	988.66	180.75	2,082.57	3,071.23	79.4	23.5
2	1,149.72	184.26	2,123.00	3,272.71	Never	23.5

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE ≥150 W AND ≤250 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(18.70)	73.4
2	2	(216.24)	90.9
3	2	(216.24)	90.9

* The savings represent the average LCC for affected consumers.

TABLE V.8—AVERAGE LCC AND PBP RESULTS FOR THE >250 W AND ≤500 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	1,098.78	237.28	2,713.41	3,812.19	.....	23.5
1	1,122.58	237.08	2,708.49	3,831.07	121.8	23.5
2	1,376.47	245.60	2,800.48	4,176.95	Never	23.5

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE >250 W AND ≤500 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(18.87)	86.9
2	2	(364.30)	87.2
3	2	(364.30)	87.2

* The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR THE >500 W AND ≤1000 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback (years)	Average fixture lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	1,305.39	555.06	6,526.50	7,831.89	.....	23.7
1	1,336.23	554.15	6,512.29	7,848.52	33.6	23.7

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE >500 W AND ≤1000 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(16.64)	93.3
2	1	(16.64)	93.3
3	1	(16.64)	93.3

* The savings represent the average LCC for affected consumers.

TABLE V.12—AVERAGE LCC AND PBP RESULTS FOR THE >1000 W AND ≤2000 W EQUIPMENT CLASS

Efficiency level	Average costs (2018\$)				Simple payback years	Average fixture lifetime years
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	1,392.61	179.13	2,145.92	3,538.52	0.0	23.7
1	1,423.31	177.41	2,124.97	3,548.28	17.9	23.7

Note: The results for each EL are calculated assuming that all customers use equipment at that efficiency level. The PBP is measured relative to the baseline equipment.

TABLE V.13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR THE >1000 W AND ≤2000 W EQUIPMENT CLASS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2018\$)	Percent of consumers that experience net cost
1	1	(9.80)	48.0
2	1	(9.80)	48.0
3	1	(9.80)	48.0

*The savings represent the average LCC for affected consumers.

2. Rebuttable Presumption Payback

As discussed in section IV.F.9 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered ELs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for MHLFs. In contrast, the PBPs presented in section V.B.1 of

this document were calculated using distributions that reflect the range of energy use in the field. See chapter 8 of the NOPD TSD for more information on the rebuttable presumption payback analysis.

C. National Impact Analysis

This section presents DOE's estimates of NES and the NPV of customer benefits that would result from each of the TSLs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended

standards for MHLFs, DOE compared the energy consumption under the no-new-standards case to the anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2025–2054). Table V.14 presents DOE's projections of the national energy savings for each TSL considered for MHLFs. The savings were calculated using the approach described in section IV.H.1 of this document.

TABLE V.14—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MHLFS; 30 YEARS OF SHIPMENTS [2025–2054]

	Equipment class	Trial standard level		
		1	2	3
Site Energy Savings (quads)	≥50 W and ≤100 W	0.000006	0.00004	0.00006
	>100 W and <150 W	0.000005	0.00002	0.00003
	≥150 W and ≤250 W	0.00001	0.00007	0.00007
	>250 W and ≤500 W	0.00001	0.0001	0.0001
	>500 W and ≤1000 W	0.00001	0.00001	0.00001
	>1000 W and ≤2000 W	0.0000003	0.0000003	0.0000003
Primary Energy Savings (quads)	Total*	0.00005	0.0002	0.0003
	≥50 W and ≤100 W	0.00002	0.0001	0.0002
	>100 W and <150 W	0.00001	0.00007	0.00008
	≥150 W and ≤250 W	0.00003	0.0002	0.0002
	>250 W and ≤500 W	0.00004	0.0003	0.0003
	>500 W and ≤1000 W	0.00003	0.00003	0.00003
FFC Energy Savings (quads)	>1000 W and ≤2000 W	0.0000007	0.0000007	0.0000007
	Total*	0.0001	0.0007	0.0007
	≥50 W and ≤100 W	0.00002	0.0001	0.0002
	>100 W and <150 W	0.00001	0.00007	0.00009
	≥150 W and ≤250 W	0.00003	0.0002	0.0002

TABLE V.14—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MHLFS; 30 YEARS OF SHIPMENTS—Continued
[2025–2054]

	Equipment class	Trial standard level		
		1	2	3
	>250 W and ≤500 W	0.00004	0.00003	0.00003
	>500 W and ≤1000 W	0.00003	0.00003	0.00003
	>1000 W and ≤2000 W	0.0000008	0.0000008	0.0000008
	Total *	0.0001	0.0007	0.0008

* Total may not equal sum due to rounding.

OMB Circular A–4³⁹ requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of

equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.⁴⁰ The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to MHLFs. Thus, such results

are presented for informational purposes only and are not indicative of any change in DOE’s analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.15 of this document. The impacts are counted over the lifetime of MHLFs purchased in 2025–2033.

TABLE V.15—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MHLFS; 9 YEARS OF SHIPMENTS
[2025–2033]

	Equipment class	Trial standard level		
		1	2	3
Site Energy Savings (quads)	≥50 W and ≤100 W	0.000006	0.00004	0.00006
	>100 W and <150 W	0.000005	0.00002	0.00003
	≥150 W and ≤250 W	0.00001	0.00007	0.00007
	>250 W and ≤500 W	0.00001	0.0001	0.0001
	>500 W and ≤1000 W	0.00001	0.00001	0.00001
	>1000 W and ≤2000 W	0.0000003	0.0000003	0.0000003
	Total *	0.00005	0.0002	0.0003
Primary Energy Savings (quads)	≥50 W and ≤100 W	0.00002	0.0001	0.0002
	>100 W and <150 W	0.00001	0.00007	0.00008
	≥150 W and ≤250 W	0.00003	0.0002	0.0002
	>250 W and ≤500 W	0.00004	0.0003	0.0003
	>500 W and ≤1000 W	0.00003	0.00003	0.00003
	>1000 W and ≤2000 W	0.0000007	0.0000007	0.0000007
	Total *	0.0001	0.0007	0.0007
FFC Energy Savings (quads)	≥50 W and ≤100 W	0.00002	0.0001	0.0002
	>100 W and <150 W	0.00001	0.00007	0.00009
	≥150 W and ≤250 W	0.00003	0.0002	0.0002
	>250 W and ≤500 W	0.00004	0.0003	0.0003
	>500 W and ≤1000 W	0.00003	0.00003	0.00003
	>1000 W and ≤2000 W	0.0000008	0.0000008	0.0000008
	Total *	0.0001	0.0007	0.0008

* Total may not equal sum due to rounding.

The NES results for the 30-years and 9-years of shipments presented in Table V.15 and Table V.16, respectively, are nearly identical due to the significant

shift to out-of-scope LED equipment that occurs over the course of the analysis period. DOE projects that MHLF shipments drop by more than 99 percent

in 2030 relative to shipments in 2019 due to the incursion of out-of-scope LED equipment.

³⁹ U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. http://www.whitehouse.gov/omb/circulars_a004_a-4/.

⁴⁰ Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after

any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year

period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

2. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for customers

that would result from the TSLs considered for MHLFs. In accordance with OMB’s guidelines on regulatory analysis,⁴¹ DOE calculated NPV using both a 7-percent and a 3-percent real

discount rate. Table V.16 shows the customer NPV results with impacts counted over the lifetime of equipment purchased in 2025–2054.

TABLE V.16—CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR MHLFs; 30 YEARS OF SHIPMENTS [2025–2054]

	Equipment class	Trial standard level		
		1	2	3
3 percent (millions 2018\$)	≥50 W and ≤100 W	-0.13	-2.08	-2.11
	>100 W and <150 W	0.012	-0.49	-1.19
	≥150 W and ≤250 W	-0.19	-4.57	-4.57
	>250 W and ≤500 W	-0.29	-3.33	-3.33
	>500 W and ≤1000 W	-0.077	-0.077	-0.077
	>1000 W and ≤2000 W	0.00026	0.00026	0.00026
	Total *	-0.68	-10.54	-11.29
7 percent (millions 2018\$)	≥50 W and ≤100 W	-0.10	-1.14	-1.20
	>100 W and <150 W	-0.0022	-0.28	-0.76
	≥150 W and ≤250 W	-0.15	-2.83	-2.83
	>250 W and ≤500 W	-0.22	-2.83	-2.83
	>500 W and ≤1000 W	-0.071	-0.071	-0.071
	>1000 W and ≤2000 W	-0.0010	-0.0010	-0.0010
	Total *	-0.54	-7.16	-7.70

* Total may not equal sum due to rounding.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.17 of this document. The impacts are counted

over the lifetime of equipment purchased in 2025–2033. As mentioned previously, such results are presented for informational purposes only and are

not indicative of any change in DOE’s analytical methodology or decision criteria.

TABLE V.17—CUMULATIVE NET PRESENT VALUE OF CUSTOMER BENEFITS FOR MHLFs; 9 YEARS OF SHIPMENTS [2025–2033]

	Equipment class	Trial standard level		
		1	2	3
3 percent (millions 2018\$)	≥50 W and ≤100 W	-0.13	-2.07	-2.11
	>100 W and <150 W	0.012	-0.48	-1.19
	≥150 W and ≤250 W	-0.19	-4.56	-4.56
	>250 W and ≤500 W	-0.29	-3.32	-3.32
	>500 W and ≤1000 W	-0.077	-0.077	-0.077
	>1000 W and ≤2000 W	0.00026	0.00026	0.00026
	Total *	-0.68	-10.52	-11.26
7 percent (millions 2018\$)	≥50 W and ≤100 W	-0.10	-1.14	-1.20
	>100 W and <150 W	0.00	-0.28	-0.76
	≥150 W and ≤250 W	-0.15	-2.83	-2.83
	>250 W and ≤500 W	-0.22	-2.83	-2.83
	>500 W and ≤1000 W	-0.071	-0.071	-0.071
	>1000 W and ≤2000 W	-0.00095	-0.00095	-0.00095
	Total *	-0.54	-7.15	-7.68

* Total may not equal sum due to rounding.

The NPV results for the 30-years and 9-years of shipments presented in Table V.16 and Table V.17, respectively, are nearly identical due to the significant shift to out-of-scope LED equipment that occurs over the course of the analysis

period. The previous results reflect DOE’s assumption of no price trend over the analysis period (see section IV.G).

D. Proposed Determination

When considering amended energy conservation standards, the standards

that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C.

⁴¹ U.S. Office of Management and Budget. Circular A-4: Regulatory Analysis. September 17,

2003. http://www.whitehouse.gov/omb/circulars_a004_a-4/.

6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPD, DOE considered the impacts of amended standards for MHLFs at analyzed TSLs, beginning with the maximum technologically feasible level, to determine whether that level would result in a significant conservation of energy. DOE also considered whether that level was economically justified. Where the max-tech level was not economically justified, DOE then considered the next most efficient level and undertook the same evaluation.

Because an analysis of potential energy savings and economic justification first requires an evaluation of the relevant technology, in the following sections DOE first discusses the technological feasibility of amended standards. DOE then addresses the energy savings and economic justification associated with potential amended standards.

1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for MHLFs would be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) DOE has tentatively determined that there are technology options that would improve the efficiency of ballasts contained within MHLFs. These technology options are being used in commercially available MHLFs and therefore are technologically feasible. (See section IV.B.4 for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for MHLFs are technologically feasible.

2. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for MHLF would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) On February 14, 2020 DOE issued a final rule that defined a significant energy savings threshold (“Process Rule”). 85 FR 8626. The Process Rule establishes a two-step process for determining the significance of energy savings using an absolute and percentage threshold. Section 6 of the Process Rule. DOE first evaluates whether standards at the max-tech level would result in a minimum site-energy

savings of 0.3 quads over a 30-year period. Section 6(b)(2) of the Process Rule. If the 0.3 quad threshold is not met, DOE then evaluates whether energy savings at the max-tech level represent at least 10 percent of the total energy usage of the covered equipment over a 30-year period. Section 6(b)(3) of the Process Rule. If the percentage threshold is not met, DOE proposes to determine that no significant energy savings would likely result from setting amended standards. Section 6(b)(4) of the Process Rule.

In this analysis, DOE estimates that amended standards for MHLFs would result in site energy savings of 0.0003 quads at max-tech levels over a 30-year analysis period (2025–2054). (See results in Table V.14.) Because the site energy savings do not meet the 0.3 quads threshold set forth in Section 6(b)(2) of the Process Rule, DOE compared the max-tech savings to the total energy usage to calculate a percentage reduction in energy usage. This comparison yielded a reduction in site energy use of 3.6 percent over a 30-year period. Because the reduction in site energy use is less than 10 percent as set forth in Section 6(b)(3) and (4) of the Process Rule, DOE determined that amended standards for metal halide lamp fixtures would not result in significant energy savings.

3. Economic Justification

In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) One of those seven factors is the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard. This factor is assessed using the life cycle cost and payback period analysis, discussed in section IV.F, and the national net present value, discussed in section IV.H.2 of this document.

At TSL 3, TSL 2, and TSL 1 the average LCC savings are negative for all equipment classes (see section V.B.1 of this document). The NPV benefits at these TSLs are also negative for all equipment classes at the 3-percent and 7-percent discount rates except for the >1000 W and ≤2000 W equipment class which has positive NPV of \$0.00026 million at the 3-percent discount rate (see section V.C.2 of this document). Additionally, the simple payback

periods are much higher than the average fixture lifetime with the exception of the >100 W and <150 W equipment class at EL 1 and EL 2 and for the >1000 W and ≤2000 W equipment class at EL 1.

Based on these negative LCC and predominantly negative NPV (*i.e.*, the second EPCA factor of savings in operating costs), DOE has tentatively determined that any potential positive impact of the other statutory factors would not outweigh the increased costs to consumers. Hence DOE has tentatively determined that amended standards at the TSLs under consideration are not economically justified.

4. Summary

In this proposed determination, DOE has tentatively determined that amended standards for MHLF would not result in significant conservation of energy or be economically justified. Hence, DOE’s initial determination is to not amend standards for MHLFs. DOE requests comments on its initial determination that energy conservation standards should not be amended for MHLFs.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). As a result, OMB did not review this proposed determination.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs.” 82 FR 9339 (Feb. 3, 2017). E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, “Enforcing the Regulatory Reform Agenda.” 82 FR 12285 (March 1, 2017). E.O. 13777 required the head of each agency to designate an agency official as its Regulatory Reform Officer (“RRO”). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies

effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this proposed determination is consistent with the directives set forth in these executive orders.

As discussed in this document, DOE is proposing to not amend energy conservation standards for MHLFs. Therefore, if finalized as proposed, this determination is expected to be an E.O. 13771 other action.

C. Review Under the Regulatory Flexibility Act

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

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not proposing to amend standards for MHLFs, if finalized, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if finalized, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the National Environmental Policy Act

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regards to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it would not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to

result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

This proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

Section 515 of the Treasury and General Government Appropriations

Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because this proposed determination does not propose amended energy conservation standards for MHLFs, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the

Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 70 FR 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.⁴² Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present action.

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s website: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=14. Participants are responsible for ensuring their systems are compatible with the webinar software.

Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: Appliance_Standards_Public_Meetings@ee.doe.gov.

B. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the

⁴² “Energy Conservation Standards Rulemaking Peer Review Report.” 2007. Available at <http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0>.

beginning of this proposed determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

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

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

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

Submitting comments via email, hand delivery/courier, or postal mail.

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

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

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

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. Submit these documents via email 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).

C. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposed determination, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on the ELs under consideration for the equipment classes, including the max-tech levels. See section IV.C.4 and IV.C.6 of this document.

(2) DOE requests comment on the methodology and resulting MSPs developed for all equipment classes. See section IV.C.7 of this document.

(3) DOE welcomes any relevant data and comments on the markups analysis methodology. See section IV.D.3 of this document.

(4) DOE welcomes any relevant data and comments on the life-cycle cost and payback period analysis methodology. See section IV.F of this document.

(5) DOE welcomes any relevant data and comments on the shipments analysis methodology. See section IV.G of this document.

(6) DOE requests comments on its initial determination that energy conservation standards should not be adopted for MHLFs. See section V.D.4 of this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this document of proposed determination.

Signing Authority

This document of the Department of Energy was signed on June 30, 2020, by Daniel R Simmons, Assistant Secretary, Office Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 1, 2020.

Treana V. Garrett,

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

[FR Doc. 2020–14540 Filed 8–4–20; 8:45 am]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Small Business Taxpayer Exceptions Under Sections 263A, 448, 460 and 471; Proposed Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG–132766–18]

RIN 1545–BP53

Small Business Taxpayer Exceptions Under Sections 263A, 448, 460 and 471**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to implement legislative changes to sections 263A, 448, 460, and 471 of the Internal Revenue Code (Code) that simplify the application of those tax accounting provisions for certain businesses having average annual gross receipts that do not exceed \$25,000,000, adjusted for inflation. This document also contains proposed regulations regarding certain special accounting rules for long-term contracts under section 460 to implement legislative changes applicable to corporate taxpayers. The proposed regulations generally affect taxpayers with average annual gross receipts of not more than \$25 million (adjusted for inflation). Additionally, this document contains a request for comments regarding the application of section 460 (or other special methods of accounting) to a contract with income that is accounted for in part under section 460 (or other special method) and in part under section 451.

DATES: Written or electronic comments or a request for a public hearing must be received by September 14, 2020.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–132766–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–132766–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning proposed §§ 1.460–1 through 1.460–6, Innessa Glazman, (202) 317–7006; concerning all other proposed regulations in this document, Anna Gleysteen, (202) 317–7007; concerning submission of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement statutory amendments to sections 263A, 448, 460, and 471 of the Code made by section 13102 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act (TCJA). These statutory amendments generally simplify the application of the method of accounting rules under those provisions to certain businesses (other than tax shelters) with average annual gross receipts that do not exceed \$25,000,000, adjusted for inflation.

This document also contains proposed amendments to the existing regulations under section 460 regarding the special accounting rules for long-term contracts to implement amendments to the Code applicable to corporate taxpayers made by TCJA sections 12001 (repealing the corporate alternative minimum tax imposed by section 55) and 14401 (adding the base erosion anti-abuse tax imposed by new section 59A).

On August 20, 2018, the Treasury Department and the IRS issued Revenue Procedure 2018–40 (2018–34 I.R.B. 320), which provided administrative procedures for a taxpayer (other than a tax shelter under section 448(d)(3)) meeting the requirements of section 448(c) to obtain consent to change the taxpayer's method of accounting to a method of accounting permitted by section 263A, 448, 460, or 471, as amended by the TCJA under the automatic change procedures of Revenue Procedure 2015–13 (2015–5 I.R.B. 419), as clarified and modified by Revenue Procedure 2015–33 (2015–24 I.R.B. 1067), as modified by Revenue Procedure 2016–1 (2016–1 I.R.B. 1), and Revenue Procedure 2017–59 (2017–48 I.R.B. 543). The revenue procedure also invited comments for future guidance regarding the implementation of the TCJA modifications to sections 263A,

448, 460, and 471. Two comments were received in response to Revenue Procedure 2018–40 and are discussed in the Explanation of Provisions.

Finally, part 5 of the Explanation of Provisions requests comments regarding the effects of section 451(b) on the application of section 460, 467, or another special method of accounting, within the meaning of section 451(b)(2). On September 9, 2019, the Treasury Department and the IRS published proposed regulations under section 451(b) (REG–104870–18) in the **Federal Register** (84 FR 47191) in which comments were requested on the allocation of the transaction price for contracts that include items of income subject to section 451 and items of income that are attributable to long-term contract activities subject to section 460. One comment was received in response to this request, but was outside the scope of the rulemaking as it was received after the expiration of the comment period for REG–104870–18. As discussed in part 5 of the Explanation of Provisions, the Treasury Department and the IRS have considered that comment in requesting additional comments regarding the application of sections 451(b)(2) and 451(b)(4) to a contract with income that is accounted for in part under section 451 and in part under section 460, 467, or another special method of accounting.

Explanation of Provisions

These proposed regulations provide guidance under sections 263A, 448, 460, and 471 to implement the TCJA's amendments to those provisions. These proposed regulations also modify §§ 1.381(c)(5)–1 and 1.446–1 to reflect these statutory amendments.

1. Section 263A Small Business Taxpayer Exemption

The uniform capitalization (UNICAP) rules of section 263A provide that, in general, the direct costs and the properly allocable share of the indirect costs of real or tangible personal property produced, or real or personal property described in section 1221(a)(1) acquired for resale, cannot be deducted but must either be capitalized into the basis of the property or included in inventory costs, as applicable. Certain property is exempted from the capitalization requirements of section 263A. For example, section 263(A)(c)(4) provides an exemption to the capitalization requirements of section 263A for any property produced by a taxpayer pursuant to a long-term contract.

In addition, certain taxpayers are exempt from the capitalization requirements. Prior to the enactment of the TCJA, section 263A(b)(2)(B) and § 1.263A-3(b)(1) provided that resellers with average annual gross receipts of \$10,000,000 or less were not subject to the capitalization requirements (Section 263A small business reseller exemption). Section 13102(b) of the TCJA replaced the Section 263A small reseller exemption with a new general exemption from section 263A under new section 263A(i) for small business taxpayers (Section 263A small business taxpayer exemption). The Section 263A small business taxpayer exemption applies to any taxpayer (other than a tax shelter under section 448(a)(3)), meeting the gross receipts test of section 448(c), as amended by section 13102(a) of the TCJA and explained in greater detail in part 2 of this Explanation of Provisions (Section 448(c) gross receipts test).

The proposed regulations remove the now obsolete Section 263A small reseller exemption provided in existing § 1.263A-3(a)(2)(ii) and (b). These proposed regulations also modify existing §§ 1.263A-1, 1.263A-2, 1.263A-3, 1.263A-4, 1.263A-7, and 1.263A-8 to incorporate the Section 263A small business taxpayer exemption.

A. Application of Section 448(c) Gross Receipts Test to Taxpayers That Are Not Corporations or Partnerships

For purposes of the Section 263A small business taxpayer exemption, section 263A(i)(2) provides that the Section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or partnership. Proposed § 1.263A-1(j)(2)(ii) provides that in the case of a taxpayer other than a corporation or partnership, the Section 448(c) gross receipts test is applied by taking into account the amount of gross receipts derived from all trades or businesses of that taxpayer. Under the proposed regulations, amounts not related to a trade or business of that taxpayer, such as inherently personal amounts of an individual taxpayer, are generally excluded from gross receipts. Such excluded amounts include, in the case of an individual, items such as Social Security benefits, personal injury awards and settlements, disability benefits, and wages received as an employee that are reported on Form W-2. The exclusion for wages does not extend to guaranteed payments, which are not generally equivalent to salaries and wages. See Revenue Ruling 69-184 (1969-1 CB 45). These proposed regulations implementing the Section

263A small business taxpayer exemption are consistent with the proposed regulations implementing the Section 460 small business taxpayer exemption and Section 471 small business taxpayer exemption discussed later in this Explanation of Provisions, which incorporate statutory language similar to that in section 263A(i).

A commenter responding to Revenue Procedure 2018-40 requested clarification on the application of the Section 448(c) gross receipts test to individuals, noting that it was unclear whether the individual owner is required to include the owner's share of gross receipts from pass-through entities in the individual's gross receipts. The commenter noted that including such amounts in the individual's gross receipts would be distortive to the individual's other trades or business reported on Schedules C, *Profit or Loss From Business*, Schedule E, *Supplemental Income and Loss*, and Schedule F, *Profit or Loss From Farming*, of the Form 1040, *U.S. Individual Income Tax Return*.

The Treasury Department and the IRS note that section 263A(i) refers to section 448(c), and section 448(c)(2) expressly requires the aggregation rules of sections 52(a) or (b) and 414(m) or (o) to apply. Thus, the aggregation rules under section 52(a) or (b) or section 414(m) or (o) will always apply in connection with applying section 263A(i)(2). Under section 52, an individual taxpayer with two or more trades or businesses reported on the individual's Schedule C or Schedule E of the individual's Form 1040 is required to aggregate the gross receipts of those trades or businesses. Proposed § 1.263A-1(j)(2)(ii) is consistent with these rules. Additionally, under section 263A(i)(2), each trade or business of the taxpayer is treated as if it were a corporation or partnership, and it is well-established under § 1.448-1T(f) that a corporation or partnership includes in its gross receipts all receipts that are properly recognized under that corporation's or partnership's accounting method in that taxable year, regardless of the source of the receipts. Since corporations and partnerships do not have inherently personal items, the exclusion of such items from the individual's trade or business gross receipts is not inconsistent with § 1.448-1T(f)(2)(iv).

Consistent with section 263A(i), proposed § 1.263A-1(j)(2)(iii) provides that when determining whether a taxpayer qualifies for the Section 263A small business taxpayer exemption, each partner in a partnership includes a share of partnership gross receipts in

proportion to such partner's distributive share of items of gross income that were taken into account by the partnership under section 703; similarly, each shareholder in an S corporation includes a *pro rata* share of the S corporation's gross receipts taken into account by the S corporation under section 1363(b).

B. Removal of Small Reseller Exception

Prior to the TCJA, the Section 263A small reseller exception in section 263A(b)(2)(B) exempted from section 263A resellers with gross receipts of \$10 million or less (small reseller gross receipts test). The TCJA removed the Section 263A small reseller exception provided in section 263A(b)(2)(B).

Consistent with the TCJA, these proposed regulations remove existing § 1.263A-3(a)(2)(ii) and modify existing § 1.263A-3(b) by removing the small reseller gross receipts test. The Treasury Department and the IRS expect that most taxpayers who previously satisfied the small reseller gross receipts test will meet the Section 448(c) gross receipts test due to the increased dollar threshold in section 448(c), and therefore would be eligible to apply the small business taxpayer exemption under section 263A(i).

The definition of gross receipts used for the small reseller gross receipts test under existing § 1.263A-3(b) is applied for purposes of other simplifying conventions under the existing section 263A regulations. Since the TCJA removed the small reseller gross receipts test and added the Section 263A small business taxpayer exemption that refers to section 448(c), these proposed regulations update those simplifying conventions by cross referencing to the definition of gross receipts set forth in the proposed regulations under section 448 where applicable.

Specifically, proposed § 1.263A-3(a)(5) modifies the definition of gross receipts that is used to determine whether a reseller has *de minimis* production activities and proposed § 1.263A-1(d)(3)(ii)(B)(1) modifies the definition of gross receipts used to permit certain taxpayers to use the simplified production method under § 1.263A-2(b) by cross referencing to the definition of "gross receipts" for purposes of the Section 448(c) gross receipts test.

C. Changes to the Uniform Interest Capitalization Rules

Prior to the TCJA, section 263A(f)(1) required the capitalization of interest if the taxpayer produced certain types of property (designated property). The Section 263A small business taxpayer

exception applies for all purposes of section 263A, including the requirement to capitalize interest under section 263A(f). Accordingly, these proposed regulations modify § 1.263A-7 and § 1.263A-8 to add new paragraphs to implement the Section 263A(i) small business taxpayer exemption for purposes of the requirement to capitalize interest.

Additionally, existing § 1.263A-9 contains an election that permits taxpayers whose average annual gross receipts do not exceed \$10 million to use the highest applicable Federal rate as a substitute for the weighted average interest rate when tracing debt. Again, the Section 263A small business taxpayer exception applies for all purposes of section 263A, including the election for small business taxpayers who choose to capitalize interest under section 263A(f). Therefore, these proposed regulations modify § 1.263A-9 to remove the \$10 million gross receipts test in the definition of eligible taxpayer and replace it with the Section 448(c) gross receipts test. The Treasury Department and the IRS have determined that the use of a single gross receipts test under the section 263A (other than the pre-existing higher \$50 million threshold for testing eligibility to apply the simplified production method) simplifies application of the UNICAP rules for taxpayers.

D. Changes to § 1.263A-4 for Farming Trades or Businesses

Prior to the TCJA, section 263A(d)(3) permitted certain taxpayers to elect not to have the rules of section 263A apply to certain plants produced in a farming business conducted by the taxpayer. An electing taxpayer and any related person, as defined in § 1.263A-4(d)(4)(iii), are required to apply the alternative depreciation system, as defined in section 168(g)(2), to property used in the taxpayer's and any related persons' farming business and placed in service in the taxable years in which the election was in effect.

The Treasury Department and the IRS are aware that taxpayers that made an election under section 263A(d)(3) may also qualify for the Section 263A small business taxpayer exemption, and may prefer to apply that exemption rather than the election under section 263A(d)(3). Proposed § 1.263A-4(d)(5) permits a taxpayer to revoke its section 263A(d)(3) election for any taxable year in which the taxpayer is eligible for and wants to apply the Section 263A small business taxpayer exemption by following applicable administrative guidance, such as Revenue Procedure 2020-13 (2020-11 IRB 515). In addition,

some taxpayers may be eligible to apply the election under section 263A(d)(3) in a taxable year in which they cease to qualify for the Section 263A small business taxpayer exemption. Therefore, proposed § 1.263A-4(d)(6) permits such a taxpayer to change its method of accounting from the exemption under section 263A(i) by making a section 263A(d)(3) election in the same taxable year by following applicable administrative guidance, such as Revenue Procedure 2020-13.

Proposed § 1.263A-4(d)(3)(i) is modified to remove the requirement that the election under section 263A(d)(3) by a partnership or S corporation be made by the partner, shareholder or member. The Treasury Department and the IRS believe that the inclusion of this requirement was a drafting error, as sections 703(b) and 1363(c) require the election to be made at the entity level.

The TCJA added new section 263A(d)(2)(C), which provides a special temporary rule for citrus plants lost by reason of casualty. The provision, which expires in 2027, provides that section 263A does not apply to replanting costs paid or incurred by a taxpayer other than the owner if certain conditions are met. Proposed § 1.263A-4(e)(5) is added to incorporate this special temporary rule.

E. Costing Rules for Self-Constructed Assets

One commenter stated that the costing rules for self-constructed property used in a taxpayer's trade or business prior to the enactment of section 263A, which would apply to small business taxpayers choosing to apply the Section 263A small business taxpayer exemption, are not clear. The commenter asked for clarification of what costs a small business taxpayer is required to capitalize to its depreciable property if the taxpayer has chosen to apply the Section 263A small business taxpayer exemption. The Treasury Department and the IRS request further comments on specific clarifications needed regarding the costing rules that existed prior to the enactment of the UNICAP rules under section 263A.

2. Changes to the Regulations Under Section 448

Section 448(a) generally prohibits C corporations, partnerships with a C corporation as a partner, and tax shelters from using the cash receipts and disbursements method of accounting (cash method). However, section 448(b)(3) provides that section 448(a) does not apply to C corporations and partnerships with a C corporation as a partner that meet the Section 448(c)

gross receipts test. Prior to the TCJA's enactment, a taxpayer met the gross receipts test of section 448(c) if, for all taxable years preceding the current taxable year, the average annual gross receipts of the taxpayer (or any predecessor) for any 3-taxable-year period did not exceed \$5 million. If a taxpayer had not been in existence for the entire 3-taxable-year period, then the gross receipt test was applied on the basis of the period during which the taxpayer or trade or business was in existence. For a taxable year less than 12 months, the gross receipts of that short taxable year were annualized (short taxable year rule). Additionally, this gross receipts test also required the aggregation of gross receipts for all persons treated as a single employer under section 52(a) or (b) or section 414(m) or (o) (aggregation rule).

Section 13102(a) of the TCJA amended the Section 448(c) gross receipts test to permit a taxpayer (other than a tax shelter) to meet the test if the taxpayer's average annual gross receipts for the 3-taxable-year period ending with the year preceding the current taxable year does not exceed \$25 million and indexed the \$25 million threshold for inflation (Section 448 small business taxpayer exemption). Other rules in section 448(c), such as the short taxable year rule and the aggregation rule, were not altered by section 13102(a) of the TCJA.

A. General Rules of Section 448(c) and Section 448(c) Gross Receipts Test

These proposed regulations modify existing § 1.448-1 to clarify that it applies to taxable years beginning before January 1, 2018 for purposes of applying the restrictions on the use of the cash method by C corporations and partnerships with C corporation partners. Proposed § 1.448-2 provides rules applicable for taxable years beginning after December 31, 2017. These rules are generally similar to the existing regulations under § 1.448-1 and § 1.448-1T of the Temporary Income Tax Regulations, including the short taxable year rule and the aggregation rule. However, for taxable years beginning after December 31, 2017, the proposed regulations update the rules to reflect the post-TCJA Section 448(c) gross receipts test. These proposed regulations also clarify that the gross receipts of a C corporation partner are included in the gross receipts of a partnership if the aggregation rules apply to the C corporation partner and the partnership.

The Treasury Department and the IRS publish an annual revenue procedure for inflation-adjusted amounts and

intend to include the inflation-adjusted section 448(c) dollar threshold in that revenue procedure. See, for example, Revenue Procedure 2019-44 (2019-47 IRB 1093).

B. Tax Shelters Defined in Section 448(d)(3)

Under section 448(a)(3), a tax shelter is prohibited from using the cash method. Section 448(d)(3) cross references section 461(i)(3) to define the term “tax shelter.” Section 461(i)(3)(B), in turn, includes a cross reference to the definition of “syndicate” in section 1256(e)(3)(B), which defines a syndicate as a partnership or other entity (other than a C corporation) if more than 35 percent of the losses of that entity during the taxable year are *allocable* to limited partners or limited entrepreneurs. Section 1.448-1T(b)(3) narrowed this definition by providing that a taxpayer is a syndicate only if more than 35 percent of its losses are *allocated* to limited partners or limited entrepreneurs. Consequently, a partnership or other entity (other than a C corporation) may be considered a syndicate only for a taxable year in which it has losses. These proposed regulations adopt the same definition of syndicate provided in § 1.448-1T.

One commenter expressed concern that the definition of syndicate is difficult to administer because many small business taxpayers may fluctuate between taxable income and loss between taxable years, thus their status as tax shelters may change each tax year. The commenter suggested that the Treasury Department and the IRS exercise regulatory authority under section 1256(e)(3)(C)(v) to provide that all the interests held in entities that meet the definition of a syndicate but otherwise meet the Section 448(c) gross receipts test be deemed as held by individuals who actively participate in the management of the entity, so long as the entities do not qualify to make an election as an electing real property business or electing farm business under section 163(j)(7)(B) or (C), respectively. The Treasury Department and the IRS decline to adopt this recommendation. The recommendation would allow a taxpayer that meets the Section 448(c) gross receipts test to completely bypass the “syndicate” portion of the tax shelter definition under section 448(d)(3). Neither the statutory language of section 448 nor the legislative history of the TCJA support limiting the application of the existing definition of tax shelter in section 448(d)(3) in this manner.

The Treasury Department and the IRS are aware of practical concerns

regarding the determination of tax shelter status for the taxable year. For example, a taxpayer may determine computationally that it is a syndicate under section 1256 after the close of the taxable year while preparing its Federal income tax return for the taxable year. However, a taxpayer that is a tax shelter is not permitted to use the cash method for that taxable year, but may no longer be able to timely file a Form 3115, *Application for Change in Accounting Method*, to change from the cash method to an appropriate method, such as an accrual method of accounting (accrual method) for that taxable year, or it may otherwise have time constraints in filing its Federal income tax return by the due date of the return (without extensions) for such taxable year. While these procedural constraints also existed prior to the TCJA, the TCJA’s modifications to several other sections of the Code to reference the section 448(d)(3) definition of tax shelter made the tax shelter status determination under section 448(c)(3) applicable to more taxpayers than prior to the TCJA, increasing the number of taxpayers affected by these procedural constraints.

In light of the increased relevance of the definition of tax shelter under section 448(d)(3) after enactment of the TCJA, proposed § 1.448-2(b)(2)(iii)(B) permits a taxpayer to elect to use the allocated taxable income or loss of the immediately preceding taxable year to determine whether the taxpayer is a syndicate for purposes of section 448(d)(3) for the current taxable year. A taxpayer that makes this election will know at the beginning of the taxable year whether it is a tax shelter for the current taxable year, alleviating concerns about the difficulties in timely determining whether it is a tax shelter under section 448(d)(3) and filing changes in method of accounting, if necessary. A taxpayer that makes this election must apply the rule to all subsequent taxable years, and for all purposes for which status as a tax shelter under section 448(d)(3) is relevant, unless the Commissioner permits a revocation of the election.

Another commenter suggested a rule to provide relief to taxpayers that report negative taxable income in a taxable year solely because of a negative section 481(a) adjustment arising from an accounting method change and are consequently within the definition of tax shelter under section 448(d)(3), but that would otherwise meet the Section 448(c) gross receipts test. The suggested rule would deem such taxpayers to not be tax shelters for purposes of section 448(d)(3). The Treasury Department and the IRS decline to adopt this suggestion.

No exception was provided in the TCJA to limit the application of the definition of tax shelter in section 448(d)(3) for taxpayers making an overall method change.

The Treasury Department and the IRS continue to study the definition of tax shelter under section 448(d)(3) and request comments on whether additional relief is necessary.

C. Procedures for Taxpayers Required To Change From the Cash Method

Prior to its amendment by the TCJA, a taxpayer met the gross receipts test of section 448(c) if its average annual gross receipts did not exceed \$5 million for all prior 3-taxable-year periods. Once a taxpayer’s average annual gross receipts had exceeded \$5 million (first section 448 year), a taxpayer was prohibited under section 448 from using the cash method for all subsequent taxable years.

The TCJA removed the requirement under section 448(c) that all prior taxable years of a taxpayer must satisfy the Section 448(c) gross receipts test for the taxpayer to qualify for the cash method for taxable years beginning after December 31, 2017. Thus, section 448 no longer permanently prevents a C corporation or a partnership with a C corporation partner from using the cash method for a year subsequent to a taxable year in which its gross receipts first exceed the dollar threshold for the Section 448(c) gross receipts test. Accordingly, the proposed regulations do not require taxpayers to meet the gross receipts test for all prior taxable years in order to satisfy the Section 448(c) gross receipts test.

The term “first section 448 year” used in existing § 1.448-1 no longer reflects the statutory language of section 448 and these proposed regulations remove this term for taxable years beginning after December 31, 2017. Proposed § 1.448-2(g)(1) uses the term “mandatory section 448 year” to describe the first taxable year that a taxpayer is prevented by section 448 from using the cash method, or a subsequent taxable year in which the taxpayer is again prevented by section 448 from using the cash method after previously making a change in method of accounting that complied with section 448.

Proposed § 1.448-2(g)(3) requires a taxpayer that meets the Section 448(c) gross receipts test in the current taxable year to obtain the written consent of the Commissioner before changing to the cash method if the taxpayer had previously changed its overall method from the cash method during any of the five taxable years ending with the current taxable year. A taxpayer that

makes multiple changes in its overall method of accounting within a short period of time may not be treating items of income and expense consistently from year to year, and a change back to the cash method within the five year period may not clearly reflect income, as required by § 1.446-1(a)(2), even if section 448 otherwise does not prohibit the use of the cash method.

The proposed regulations also do not contain specific procedures to make a method change from the cash method to a permissible method. The Treasury Department and the IRS have determined that providing a single procedure in administrative guidance, such as Revenue Procedure 2015-13 (or successor) and Revenue Procedure 2019-43 (2019-48 IRB 1107) (or successor) will reduce confusion for taxpayers to make voluntary changes in method of accounting to comply with section 448. Consequently, the proposed regulations provide that a taxpayer in a mandatory section 448 year must follow the applicable administrative procedures to change from the cash method to a permissible method.

3. Changes to the Regulations Under Section 460

Section 460(a) provides that income from a long-term contract must be determined using the percentage-of-completion method (PCM). A long-term contract is defined in section 460(f) as generally any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into. Subject to special rules in section 460(b)(3), section 460(b)(1)(A) generally provides that the percentage of completion of a long-term contract is determined by comparing costs allocated to the contract under section 460(c) and incurred before the close of the taxable year with the estimated total contract costs. Section 460(b)(1)(B) generally provides that a taxpayer is required to pay or is entitled to receive interest determined under the look-back rules of section 460(b)(2) on the amount of any tax liability under chapter 1 of the Code that was deferred or accelerated as a result of overestimating or underestimating total allocable contract costs or contract price with respect to income from long-term contracts reported under the PCM. Section 56(a)(3) generally provides that for alternative minimum tax (AMT) purposes, the taxable income from a long-term contract (other than a home construction contract defined in section 460(e)(5)(A)) is determined under the PCM (as modified by section 460(b)).

Section 460(e)(1)(A) provides an exemption from the requirement to use the PCM for home construction contracts. Prior to the TCJA, section 460(e)(1)(B) provided a separate exemption from the PCM for a long-term construction contract of a taxpayer who estimated that the contract would be completed within the 2-year period from the commencement of the contract (two-year rule), and whose average annual gross receipts for the 3-taxable-year period ending with the year preceding the year the contract was entered into did not exceed \$10 million (Section 460(e) gross receipts test). The flush language of section 460(e)(1) provides that a home construction contract with respect to which the two-year rule and Section 460(e) gross receipts test are not met will be subject to section 263A, notwithstanding the general exemption under section 263A(c)(4) for property produced pursuant to a long-term contract (large homebuilder rule). Additionally, for AMT purposes, section 56(a)(3) provides in the case of contract described in section 460(e)(1), other than a home construction contract, the percentage of the contract completed is determined under section 460(b)(1) by using the simplified procedures for allocation of costs prescribed under section 460(b)(3).

Section 13102(d) of the TCJA amended section 460(e)(1)(B) by removing the Section 460(e) gross receipts test and replacing it with the Section 448(c) gross receipts test, as amended by section 13102(a) of the TCJA, for the taxable year in which the contract is entered into. Thus, section 460(e)(1)(B), as modified by TCJA, provides a small contractor exemption for long-term construction contracts of a taxpayer other than a tax shelter that estimates that the contract will be completed within two years of the commencement of the contract and meets the Section 448(c) gross receipts test (Section 460 small contractor exemption). The Section 460 small contractor exemption does not apply to home construction contracts, which remain exempt from required use of PCM under section 460(e)(1)(A).

A. Application of the Section 448(c) Gross Receipts Test and Rules Applicable to Taxpayers Other Than a Corporation or Partnership

Proposed § 1.460-3(b) modifies the rules relating to the small contractor exemption by incorporating the requirement in section 460(e)(1)(B)(ii) that an eligible taxpayer must meet the Section 448(c) gross receipts test for the

taxable year in which the contract is entered into.

Section 460(e)(2), which has statutory language identical to that in section 263A(i)(2), provides that for a taxpayer that is not a corporation or partnership, the Section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or a partnership. Proposed § 1.460-3(b)(3)(ii)(A) through (D) provide guidance under section 460(e)(2) consistent with the rules in proposed § 1.263A-1(j)(2).

B. Home Construction Contract Rules

The large homebuilder rule under section 460(e)(1) exempts home construction contracts from PCM but requires capitalization of costs under the UNICAP rules under section 263A. Consistent with section 460(e)(1), proposed § 1.460-5(d)(3) provides that a taxpayer must capitalize the costs of home construction contracts under section 263A and the regulations under section 263A, unless the taxpayer estimates, when entering into the contract, that it will be completed within two years of the contract commencement date and the taxpayer satisfies the Section 448(c) gross receipts test for the taxable year in which the contract is entered into.

C. Clarification of Method of Accounting Rules

Section 460(e)(2)(B) provides that any change in method of accounting made pursuant to section 460(e)(1)(B)(ii) is treated as initiated by the taxpayer and made with the consent of the Secretary of the Treasury or his delegate (Secretary). The change is made on a cut-off basis for all similarly classified contracts entered into on or after the year of change.

Revenue Ruling 92-28 (92-1 CB 153) held that within the same trade or business, a taxpayer may use different methods of accounting for contracts exempt under section 460(e)(1) and contracts subject to mandatory use of PCM under section 460(a). Accordingly, a taxpayer with both exempt contracts and nonexempt contracts within the same trade or business may use a method of accounting other than PCM for all exempt contracts, even though the taxpayer would be required to use PCM for the nonexempt contracts.

A commenter requested clarification on the interaction of Revenue Ruling 92-28 with section 460(e)(2)(B). The commenter asked for clarification because Revenue Ruling 92-28 describes situations in which a taxpayer is not required to obtain consent to a change in method of accounting because

it is either adopting a method of accounting for a new item (Situation 1: PCM for nonexempt long-term contracts) or returning to the use of a previously adopted method (Situation 2: completed contract method for contracts exempt because taxpayer's average annual gross receipts have fallen below the threshold for the small contractor exemption).

The Treasury Department and the IRS have determined that the holding in Revenue Ruling 92-28 remains correct, and that section 460(e)(2)(B) does not apply to Situations 1 and 2 in Revenue Ruling 92-28. In reconciling the statutory language of section 460(e)(2)(B) with section 446, the Treasury Department and the IRS interpret section 460(e)(2)(B) as applying to situations in which a taxpayer has been using PCM for exempt contracts and would like to change to a different exempt contract method. Accordingly, proposed § 1.460-1(f)(3) incorporates the holding of Revenue Ruling 92-28 and provides that a taxpayer may adopt any permissible method of accounting for each classification of contract (that is, exempt and nonexempt).

D. Look-Back Rules

Section 460(b) provides that, upon the completion of any long-term contract, the look-back method is applied to amounts reported under the contract using PCM, whether for regular income tax purposes or for AMT purposes. Under the look-back method, taxpayers are required to pay interest if the taxpayer's Federal income tax liability is deferred as a result of underestimating the total contract price or overestimating total contract costs. Alternatively, a taxpayer is entitled to receive interest if the taxpayer's Federal income tax liability has been accelerated as a result of overestimating the total contract price or underestimating total contract costs. Any interest to be paid is based on a comparison of the difference between the Federal income tax liability actually reported by the taxpayer compared to the Federal income tax liability that would have been reported if the taxpayer had used actual contract prices and costs instead of estimated contract prices and costs in computing income under PCM.

i. Look-Back Rules and AMT

Section 12001 of the TCJA amended section 55(a) so that the AMT is no longer imposed on corporations for taxable years beginning after December 31, 2017. Consistent with section 12001 of the TCJA, proposed § 1.460-6(c) reflects the changes to section 55(a) by

providing that in applying the look-back method, alternative minimum taxable income is redetermined only for taxable years in which the AMT is applicable. Similarly, the recomputed tax liability for prior contract years includes the AMT only for the taxable years in which the AMT is applicable. Consequently, for taxable years beginning after December 31, 2017, for purposes of the look-back method, a corporation will not redetermine alternative minimum taxable income or recompute AMT liability. However, a corporation that has a contract that spans a period beginning before the TCJA (taxable years beginning before January 1, 2018) and ending after the TCJA (taxable years beginning after December 31, 2017), would be required to redetermine alternative minimum taxable income and recompute AMT for those taxable years beginning before January 1, 2018.

ii. De Minimis Exception to Look-Back Rules

Section 460(b)(3) provides an exception to the requirement to apply the look-back method. Under the exception, the look-back method need not be applied if the contract price does not exceed the lesser of \$1,000,000 or one percent of the taxpayer's average annual gross receipts for the prior 3-taxable-year period ending with the year preceding the taxable year in which the contract is completed, and the contract is completed within two years of the commencement of the contract. Proposed § 1.460-3(b)(3) provides that, for purposes of this *de minimis* exception, gross receipts are determined in accordance with the regulations under section 448(c).

iii. Look-Back Rules and the BEAT

Proposed § 1.460-6 is also updated to reflect the enactment of the base erosion anti-abuse tax (BEAT) imposed by section 59A. For any taxable year, the BEAT is a tax on each applicable taxpayer (see § 1.59A-2) equal to the base erosion minimum tax amount (BEMTA) for that year. Generally, the taxpayer's BEMTA equals the excess of (1) the applicable tax rate for the taxable year (BEAT rate) multiplied by the taxpayer's modified taxable income under § 1.59A-3(b) for the taxable year over (2) the taxpayer's adjusted regular Federal income tax liability for that year.

Proposed § 1.460-6 applies the look-back method to re-determine the taxpayer's modified taxable income under § 1.59-3(b) and the taxpayer's BEMTA for the taxable year. Specifically, the taxpayer must determine its modified taxable income

and BEMTA for each year prior to the filing year that is affected by contracts completed or adjusted in the filing year as if the actual total contract price and costs had been used in applying the percentage of completion method.

The Treasury Department and the IRS have proposed this rule because the income from long-term contracts determined using the PCM may be overestimated or underestimated, which may change the taxpayer's modified taxable income or BEMTA, or whether or not a taxpayer is an applicable taxpayer in a particular taxable year. Clarifying in the regulations under section 460 that the look-back method must take into account any application of the BEAT makes clear that section 460 provides taxpayers will pay or receive interest (whichever is the case) if their Federal income tax liability, including any BEAT liability, is deferred, eliminated, understated, or overstated as a result of the taxpayer's estimation of the total contract price or total contract costs.

4. Section 471 Small Business Taxpayer Exemption

Section 471(a) requires inventories to be taken by a taxpayer when, in the opinion of the Secretary, taking an inventory is necessary to determine the income of the taxpayer. Section 1.471-1 requires the taking of an inventory at the beginning and end of each taxable year in which the production, purchase, or sale of merchandise is an income-producing factor. Additionally, when an inventory is required to be taken, § 1.446-1(c)(1)(iv) and (c)(2) require that an accrual method be used for purchases and sales.

Section 13102(c) of the TCJA added new section 471(c) to remove the statutory requirement to take an inventory when the production, purchase, or sale of merchandise is an income-producing factor for a taxpayer (other than a tax shelter) meeting the Section 448(c) gross receipts test (Section 471 small business taxpayer exemption). The Section 471 small business taxpayer exemption provides that the requirements of section 471(a) do not apply to a taxpayer for that taxable year, and the taxpayer's method of accounting for inventory for such taxable year shall not be treated as failing to clearly reflect income if the taxpayer either: (1) Treats the taxpayer's inventory as non-incidental materials and supplies, or (2) conforms the taxpayer's inventory method to the taxpayer's method of accounting for inventory reflected in an applicable financial statement as defined in section 451(b)(3) (AFS), or if the taxpayer does

not have an AFS, in the taxpayer's books and records prepared in accordance with the taxpayer's accounting procedures.

Section 471(c)(3) provides that in the case of a taxpayer that is not a corporation or partnership, the Section 448(c) gross receipts test is determined in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

A taxpayer's method of accounting for inventory may not clearly reflect income if a taxpayer meets the Section 448(c) gross receipts test but does not take an inventory, and also does not either treat its inventory as non-incidental materials and supplies or in conformity with its AFS, or its books and records if it does not have an AFS. In such instances, the general rules under section 446 for analyzing whether a method of accounting clearly reflects income are applicable.

These proposed regulations modify existing § 1.471-1 by adding proposed § 1.471-1(b) to implement the Section 471 small business taxpayer exemption under section 471(c). Proposed § 1.471-1(b) provides guidance on the application of the Section 448(c) gross receipts test to taxpayers other than a corporation or partnership, the treatment of inventory as non-incidental materials and supplies, and the conforming of inventory to an AFS or the taxpayer's books and records.

A. Application of the Section 448(c) Gross Receipts Test to Taxpayers Other Than a Corporation or Partnership

These proposed regulations provide guidance under section 471(c)(3), which has statutory language identical to section 263A(i)(2), consistent with the rules in proposed § 1.263A-1(j)(2). See part 1.A of this Explanation of Provisions for discussion of the application of the Section 448(c) gross receipts test to individuals and other taxpayers that are not a corporation or partnership.

B. Treatment of Inventory as Non-Incidental Materials and Supplies

Section 471(c)(1)(B)(i) provides that a taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test can treat its inventory as non-incidental materials and supplies.

Prior to the TCJA, the Treasury Department and the IRS provided administrative relief for certain taxpayers from the requirements of section 471(a) with regard to purchases and sales of inventory. Under Revenue Procedure 2001-10 (2001-2 IRB 272), a taxpayer with average annual gross receipts that did not exceed \$1 million

was exempted from the requirements to use an accrual method under section 446 and to account for inventories under section 471. Similarly, under Revenue Procedure 2002-28 (2002-28 IRB 815), a "qualifying small business taxpayer," as defined in section 4.01 of Revenue Procedure 2002-28, was also exempted from the requirements to use an accrual method under section 446 and to account for inventories under section 471. To qualify, a taxpayer must have had average annual gross receipts that did not exceed \$10 million in certain industries, or reasonably determined that its principal business activity was the provision of services, or reasonably determined its principal business activity was the fabrication or modification of customized tangible personal property.

Under both revenue procedures, a taxpayer was permitted to account for its inventory in the same manner as non-incidental materials and supplies under § 1.162-3. Under § 1.162-3, materials and supplies that are not incidental are deductible only in the year in which they are actually consumed and used in the taxpayer's business. For purposes of these revenue procedures, inventoriable items treated as non-incidental materials and supplies were treated as consumed and used in the taxable year the taxpayer provided the items to a customer. Thus, the costs of such inventoriable items were recovered by a cash basis taxpayer only in that year, or in the year in which the taxpayer actually paid for the goods, whichever was later. See section 4.02 of Revenue Procedure 2001-10 and section 4.05 of Revenue Procedure 2002-28.

Section 471(c)(1)(B)(i) generally codified the treatment of inventory using the non-incidental materials and supplies method of accounting described in Revenue Procedure 2001-10 and Revenue Procedure 2002-28, with certain exceptions. Accordingly, proposed § 1.471-1(b)(4) provides rules similar to the provisions of these revenue procedures, including that the items continue to be inventory property. The proposed regulations refer to inventory treated as non-incidental materials and supplies as "section 471(c) materials and supplies."

i. Definition of the Term "Used and Consumed"

As explained previously and as noted in the Conference Report to the TCJA, an exception to the requirement to take an inventory was provided under Revenue Procedure 2001-10 and Revenue Procedure 2002-28. H.R. Rep. No. 115-466, at 378 fn. 638 and 639 (2017). Under that exception, a taxpayer

was able to account for inventory as materials and supplies that are not incidental. The cost of non-incidental materials and supplies is deductible in the taxable year in which the materials and supplies are first used or consumed in the taxpayer's operations. *Id.* at 378 fn. 640. As discussed in part 4.B of this Explanation of Provisions, the administrative guidance as in existence prior to the TCJA provided that inventory treated as non-incidental materials and supplies under § 1.162-3 remained inventory property, the cost of which was recovered by a cash basis taxpayer when the items were provided to a customer, or when the taxpayer paid for the items, whichever was later. The Conference Report describes the TCJA as generally permitting the costs of non-incidental materials and supplies to be recovered in the taxable year that is "consistent with present law." *Id.* at 380 fn. 657. The Treasury Department and IRS interpret section 471(c)(1)(B)(i) as generally codifying the administrative guidance existing at the time of enactment (that is, Revenue Procedure 2001-10 and Revenue Procedure 2002-28). Accordingly, proposed § 1.471-1(b)(4)(i) provides that section 471(c) materials and supplies are used or consumed in the taxable year in which the taxpayer provides the item to a customer and the cost of such item is recovered in that year or the taxable year in which the taxpayer pays for or incurs (in the case of an accrual method taxpayer) such cost, whichever is later.

One commenter requested that raw materials used in the production of finished goods be deemed "used or consumed" when the raw material is used during production instead of when the finished product is provided to a customer. Under this approach, a producer would be able to recover production costs earlier than allowed under the administrative guidance of Revenue Procedure 2001-10 and Revenue Procedure 2002-28. Further, under this approach, a producer would be permitted to recover costs earlier than a reseller. The Treasury Department and the IRS decline to adopt this suggestion. As discussed previously, the Treasury Department and the IRS interpret section 471(c)(1)(B)(i) and its legislative history generally as codifying the rules provided in the administrative guidance existing at the time the Act was enacted. Accordingly, proposed § 1.471-1(b)(4) provides that section 471(c) materials and supplies are "used and consumed" in the taxable year the taxpayer provides the goods to a customer, and that the

cost of goods is recovered in that year or the taxable year in which such cost is paid or incurred (in accordance with the taxpayer's method of accounting), whichever is later.

ii. De Minimis Safe Harbor Under § 1.263(a)–1(f)

Section 1.263(a)–1(f) provides a regulatory *de minimis* safe harbor election through which an electing taxpayer may choose not to treat as a material or supply under § 1.162–3(a) any amount paid in the taxable year for tangible property if the amount paid meets certain requirements, and instead to deduct the *de minimis* amount in accordance with its AFS, or books and records, if the taxpayer has no AFS. Section 1.263(a)–1(f)(2)(i) provides that the *de minimis* safe harbor election does not apply to amounts paid for property that is or is intended to be included in inventory property.

Two commenters asked for clarification on whether a taxpayer using the non-incidentals materials and supplies method under section 471(c)(1)(B)(i) may use the *de minimis* safe harbor election of § 1.263(a)–1(f). As discussed in part 4.B of this Explanation of Provisions, the Treasury Department and the IRS continue to interpret inventory treated as non-incidentals materials and supplies as remaining characterized as inventory property. Consequently, proposed § 1.471–1(b)(4)(i) provides that inventory treated as section 471(c) non-incidentals materials and supplies is not eligible for the *de minimis* safe harbor election under § 1.263(a)–1(f). Extending the regulatory election under § 1.263(a)–1(f) to encompass section 471(c) materials and supplies is outside the intended scope of the election and runs counter to section 471(c), which indicates section 471(c) materials and supplies are inventory property.

iii. Identification and Valuation of Section 471(c) Materials and Supplies

One commenter asked for guidance on how a taxpayer determines the cost basis of inventory items that are treated as non-incidentals materials and supplies. Proposed § 1.471–1(b)(4)(ii) provides guidance on how a taxpayer may identify and value section 471(c) materials and supplies. These identification and valuation methods would apply whether the taxpayer used the cash method or an accrual method.

Consistent with Revenue Procedure 2002–28, and the legislative history to section 471(c), proposed § 1.471–1(b)(4)(ii) permits taxpayers to determine the amount of their section 471(c) materials and supplies by using

either a specific identification method, a first-in, first-out (FIFO) method, or an average cost method, provided that the method is used consistently. Taxpayers may not identify their inventory using a last-in, first-out (LIFO) method or value section 471(c) materials and supplies using a lower-of-cost-or-market (LCM) method. The Treasury Department and the IRS are aware that the purpose of the section 471(c) materials and supplies method is to provide simplification. Accounting methods using LIFO and LCM require sophisticated computations and are allowed under the more complex inventory rules of sections 471(a) and 472. Accordingly, these proposed regulations do not permit a taxpayer using the section 471(c) materials and supplies method to use either a LIFO method or the LCM method.

iv. Direct Labor and Overhead Costs for Section 471(c) Materials and Supplies

Commenters asked for clarification as to the treatment of direct labor and overhead costs for section 471(c) materials and supplies. Revenue Procedure 2001–10 and Revenue Procedure 2002–28 did not directly address whether direct labor and overhead costs for inventory treated as non-incidentals materials and supplies were immediately deductible. The commenters argue that if inventories are treated as non-incidentals materials and supplies, then all of the direct labor and overhead costs incurred in producing the goods are deductible when incurred. One commenter noted that prior to the enactment of section 263A, the costing rules for inventoriable goods produced by a taxpayer were governed by the full absorption method under § 1.471–11, and § 1.471–3, in the case of a reseller of inventory.

The Treasury Department and the IRS have determined that under the section 471(c) materials and supplies method, the items retain their character as inventory property. Because the property remains characterized as inventory property, the costing rules in § 1.471–11 and § 1.471–3 are the applicable rules to determine which costs are to be included under the section 471(c) materials and supplies method. However, the Treasury Department and the IRS are aware that the purpose of section 471(c)(1)(A)(i) is to provide simplification for taxpayers. Accordingly, these proposed regulations provide that a taxpayer using the section 471(c) materials and supplies method is required to include only direct costs paid to produce or acquire the inventory treated as section 471(c) materials and supplies. These direct costs are not

immediately deductible but are recovered in accordance with proposed § 1.471–1(b)(4). Consistent with existing law, these proposed regulations provide that a taxpayer is not permitted to recover a cost that it otherwise would be neither permitted to recover nor deduct for Federal income tax purposes solely by reason of it being included in the costs of section 471(c) materials and supplies.

C. Treatment of Inventory for an AFS Taxpayer

A taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test need not take an inventory under section 471(a) and may choose to treat its inventory as the inventory is reflected in the taxpayer's AFS, or if the taxpayer does not have an AFS, as the inventory is treated in the taxpayer's books and records prepared in accordance with the taxpayer's accounting procedures. These proposed regulations provide guidance on the definition of AFS, the types and amounts of costs reflected in an AFS that can be recovered under section 471(c), and when such costs may be taken into account. The proposed regulations use the term "AFS section 471(c) method" to describe the permissible section 471(c)(1)(B)(ii) method for a taxpayer with an AFS (AFS taxpayer).

i. Definition of AFS

Section 471(c)(2) defines an AFS by cross-reference to section 451(b)(3). Consistent with the statute, proposed § 1.471–1(b)(5)(ii) defines the term AFS in accordance with section 451(b)(3), and incorporates the definition provided in proposed § 1.451–3(c)(1). The rules relating to additional AFS issues provided in § 1.451–3(h) also apply to the AFS section 471(c) method. The proposed regulations also provide that a taxpayer has an AFS for the taxable year if all of the taxpayer's taxable year is covered by an AFS.

If a taxpayer's AFS is prepared on the basis of a financial accounting year that differs from the taxpayer's taxable year, proposed § 1.471–1(b)(5)(ii) provides that a taxpayer determines its inventory for the mismatched reportable period by using a method of accounting described in proposed § 1.451–3(h)(4). The Treasury Department and the IRS propose to require a taxpayer with an AFS that uses the AFS section 471(c) method to consistently apply the same mismatched reportable period method provided in proposed § 1.451–3(h)(4) for purposes of its AFS section 471(c) method of accounting that is used for section 451. The Treasury Department

and the IRS request comments on the consistency requirement and other issues related to the application of proposed § 1.451–3(h) to the AFS section 471(c) method.

ii. Types and Amounts of Costs Reflected in an AFS

Proposed § 1.471–1(b)(5) provides rules relating to the AFS section 471(c) method, including a description of the costs included in this method. The proposed regulations provide that an AFS taxpayer, other than a tax shelter, that meets the Section 448(c) gross receipts test may use the AFS section 471(c) method to account for its inventory costs for that taxable year. The proposed regulations also clarify that a taxpayer using the AFS section 471(c) method is maintaining inventory, but generally recovers the costs of inventory in accordance with its AFS inventory method and not by using an inventory method specified under section 471(a) and the regulations under section 471.

Under the AFS section 471(c) method, the term “inventory costs” means the costs that a taxpayer capitalizes to property produced or property acquired for resale in its AFS. However, these proposed regulations clarify that the amount of an inventory cost in a taxpayer’s AFS may not properly reflect the amount recoverable under the taxpayer’s AFS section 471(c) method. These proposed regulations provide that a taxpayer is not permitted to recover a cost that it otherwise would be neither permitted to recover nor deduct for Federal income tax purposes solely by reason of it being an inventory cost in the taxpayer’s AFS inventory method. In addition, these proposed regulations provide that a taxpayer may not capitalize a cost to inventory any earlier than the taxable year in which the amount is paid or incurred under the taxpayer’s overall method of accounting for Federal income tax purposes (for example, if applicable, section 461(h) is met) or not permitted to be capitalized by another Code provision (for example, section 263(a)). As a result, a taxpayer may be required to reconcile any differences between its AFS and Federal income tax return treatment (book-tax adjustments) for all or a portion of a cost that was included in the taxpayer’s AFS inventory method under the AFS section 471(c) method.

The Treasury Department and the IRS are aware that some taxpayers may interpret section 471(c)(1)(B)(ii) as permitting a taxpayer to capitalize a cost to inventory for Federal income tax purposes when that cost is included in the taxpayer’s AFS inventory method

irrespective of: (1) Whether the amount is deductible or otherwise recoverable for Federal income tax purposes; or (2) when the amount is capitalizable under the taxpayer’s overall method of accounting used for Federal income tax purposes. The Treasury Department and the IRS do not agree with this interpretation because section 471 is a timing provision. Section 471 is in subchapter E of chapter 1, Accounting Periods and Methods of Accounting. It is not in subchapter B of chapter 1, Computation of Taxable Income. A method of accounting determines when an item of income or expense is recognized, not whether it is deductible or recoverable through cost of goods sold or basis.

Accordingly, the Treasury Department and the IRS view section 471(c)(1)(B)(ii) as an exemption from taking an inventory under section 471(a) for certain taxpayers that meet the Section 448(c) gross receipts test and not as an exemption from the application of Code provisions other than section 471(a). While Congress provided an exemption from the general inventory timing rules of section 471(a), Congress did not exempt these taxpayers from applying other Code provisions that determine the deductibility or recoverability of costs, or the timing of when costs are considered paid or incurred. For example, Congress did not modify or alter section 461 regarding when a liability is taken into account, or any of the provisions that disallow a deduction, in whole or in part, such as any disallowance under section 274, to exempt these taxpayers. Accordingly, these proposed regulations require an AFS taxpayer that uses the AFS section 471(c) method to make book-tax adjustments for costs capitalized in its AFS that are not deductible or otherwise recoverable, in whole or in part, for Federal income tax purposes or that are taken into account in a taxable year different than the year capitalized under the AFS as a result of another Code provision.

D. Treatment of Inventory by Taxpayers Without an AFS

Under section 471(c)(1)(B)(ii), a taxpayer, other than a tax shelter, that does not have an AFS and that meets the Section 448(c) gross receipts test is not required to take an inventory under section 471(a), and may choose to treat its inventory as reflected in the taxpayer’s books and records prepared in accordance with the taxpayer’s accounting procedures (non-AFS section 471(c) method). These proposed regulations permit a taxpayer without an AFS (non-AFS taxpayer) to follow its

method of accounting for inventory used in its books and records that properly reflect its business activities for non-Federal income tax purposes. The proposed regulations clarify that a non-AFS taxpayer using the non-AFS section 471(c) method has inventory, but recovers the costs of inventory through its book method, rather than through an inventory method under section 471(a) and the regulations under section 471.

Two comments received requested a definition of “books and records of the taxpayer prepared in accordance with the taxpayer’s accounting procedures.” The Treasury Department and the IRS decline to define books and records in these proposed regulations. It is well-established under existing law that the books and records of a taxpayer comprise the totality of the taxpayer’s documents and electronically-stored data. *See, for example, United States v. Euge*, 444 U.S. 707 (1980). *See also Digby v. Comm’r*, 103 T.C. 441 (1994), and § 1.6001–1(a). A commenter specifically asked for clarification on whether books and records of the taxpayer include the accountant’s workpapers (whether recorded on paper, electronically or on other media). The Treasury Department and the IRS note that under existing law, these workpapers are generally considered part of the books and records of the taxpayer. *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984).

The Treasury and the IRS interpret section 471(c)(1)(B)(ii) as a simplification of the inventory accounting rules in section 471(a) for certain small business taxpayers. Proposed § 1.471–1(b)(6)(i) provides that under the non-AFS section 471(c) method, a taxpayer recovers the costs of inventory in accordance with the method used in its books and records and not by using an inventory method specified under section 471(a) and regulations under 471. A books and records method that determines ending inventory and cost of goods sold that properly reflects the taxpayer’s business activities for non-Federal income tax purposes is to be used under the taxpayer’s non-AFS section 471(a) method. For example, a taxpayer that performs a physical count that is used in determining inventory in the taxpayer’s books and records must use that count for purposes of the non-AFS section 471 method.

Consistent with the rules applicable to AFS taxpayers, proposed § 1.471–1(b)(6)(ii) clarifies that a non-AFS taxpayer is not permitted to recover a cost that it otherwise would not be permitted to recover or deduct for

Federal income tax purposes solely by reason of it being an inventory cost in the taxpayer's non-AFS inventory method. These proposed regulations provide that a taxpayer may not capitalize a cost to inventory any earlier than the taxable year in which the amount is paid or incurred under the taxpayer's overall method of accounting for Federal income tax purposes (for example, if applicable, section 461(h) is met) or not permitted to be capitalized by another Code provision (for example, section 263(a)). See section 4.C.ii of this Explanation of Provisions.

5. Section 451 Allocation of Transaction Price

As noted in the Background section of this preamble, section 13221(a) of the TCJA added a new section 451(b) to the Code effective for taxable years beginning after December 31, 2017. This provision provides that, for an accrual method taxpayer with an AFS, the all events test with respect to any item of gross income (or portion thereof) is not treated as met any later than when the item (or portion thereof) is included in revenue for financial accounting purposes on an AFS. Section 451(b)(1)(A) sets forth the general AFS Income Inclusion Rule, providing that, for an accrual method taxpayer with an AFS, the all events test with respect to an item of gross income, or portion thereof, is met no later than when the item, or portion thereof, is included as revenue in an AFS (AFS Income Inclusion Rule). However, section 451(b)(2) provides that the AFS Income Inclusion Rule does not apply with respect to any item of gross income the recognition of which is determined using a special method of accounting, "other than any provision of part V of subchapter P (except as provided in clause (ii) of paragraph (1)(B))." In addition, section 451(b)(4) provides that for purposes of section 451(b), in the case of a contract which contains multiple performance obligations, the allocation of the transaction price to each performance obligation is equal to the amount allocated to each performance obligation for purposes of including such item in revenue in the taxpayer's AFS. Additionally, section 451(c)(4)(D), which provides rules for allocating payments to each performance obligation for purposes of applying the advance payment rules under section 451(c), provides that for purposes of section 451(c), "rules similar to section 451(b)(4) shall apply."

The preamble to the proposed regulations under section 451(b) contained in REG-104870-18 (84 FR 47191) requested comments on the

allocation of transaction price for contracts that include both income subject to section 451 and income subject to a special method of accounting provision (specifically section 460). One commenter suggested that the allocation provisions under section 460 and the regulations thereunder, and not section 451(b)(4), should control the amount of gross income from a long-term contract that is accounted for under section 460. The commenter notes that using this approach is appropriate in light of section 451(b)(2), which reflects Congress's intent to not disturb the treatment of amounts for which a taxpayer uses a special method of accounting. The preamble to the proposed regulations under section 451(c) contained in REG-104554-18 (84 FR 47175) also included a similar request for comments for advance payment purposes; however, no comments were received in response to this request.

In light of the comment in the preceding paragraph and the questions received from taxpayers and practitioners regarding this issue in the context of other special methods of accounting (for example, section 467), the Treasury Department and the IRS are considering a rule that addresses the application of sections 451(b)(2) and (4) to contracts with income that is accounted for in part under section 451 and in part under a special method of accounting provision. The Treasury Department and the IRS are also considering a similar rule that addresses the application of section 451(c)(4)(D) to certain payments received under such contracts. The Treasury Department and the IRS have determined that these rules would benefit from further notice and public comment.

The Treasury Department and the IRS are considering a rule providing that if an accrual method taxpayer with an AFS has a contract with a customer that includes one or more items of gross income subject to a special method of accounting (as defined in proposed § 1.451-3(c)(5)) and one or more items of gross income subject to section 451, the allocation rules under section 451(b)(4) do not apply to determine the amount of each item of gross income that is accounted for under the special method of accounting provision. Accordingly, the transaction price allocation rules in section 451(b)(4) and proposed § 1.451-3(g)(1) (as contained in REG-104870-18) would apply to only the portion of the gross transaction price that is not accounted for under the special method of accounting provision (that is, the residual amount) and only

to the extent the contract contains more than one performance obligation that is subject to section 451. To the extent such a contract contains more than one performance obligation that is subject to section 451, the residual amount would be allocated to each section 451 performance obligation in proportion to the amount allocated to each such performance obligation for purposes of including such item in revenue in the taxpayer's AFS. The Treasury Department and the IRS request comments on this rule (section 451(b) special method allocation rule), including (i) whether taxpayers should be permitted to use the allocation rules under section 451(b)(4) to determine the amount of an item of gross income that is accounted for under a special method of accounting, (ii) whether a specific allocation standard should be provided for determining the amount of an item of gross income that is accounted for under a special method of accounting in situations where an allocation standard is not provided under the applicable special method of accounting rules, and (iii) whether alternative allocation options may be appropriate for allocating the residual amount to multiple performance obligations that are within the scope of section 451.

The Treasury Department and the IRS are also considering a similar allocation rule for purposes of applying the advance payment rules under section 451(c). Specifically, the Treasury Department and the IRS are considering a rule providing that if an accrual method taxpayer with an AFS receives a payment that is attributable to one or more items of gross income that are described in proposed § 1.451-8(b)(1)(i)(C) and one or more items of gross income that are subject to a special method of accounting (as defined in proposed § 1.451-3(c)(5)), then the taxpayer must determine the portion of the payment allocable to the item(s) of gross income that are described in proposed § 1.451-8(b)(1)(i)(C) by using an objective criteria standard (consistent with objective criteria standard under section 5.02(4) of Revenue Procedure 2004-34 (2004-22 IRB 991)). Under this rule a taxpayer that allocates the payment to each item of gross income in proportion to the total amount of each such item of gross income (as determined under the section 451(b) special method allocation rule that is described in the preceding paragraph), will be deemed to have met the objective criteria standard. The Treasury Department and the IRS request comments on this rule, including whether alternative payment allocation

approaches may be more appropriate (for example, an approach that permits the taxpayer to follow its AFS allocation).

Proposed Applicability Date

These regulations are proposed to be applicable for taxable years beginning on or after the date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**. For taxable years beginning before the date the Treasury Decision adopting these regulations as final is published in the **Federal Register**, see §§ 1.448-1, 1.448-2, 1.263A-0, 1.263A-1, 1.263A-2, 1.263A-3, 1.263A-4, 1.263A-7, 1.263A-8, 1.263A-9, 1.263A-15, 1.381-1, 1.446-1, 1.460-0, 1.460-1, 1.460-3, 1.460-4, 1.460-5, 1.460-6, and 1.471-1 as contained in 26 CFR part 1, April 1, 2019.

However, for taxable years beginning after December 31, 2017, and before the date the Treasury Decision adopting these regulations as final regulations is published in the **Federal Register**, a taxpayer may rely on these proposed regulations, provided that the taxpayer follows all the applicable rules contained in the proposed regulations for each Code provision that the taxpayer chooses to apply. For example, a taxpayer using an accrual method with inventory subject to the capitalization rules of section 263A, may rely on proposed § 1.448-2 to determine whether it must continue its use of its accrual method and proposed § 1.263A-1 to determine its cost capitalizing rules, but may maintain its current inventory method rather than follow the proposed regulations under section 471.

Statement of Availability of IRS Documents

The IRS notices, revenue rulings, and revenue procedures cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Special Analysis

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

I. Paperwork Reduction Act

Proposed § 1.448-2(b)(2)(iii)(B) imposes a collection of information for an election to use prior year's allocated taxable income or loss to determine whether a partnership or other entity (other than a C corporation) is a "syndicate" for purposes of section 448(d)(3) for the current tax year. The election is made by attaching a statement to the taxpayer's original Federal income tax return for the current tax year. The election is binding for all subsequent taxable years, and can only be revoked with the consent of the Commissioner. The collection of information is voluntary for purposes of obtaining a benefit under the proposed regulations. The likely respondents are businesses or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 199,289 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 199,289.

Estimated annual frequency of responses: Once.

Other than the election statement, these proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements or third-party disclosure statements. However, because the exemptions in sections 263A, 448, 460 and 471 are methods of accounting under the statute, taxpayers are required to request the consent of the Commissioner for a change in method of accounting under section 446(e) to implement the statutory exemptions. The IRS expects that these taxpayers will request this consent by filing Form 3115, *Application for Change in Accounting Method*. Taxpayers may request these changes using reduced filing requirements by completing only certain parts of Form 3115. See Revenue Procedure 2018-40 (2018-34 I.R.B. 320). Revenue Procedure 2018-40 provides procedures for a taxpayer to make a change in method of accounting using the automatic change procedures of Revenue Procedure 2015-13 (2015-5 IRB 419) in order to use the exemptions provided in sections 263A, 460 and/or 471.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) (PRA), the reporting burden associated with the collection of information for the election statement and Form 3115 will be reflected in the PRA submission associated with the income tax returns under the OMB

control number 1545-0074 (in the case of individual filers of Form 3115) and 1545-0123 (in the case of business filers of Form 3115).

In 2018, the IRS released and invited comment on a draft of Form 3115 in order to give members of the public the opportunity to benefit from certain specific provisions made to the Code. The IRS received no comments on the forms during the comment period. Consequently the IRS made the forms available in January 2019 for use by the public. The IRS notes that Form 3115 applies to changes of accounting methods generally and is therefore broader than sections 263A, 448, 460 and 471.

As discussed above, the reporting burdens associated with the proposed regulations are included in the aggregated burden estimates for OMB control numbers 1545-0074 (in the case of individual filers of Form 3115), 1545-0123 (in the case of business filers of Form 3115 subject to Revenue Procedure 2019-43 and business filers that make the election under proposed § 1.448-2(b)(2)(iii)(B)). The overall burden estimates associated with the OMB control numbers below are aggregate amounts related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in these proposed regulations. These numbers are therefore not specific to the burden imposed by these proposed regulations. The burdens have been reported for other income tax regulations that rely on the same information collections and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burdens imposed by tax provisions prior to the Act. No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control numbers discussed in the preceding paragraphs, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and IRS request comment on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork

burdens described above for each relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted for comment at <https://apps.irs.gov/app/picklist/lit/draftTaxForms.htm>. IRS forms are available at <https://www.irs.gov/forms-instructions>. Forms will not be finalized until after they have been approved by OMB under the PRA.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rules. The Treasury Department and the IRS have not determined whether the proposed rules, when finalized, will likely have a significant economic impact on a substantial number of small entities. The determination of whether the voluntary exemptions under sections 263A, 448, 460, and 471 will have a significant economic impact requires further study. However, because there is a possibility of significant economic impact on a substantial number of small entities, an IRFA is provided in these proposed regulations. The Treasury Department and the IRS invite comments on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

1. Need for and Objectives of the Rule

As discussed earlier in the preamble, these proposed regulations largely implement voluntary exemptions that relieve small business taxpayers from otherwise applicable restrictions and requirements under sections 263A, 448, 460, and 471.

Section 448 provides a general restriction for C corporations and partnerships with C corporation partners from using the cash method of accounting, and sections 263A, 460 and 471 impose specific rules on uniform

capitalization of direct and indirect production costs, the percentage of completion method for long-term contracts, and accounting for inventory costs, respectively. Section 13102 of TCJA provided new statutory exemptions from certain of these rules and expanded the scope of existing statutory exemptions from certain of these rules to reduce compliance burdens for small taxpayers. The proposed regulations clarify the exemption qualification requirements and provide guidance with respect to the applicable methods of accounting should a taxpayer choose to apply one or more exemptions.

The objective of the proposed regulations is to provide clarity and certainty for small business taxpayers implementing the exemptions. Under the Code, small business taxpayers were able to implement these provisions for taxable years beginning after December 31, 2017 (or, in the case of section 460, for contracts entered into after December 31, 2017) even in the absence of these proposed regulations. Thus, the Treasury Department and the IRS expect that, at the time these proposed regulations are published, many small business taxpayers may have already implemented some aspects of the proposed regulations.

2. Affected Small Entities

The voluntary exemptions under sections 263A, 448, 460 and 471 generally apply to taxpayers that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) and are otherwise subject to general rules under sections 263A, 448, 460, or 471.

A. Section 263A

The Treasury Department and the IRS expect that the addition of section 263A(i) will expand the number of small business taxpayers exempted from the requirement to capitalize costs, including interest, under section 263A. Under section 263A(i), taxpayers (other than tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) can choose to deduct certain costs that are otherwise required to be capitalized to the basis of property. Section 263A applies to taxpayers that are producers, resellers, and taxpayers with self-constructed assets. The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million (adjusted for inflation) that are eligible to change their method of accounting to no longer capitalize costs under section 263A. These estimates come from information

collected on: Form 1125-A, *Cost of Goods Sold*, and attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120-S, *U.S. Income Tax Return for an S Corporation*, on which the taxpayer also indicated it had additional section 263A costs. The Treasury Department and the IRS do not have readily available data to measure the prevalence of entities with self-constructed assets. In addition, these data also do not include other business entities, such as a business reported on Schedule C, *Profit or Loss Form Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*.

Under section 263A, as modified by the TCJA, small business entities that qualified for Section 263A small reseller exception will no longer be able to use this exception. The Treasury Department and the IRS estimate that nearly all taxpayers that qualified for the small reseller exception will qualify for the small business taxpayer exemption under section 263A(i) since the small reseller exception utilized a \$10 million gross receipts test. The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million that are eligible for the exemption under section 263A(i). These estimates come from information collected on: Form 1125-A, *Cost of Goods Sold*, and attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120-S, *U.S. Income Tax Return for an S Corporation* on which the taxpayer also indicated it had additional section 263A costs. These data provide an upper bound for the number of taxpayers affected by the repeal of the small reseller exception and enactment of section 263A(i) because the data includes taxpayers that were not previously eligible for the small reseller exception, such as producers and taxpayers with gross receipts of more than \$10 million.

The proposed regulations modify the \$50 million gross receipts test in § 1.263A-1(d)(3)(ii)(B)(1) by using the section 448 gross receipts test. The \$50 million gross receipts amount is used by taxpayers to determine whether they are eligible to treat negative adjustments as additional section 263A costs for purposes of the simplified production method (SPM) under section 263A. The Treasury Department and the IRS do not have readily available data to measure the prevalence of entities using the SPM.

Proposed § 1.263A-9 modifies the current regulation to increase the

eligibility threshold to \$25 million for the election permitting taxpayers to use the highest applicable Federal rate as a substitute for the weighted average interest rate when tracing debt for purposes of capitalizing interest under section 263A(f). The Treasury Department and the IRS estimate that there are between 38,100 and 38,900 respondents with gross receipts of not more than \$25 million that are eligible to make this election. These estimates come from information collected on: Form 1125-A, *Cost of Goods Sold*, attached to Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* or Form 1120-S, *U.S. Income Tax Return for an S Corporation*, on which the taxpayer also indicated it had additional section 263A costs. The Treasury Department and the IRS expect that many taxpayers eligible to make the election for purposes of section 263A(f) will instead elect the small business exemption under section 263A(i). Additionally, taxpayers who chose to apply section 263A even though they qualify for the small business exemption under 263A(i) may not have interest expense required to be capitalized under section 263A(f). As a result, although these data do not include taxpayers with self-constructed assets that are eligible for the election, the Treasury Department and the IRS estimate that this data provides an upper bound for the number of eligible taxpayers.

B. Section 448

The Treasury Department and the IRS expect that the changes to section 448(c) by the TCJA will expand the number of taxpayers permitted to use the cash method. Section 448(a) provides that C corporations, partnerships with C corporations as partners, and tax shelters are not permitted to use the cash method of accounting; however section 448(c), as amended by the TCJA, provides that C corporations or partnerships with C corporations as partners, other than tax shelters, are not restricted from using the cash method if their average annual gross receipts are \$25 million (adjusted for inflation) or less. Prior to the amendments made by the TCJA, the applicable gross receipts threshold was \$5 million. Section 448 does not apply to S corporations, partnerships without a C corporation partner, or any other business entities (including sole proprietorships reported on an individual's Form 1040). The Treasury Department and the IRS estimate that there are between 587,000 and 595,000 respondents with gross receipts of not more than \$5 million presently using an accrual method, and

between 70,000 and 73,000 respondents with gross receipts of more than \$5 million but not more than \$25 million that are permitted to use the cash method. These estimates come from information collected on Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation*.

Under the proposed regulations, taxpayers that would meet the gross receipts test of section 448(c) and seem to be eligible to use the cash method but for the definition of "syndicate" under section 448(d)(3), may elect to use the allocated taxable income or loss of the immediately preceding taxable year to determine whether the taxpayer is a "syndicate" for purposes of section 448(d)(3) for the current taxable year. The Treasury Department and IRS estimate that 199,289 respondents may potentially make this election. This estimate comes from information collected on the Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation*, and the Form 1125-A, *Cost of Goods Sold*, attached to the Forms 1065 and 1120-S. The Treasury Department and the IRS estimate that these data provide an upper bound for the number of eligible taxpayers because not all taxpayers eligible to make the election will choose to do so.

C. Section 460

The Treasury Department and the IRS expect that the modification of section 460(e)(1)(B) by the TCJA will expand the number of taxpayers exempted from the requirement to apply the percentage-of-completion method to long-term construction contracts. Under section 460(e)(1)(B), as modified by the TCJA, taxpayers (other than a tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) are not required to use PCM to account for income from a long-term construction contract expected to be completed in two years. Prior to the modification of section 460(e)(1)(B) by the TCJA, a separate \$10 million dollar gross receipts test applied. The Treasury Department and the IRS estimate that there are between 15,400 and 18,000 respondents with gross receipts of between \$10 million and \$25 million who are eligible to change their method of accounting to apply the modified exemption. This estimate comes from information collected on the Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income* and Form 1120-S, *U.S. Income Tax Return for an S Corporation* in which the taxpayer indicated its

principal business activity was construction (NAICS codes beginning with 23). These data available do not distinguish between long-term contracts and other contracts, and also do not include other business entities that do not file Form 1120, *U.S. Corporation Income Tax Return*, Form 1065, *U.S. Return of Partnership Income*, and Form 1120-S, *U.S. Income Tax Return for an S Corporation*, such as a business reported on Schedule C, *Profit or Loss from Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*.

D. Section 471

The Treasury Department and the IRS expect that the addition of section 471(c) will expand the number of taxpayers exempted from the requirement to take inventories under section 471(a). Under section 471(c), taxpayers (other than tax shelters) that meet the \$25 million (adjusted for inflation) gross receipts test in section 448(c) can choose to apply certain simplified inventory methods rather than those otherwise required by section 471(a). The Treasury Department and the IRS estimate that there are between 3,200,000 and 3,400,000 respondents with gross receipts of not more than \$25 million that are exempted from the requirement to take inventories, and will treat their inventory either as non-incidental materials and supplies, or conform their inventory method to the method reflected in their AFS, or if they do not have an AFS, in their books and records. This estimate comes from data collected on the Form 1125-A, *Cost of Goods Sold*. Within that set of taxpayers, the Treasury Department and the IRS estimate that there are between 10,500 and 11,300 respondents that may choose to conform their method of accounting for inventories to their method for inventory reflected in their AFS. This estimate comes from IRS-collected data on taxpayers that filed the Form 1125-A, *Cost of Goods Sold*, in addition to a Schedule M3, *Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*, that indicated they had an AFS. These data provide a lower bound because they do not include other business entities, such as a business reported on Schedule C, *Profit or Loss from Business*, of an individual's Form 1040, *U.S. Individual Income Tax Return*, that are not required to file the Form 1125-A, *Cost of Goods Sold*.

3. Impact of the Rule

As discussed earlier in the preamble, section 448 provides a general restriction for C corporations,

partnerships with C corporation partners, and tax shelters from using the cash method of accounting, and sections 263A, 460 and 471 impose specific rules on uniform capitalization of direct and indirect production costs, the percentage of completion method for long-term contracts, and accounting for inventory costs, respectively. Section 13102 of TCJA provided new statutory exemptions and expanded the scope of existing statutory exemptions from these rules to reduce compliance burdens for small taxpayers (e.g., reducing the burdens associated with applying complex accrual rules under section 451 and 461, maintaining inventories, identifying and tracking costs that are allocable to property produced or acquired for resale, identifying and tracking costs that are allocable to long-term contracts, applying the look-back method under section 460, etc.). For example, a small business taxpayer with average gross receipts of \$20 million may pay an accountant an annual fee to perform a 25 hour analysis to determine the section 263A costs that are capitalized to inventory produced during the year. If this taxpayer chooses to apply the exemption under section 263A and these proposed regulations, it will no longer need to pay an accountant for the annual section 263A analysis.

The proposed regulations implementing these exemptions are completely voluntary because small business taxpayers may continue using an accrual method of accounting, and applying sections 263A, 460 and 471 if they so choose. Thus, the exemptions increase the flexibility small business taxpayers have regarding their accounting methods relative to other businesses. The proposed regulations provide clarity and certainty for small business taxpayers implementing the exemptions.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Treasury Department and the IRS have not performed an analysis with respect to the projected reporting, recordkeeping, and other compliance requirements associated with the statutory exemptions under sections 263A, 448, 460, and 471 and the proposed regulations implementing these exemptions. However, the Treasury Department and the IRS anticipate that the statutory exemptions and the proposed regulations implementing these exemptions will reduce the reporting, recordkeeping, and other compliance requirements of affected taxpayers relative to the requirements that exist under the

general rules in sections 263A, 448, 460, and 471.

5. Alternatives Considered

As described in more detail earlier in the preamble, the Treasury Department and the IRS considered a number of alternatives under the proposed regulations. For example, in providing rules related to inventory exemption in Section 471(c)(1)(B)(i), which permits the taxpayer to treat its inventory as non-incidental materials and supplies, the Treasury Department and the IRS considered whether inventoriable costs should be recovered by (i) using an approach similar to the approach set forth under Revenue Procedure 2001–10 (2001–2 IRB 272) and Revenue Procedure 2002–28 (2002–28 IRB 815), which provided that inventory treated as non-incidental materials and supplies was “used and consumed,” and thus recovered through costs of goods sold by a cash basis taxpayer, when the inventory items were provided to a customer, or when the taxpayer paid for the items, whichever was later, or (ii) using an alternative approach that treated inventory as “used and consumed” and thus recovered through costs of goods sold by the taxpayer, in a taxable year prior to the year in which the inventory item is provided to the customer (e.g., in the taxable year in which an inventory item is acquired or produced). The alternative approach described in (ii) would produce a savings equal the amount of the cost recovery multiplied by an applicable discount rate (determined based on the number of years the cost of goods sold recovery would be accelerated under this alternative). The Treasury Department and the IRS interpret section 471(c)(1)(B)(i) and its legislative history generally as codifying the rules provided in the administrative guidance existing at the time TCJA was enacted. Based on this interpretation, the Treasury Department and the IRS have determined that section 471(c) materials and supplies are “used and consumed” in the taxable year the taxpayer provides the goods to a customer, and are recovered through costs of goods sold in that year or the taxable year in which the cost of the goods is paid or incurred (in accordance with the taxpayer’s method of accounting), whichever is later. The Treasury Department and the IRS do not believe this approach creates or imposes undue burdens on taxpayers.

6. Duplicate, Overlapping, or Relevant Federal Rules

The proposed rules would not conflict with any relevant federal rules. As discussed above, the proposed

regulations merely implement voluntary exemptions that relieve small business taxpayers from otherwise applicable restrictions and requirements under sections 263A, 448, 460, and 471.

III. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial, direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these proposed regulations is Anna Gleysteen, IRS Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.263A-0 is amended by:

- 1. Revising the entry in the table of contents for § 1.263A-1(b)(1).
2. Redesignating the entries in the table of contents for § 1.263A-1(j), (k), and (l) as the entries for § 1.263A-1(k), (l), and (m).
3. Adding a new entry in the table of contents for § 1.263A-1(j).
4. Revising the newly designated entries for § 1.263A-1(k), (l), and (m).
5. Revising the entries in the table of contents for § 1.263A-3(a)(2)(ii).
6. Adding entries for § 1.263A-3(a)(5) and revising the entry for § 1.263A-3(b).
7. Redesignating the entries in the table of contents for § 1.263A-4(a)(3) and (4) as the entries for § 1.263A-4(a)(4) and (5).
8. Adding in the table of contents a new entry for § 1.263A-4(a)(3).
9. Revising the entry in the table of contents for § 1.263A-4(d) introductory text.
10. Redesignating the entry in the table of contents for § 1.263A-4(d)(5) as the entry for § 1.263A-4(d)(7).
11. Adding in the table of contents a new entry for § 1.263A-4(d)(5).
12. Adding an entry in the table of contents for § 1.263A-4(d)(6).
13. Adding an entry in the table of contents for § 1.263A-4(e)(5).
14. Revising the entry in the table of contents for § 1.263A-4(f) introductory text.
15. Adding an entry in the table of contents for § 1.263A-4(g).
16. Revising the entry in the table of contents for § 1.263A-7(a)(4).

The revisions and additions read as follows:

§ 1.263A-0 Outline of regulations under section 263A.

* * * * *

§ 1.263A-1 Uniform Capitalization of Costs.

* * * * *

(b) * * *

(1) Small business taxpayers.

* * * * *

(j) Exemption for certain small business taxpayers.

(1) In general.

(2) Application of the section 448(c) gross receipts test.

- (i) In general.
(ii) Gross receipts of individuals, etc.
(iii) Partners and S corporation shareholders.

(iv) Examples.

(A) Example 1

(B) Example 2

(3) Change in method of accounting.

(i) In general.

(ii) Prior section 263A method

change.

(k) Special rules

(1) Costs provided by a related person.

(i) In general

(ii) Exceptions

(2) Optional capitalization of period

costs.

(i) In general.

(ii) Period costs eligible for

capitalization.

(3) Trade or business application

(4) Transfers with a principal purpose

of tax avoidance. [Reserved]

(1) Change in method of accounting.

(1) In general.

(2) Scope limitations.

(3) Audit protection.

(4) Section 481(a) adjustment.

(5) Time for requesting change.

(m) Effective/applicability date.

§ 1.263A-3 Rules Relating to Property Acquired for Resale.

(a) * * *

(2) * * *

(ii) Exemption for small business

taxpayers.

* * * * *

(5) De minimis production activities.

(i) In general.

(ii) Definition of gross receipts to determine de minimis production activities.

(iii) Example.

(b) [Reserved].

* * * * *

§ 1.263A-4 Rules for Property Produced in a Farming Business.

(a) * * *

(3) Exemption for certain small

business taxpayers.

* * * * *

(d) Election not to have section 263A apply under section 263A(d)(3).

* * * * *

(5) Revocation of section 263A(d)(3) election in order to apply exemption under section 263A(i).

(6) Change from applying exemption under section 263A(i) to making a section 263A(d)(3) election.

* * * * *

(e) * * *

(5) Special temporary rule for citrus plants lost by reason of casualty.

(f) Change in method of accounting.

* * * * *

(g) Effective date.

(1) In general.

(2) Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).

§ 1.263A-7 Changing a method of accounting under section 263A.

(a) * * *

(4) Applicability dates.

(i) In general.

(ii) Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).

* * * * *

Par. 3. Section 1.263A-1 is amended by:

1. Revising the paragraph (a)(2) subject heading.

2. In paragraph (a)(2)(i), revising the second sentence and adding a new third sentence.

3. Revising paragraph (b)(1).

4. In the second sentence of paragraph (d)(3)(ii)(B)(1), the language “§ 1.263A-3(b)” is removed and the language “§ 1.263A-1(j)” is added in its place.

5. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m).

6. Adding a new paragraph (j).

The revisions and addition read as follows:

§ 1.263A-1 Uniform capitalization of costs.

(a) * * *

(2) Applicability dates. (i) * * * In the case of property that is inventory in the hands of the taxpayer, however, these sections are applicable for taxable years beginning after December 31, 1993. The small business taxpayer exception described in paragraph (b)(1) of this section and set forth in paragraph (j) of this section is applicable for taxable years beginning after December 31, 2017. * * *

* * * * *

(b) * * *

(1) Small business taxpayers. For taxable years beginning after December 31, 2017, see section 263A(i) and paragraph (j) of this section for an exemption for certain small business taxpayers from the requirements of section 263A.

* * * * *

(j) Exemption for certain small business taxpayers—(1) In general. A taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), that meets the gross receipts test under section 448(c) and § 1.448-2(c) (section 448(c) gross receipts test) for any taxable year (small business taxpayer) is not required to capitalize costs under section 263A to any real or tangible personal property produced, and any real or personal property described in section 1221(a)(1) acquired for resale, during that taxable year.

(2) *Application of the section 448(c) gross receipts test*—(i) *In general*. In the case of any taxpayer that is not a corporation or a partnership, and except as provided in paragraphs (j)(2)(ii) and (iii) of this section, the section 448(c) gross receipts test is applied in the same manner as if each trade or business of the taxpayer were a corporation or partnership.

(ii) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or business are excluded from the gross receipts of the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W-2.

(iii) *Partners and S corporation shareholders*. Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of the partnership's gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder of an S corporation includes such shareholder's *pro rata* share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(iv) *Examples*. The operation of this paragraph (j) is illustrated by the following examples:

(A) *Example 1*. Taxpayer A is an individual who operates two separate and distinct trades or business that are reported on Schedule C, *Profit or Loss from Business*, of A's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (j)(2)(ii) of this section, for 2020, neither of A's trades or businesses meets the gross receipts test of paragraph (j)(2) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(B) *Example 2*. Taxpayer B is an individual who operates three separate and distinct trades or business that are

reported on Schedule C of B's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (j)(2)(ii) of this section, B's gross receipts are the combined amount derived from all three of B's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (j)(2)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Change in method of accounting*—(i) *In general*. A change from applying the small business taxpayer exemption under paragraph (j) of this section to not applying the exemption under this paragraph (j), or *vice versa*, is a change in method of accounting under section 446(e) and § 1.446-1(e). A taxpayer obtains the consent of the Commissioner to change its method of accounting to comply with paragraph (j) of this section by following the applicable administrative procedures to obtain the consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015-13, 2015-5 IRB 419 (or successor) (see also § 601.601(d)(2) of this chapter)). If an item of income or expense is not treated consistently from year to year, that treatment may not clearly reflect income, notwithstanding the application of this section. For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446-1.

(ii) *Prior section 263A method change*. A taxpayer that otherwise meets the requirements of paragraph (j) of this section, and that had previously changed its method of accounting to capitalize costs under section 263A because it no longer met the section 448(c) gross receipts test, may not change its method of accounting under section 263A to apply the exemption under paragraph (j) of this section without the consent of the Commissioner. Taxpayers must follow the administrative procedures to obtain the consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015-13, 2015-5 IRB 419 (or successor) (see also § 601.601(d)(2) of this chapter)). For rules relating to the clear reflection of income and the

pattern of consistent treatment of an item, see section 446 and § 1.446-1.

* * * * *

■ **Par. 4.** Section 1.263A-2 is amended by:

- 1. Adding a sentence at the end of paragraph (a) introductory text.
- 2. Revising paragraph (a)(1)(ii)(C).
- 3. Revising the paragraph (g) subject heading.
- 4. Adding paragraph (g)(4).

The additions and revisions read as follows:

§ 1.263A-2 Rules relating to property produced by the taxpayer.

(a) * * * For taxable years beginning after December 31, 2017, see § 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

(1) * * *

(ii) * * *

(C) Home construction contracts. Section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and, for contracts entered into after December 31, 2017, in taxable years ending after December 31, 2017, the taxpayer meets the gross receipts test of section 448(c) and § 1.448-2(c) for the taxable year in which such contract is entered into.

* * * * *

(g) *Applicability dates*. * * *

(4) The rules set forth in the last sentence of the introductory text of paragraph (a) of this section and in paragraph (a)(1)(ii)(C) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 5.** Section 1.263A-3 is amended:

- 1. In paragraph (a)(1), by revising the second sentence.
- 2. By revising paragraphs (a)(2)(ii) and (iii).
- 4. In paragraph (a)(3), by removing the language “small reseller” and adding in its place the language “small business taxpayer”.
- 5. In paragraph (a)(4)(ii), by removing the language “(within the meaning of paragraph (a)(2)(iii) of this section)” and adding in its place the language “(within the meaning of paragraph (a)(5) of this section)”.
- 6. By adding paragraph (a)(5).
- 7. By removing and reserving paragraph (b).
- 8. By revising paragraph (f).

The revisions and additions read as follows:

§ 1.263A-3 Rules relating to property acquired for resale.

(a) * * *

(1) * * * However, for taxable years beginning after December 31, 2017, a small business taxpayer, as defined in § 1.263A-1(j), is not required to apply section 263A in that taxable year. * * *

(2) * * *

(ii) *Exemption for certain small business taxpayers.* For taxable years beginning after December 31, 2017, see § 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

(iii) *De minimis production activities.* See paragraph (a)(5) of this section for rules relating to an exception for resellers with *de minimis* production activities.

* * * * *

(5) *De minimis production activities—*

(i) *In general.* In determining whether a taxpayer’s production activities are *de minimis*, all facts and circumstances must be considered. For example, the taxpayer must consider the volume of the production activities in its trade or business. Production activities are presumed *de minimis* if—

(A) The gross receipts from the sale of the property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and

(B) The labor costs allocable to the trade or business’s production activities are less than 10 percent of the reseller’s total labor costs allocable to its trade or business.

(ii) *Definition of gross receipts to determine de minimis production activities.* Gross receipts has the same definition as for purposes of the gross receipts test under § 1.448-2(c), except that gross receipts are measured at the trade-or-business level rather than at the single-employer level.

(iii) *Example: Reseller with de minimis production activities.* Taxpayer N is in the retail grocery business. In 2019, N’s average annual gross receipts for the three previous taxable years are greater than the gross receipts test of section 448(c). Thus, N is not exempt from the requirement to capitalize costs under section 263A. N’s grocery stores typically contain bakeries where customers may purchase baked goods produced by N. N produces no other goods in its retail grocery business. N’s gross receipts from its bakeries are 5 percent of the entire grocery business. N’s labor costs from its bakeries are 3 percent of its total labor costs allocable to the entire grocery business. Because both ratios are less than 10 percent, N’s production activities are *de minimis*.

Further, because N’s production activities are incident to its resale activities, N may use the simplified resale method, as provided in paragraph (a)(4)(ii) of this section.

* * * * *

(f) *Applicability dates.* (1) Paragraphs (d)(3)(i)(C)(3), (d)(3)(i)(D)(3), and (d)(3)(i)(E)(3) of this section apply for taxable years ending on or after January 13, 2014.

(2) The rules set forth in the second sentence of paragraph (a)(1) of this section, paragraphs (a)(2)(ii) and (iii) of this section, the third sentence of paragraph (a)(3) of this section, and paragraphs (a)(4)(ii) and (a)(5) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 6.** Section 1.263A-4 is amended:

■ 1. In paragraph (a)(1), by revising the last sentence.

■ 2. In paragraph (a)(2)(ii)(A)(1), by removing the language “section 464(c)” and adding in its place the language with “section 461(k)”.

■ 3. By redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5) respectively.

■ 4. By adding new paragraph (a)(3).

■ 5. By revising the paragraph (d) subject heading.

■ 6. In paragraph (d)(1), by revising the last sentence and adding a new last sentence.

■ 7. In paragraph (d)(3)(i), by removing the last sentence.

■ 8. By revising paragraph (d)(3)(ii).

■ 9. By redesignating paragraph (d)(5) as paragraph (d)(7).

■ 10. By adding new paragraph (d)(5)

■ 11. By adding paragraphs (d)(6) and (e)(5).

■ 12. By redesignating paragraph (f) as paragraph (g).

■ 13. By adding new paragraph (f).

■ 15. By revising the subject headings for newly redesignated paragraphs (g) and (g)(1), and revising newly designated paragraph (g)(2).

The revisions and additions read as follows:

§ 1.263A-4 Rules for property produced in a farming business.

(a) * * *

(1) * * * Except as provided in paragraphs (a)(2), (a)(3), and (e) of this section, taxpayers must capitalize the costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

* * * * *

(3) *Exemption for certain small business taxpayers.* For taxable years beginning after December 31, 2017, see

§ 1.263A-1(j) for an exception in the case of a small business taxpayer that meets the gross receipts test of section 448(c) and § 1.448-2(c).

* * * * *

(d) *Election not to have section 263A apply under section 263A(d)(3)—*(1)

* * * Except as provided in paragraph (d)(5) and (6) of this section, the election is a method of accounting under section 446. An election made under section 263A(d)(3) and this paragraph (d) is revocable only with the consent of the Commissioner.

* * * * *

(3) * * * (ii) *Nonautomatic election.* Except as provided in paragraphs (d)(5) and (6) of this section, a taxpayer that does not make the election under this paragraph (d) as provided in paragraph (d)(3)(i) of this section must obtain the consent of the Commissioner to make the election by filing a Form 3115, *Application for Change in Method of Accounting*, in accordance with § 1.446-1(e)(3).

* * * * *

(5) *Revocation of section 263A(d)(3) election in order to apply exemption under section 263A(i).* A taxpayer that elected under section 263A(d)(3) and paragraph (d)(3) of this section not to have section 263A apply to any plant produced in a farming business that wants to revoke its section 263A(d)(3) election, and in the same taxable year, apply the small business taxpayer exemption under section 263A(i) and § 1.263A-1(j) may revoke the election in accordance with the applicable administrative guidance as published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). A revocation of the taxpayer’s section 263A(d)(3) election under this paragraph (d)(5) is not a change in method of accounting under sections 446 and 481 and §§ 1.446-1 and 1.481-1 through 1.481-5.

(6) *Change from applying exemption under section 263A(i) to making a section 263A(d)(3) election.* A taxpayer whose method of accounting is to not capitalize costs under section 263A based on the exemption under section 263A(i), that becomes ineligible to use the exemption under section 263A(i), and is eligible and wants to elect under section 263A(d)(3) for this same taxable year to not capitalize costs under section 263A for any plant produced in the taxpayer’s farming business, must make the election in accordance with the applicable administrative guidance as published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). An election under section 263A(d)(3) made in accordance with

this paragraph (d)(6) is not a change in method of accounting under sections 446 and 481 and §§ 1.446-1 and 1.481-1 through 1.481-5.

* * * * *

(e) * * *

(5) *Special temporary rule for citrus plants lost by reason of casualty.* Section 263A(d)(2)(A) provides that if plants bearing an edible crop for human consumption were lost or damaged while in the hands of the taxpayer by reason of freezing temperatures, disease, drought, pests, or casualty, section 263A does not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States). The rules of this paragraph (e)(5) apply to certain costs that are paid or incurred after December 22, 2017, and on or before December 22, 2027, to replant citrus plants after the loss or damage of citrus plants. Notwithstanding paragraph (e)(2) of this section, in the case of replanting citrus plants after the loss or damage of citrus plants by reason of freezing temperatures, disease, drought, pests, or casualty, section 263A does not apply to replanting costs paid or incurred by a taxpayer other than the owner described in section 263A(d)(2)(A) if—

(i) The owner described in section 263A(d)(2)(A) has an equity interest of not less than 50 percent in the replanted citrus plants at all times during the taxable year in which such amounts were paid or incurred and the taxpayer holds any part of the remaining equity interest; or

(ii) The taxpayer acquired the entirety of the equity interest in the land of that owner described in section 263A(d)(2)(A) and on which land the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land.

(f) *Change in method of accounting.* Except as provided in paragraphs (d)(5) and (6) of this section, any change in a taxpayer's method of accounting necessary to comply with this section is a change in method of accounting to which the provisions of sections 446 and 481 and § 1.446-1 through 1.446-7 and § 1.481-1 through § 1.481-3 apply.

(g) *Applicability dates—(1) In general.* * * *

(2) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).* Paragraphs (a)(3), (d)(5), (d)(6), and (e)(5) of this section apply for taxable years ending on or after [date the Treasury Decision adopting these proposed regulations as

final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (g), for taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A-4 as contained in 26 CFR part 1, revised April 1, 2019.

- **Par. 7.** § 1.263A-7 is amended:
 - 1. By revising paragraph (a)(3)(i).
 - 2. By redesignating paragraph (a)(4) as paragraph (a)(4)(i).
 - 3. By adding a paragraph (a)(4) subject heading.
 - 4. By revising the newly designated paragraph (a)(4)(i) subject heading.
 - 5. By adding paragraph (a)(4)(ii).
 - 6. In paragraph (b)(1), by removing the language “Rev. Proc. 97-27 (1997-21 I.R.B.10)” and adding in its place the language “Revenue Procedure 2015-13 (2015-5 IRB 419)”.
 - 7. In paragraph (b)(2)(ii), by removing the language “Rev. Proc. 2002-9 (2002-1 C.B. 327) and Rev. Proc. 97-27 (1991-1 C.B. 680)” and adding the language “applicable administrative procedures” in its place.

The revisions and additions read as follows:

§ 1.263A-7 Changing a method of accounting under section 263A.

- (a) * * *
- (3) * * *

(i) For taxable years beginning after December 31, 2017, resellers of real or personal property or producers of real or tangible personal property whose average annual gross receipts for the immediately preceding 3-taxable-year period (or lesser period if the taxpayer was not in existence for the three preceding taxable years, annualized as required) exceed the gross receipts test of section 448(c) and the accompanying regulations where the taxpayer was not subject to section 263A in the prior taxable year;

* * * * *

(4) *Applicability dates—(i) In general.* * * *

(ii) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).* Paragraph (a)(3)(i) of this section applies to taxable years ending on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (a)(4), for taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A-7(a)(3)(i) as contained in 26 CFR part 1, revised April 1, 2019.

* * * * *

■ **Par. 8.** Section 1.263A-8 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

§ 1.263A-8 Requirement to capitalize interest.

- (a) * * *
- (1) * * * However, a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), that meets the gross receipts test of section 448(c) for the taxable year is not required to capitalize costs, including interest, under section 263A. See § 1.263A-1(j).

* * * * *

■ **Par. 9.** Section 1.263A-9 is amended by adding a sentence at the end of paragraph (e)(2) to read as follows:

§ 1.263A-9 The avoided cost method.

* * * * *

- (e) * * *
- (2) * * * A taxpayer is an eligible taxpayer for a taxable year for purposes of this paragraph (e) if the taxpayer is a small business taxpayer, as defined in § 1.263A-1(j).

* * * * *

■ **Par. 10.** Section 1.263A-15 is amended by adding paragraph (a)(4) to read as follows:

§ 1.263A-15 Effective dates, transitional rules, and anti-abuse rule.

- (a) * * *

(4) The last sentence of each of § 1.263A-8(a)(1) and § 1.263A-9(e)(2) apply to taxable years beginning on or after [date the Treasury decision adopting these proposed regulations as final is published in the **Federal Register**]. Except as otherwise provided in this paragraph (a)(4), for taxable years beginning before [date the Treasury decision adopting these regulations as final is published in the **Federal Register**], see § 1.263A-8(a)(1) and § 1.263A-9(e)(2) as contained in 26 CFR part 1, revised April 1, 2019.

* * * * *

§ 1.381(c)(5)-1 [Amended]

■ **Par. 11.** Section 1.381(c)(5)-1 is amended:

- 1. In paragraph (a)(6), by designating *Examples 1* and 2 as paragraphs (a)(6)(i) and (ii), respectively.
- 2. In newly-designated paragraphs (a)(6)(i) and (ii), by redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(a)(6)(i)(i) and (ii)	(a)(6)(i)(A) and (B).
(a)(6)(ii)(i) and (ii)	(a)(6)(ii)(A) and (B).

■ 3. In newly designated paragraphs (a)(6)(ii)(A) and (B), by removing the language “small reseller” and adding in its place the language “small business taxpayer” everywhere it appears.

■ Par. 12. § 1.446-1 is amended:

■ 1. In paragraph (a)(4)(i), by revising the first sentence.

■ 2. By revising paragraph (c)(2)(i).

■ 3. By adding paragraph (c)(3).

The revisions and addition read as follows:

§ 1.446-1 General rule for methods of accounting.

(a) * * *

(4) * * *

(i) Except in the case of a taxpayer qualifying as a small business taxpayer for the taxable year under section 471(c), in all cases in which the production, purchase or sale of merchandise of any kind is an income-producing factor, merchandise on hand (including finished goods, work in progress, raw materials, and supplies) at the beginning and end of the year shall be taken into account in computing the taxable income of the year. * * *

* * * * *

(c) * * *

(2) * * *

(i) In any case in which it is necessary to use an inventory, the accrual method of accounting must be used with regard to purchases and sales unless:

(A) The taxpayer qualifies as a small business taxpayer for the taxable year under section 471(c), or

(B) Otherwise authorized under paragraph (c)(2)(ii) of this section.

* * * * *

(3) *Applicability date.* The first sentence of paragraph (a)(4)(i) of this section and paragraph (c)(2)(i) of this section apply to taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.446-1(c) as contained in 26 CFR part 1, revised April 1, 2019.

* * * * *

■ Par. 13. Section 1.448-1 is amended by adding new first and second sentences to paragraphs (g)(1) and (h)(1) to read as follows:

§ 1.448-1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(1) * * * The rules provided in paragraph (g) of this section apply to taxable years beginning before January

1, 2018. See § 1.448-2 for rules relating to taxable years beginning after December 31, 2017. * * *

* * * * *

(h) * * *

(1) * * * The rules provided in paragraph (h) of this section apply to taxable years beginning before January 1, 2018. See § 1.448-2 for rules relating to taxable years beginning after December 31, 2017. * * *

* * * * *

§ 1.448-2 [Redesignated as § 1.448-3]

■ Par. 14. Section 1.448-2 is redesignated as § 1.448-3.

■ Par. 15. A new § 1.448-2 is added to read as follows:

§ 1.448-2 Limitation on the use of the cash receipts and disbursements method of accounting for taxable years beginning after December 31, 2017.

(a) *Limitation on method of accounting—(1) In general.* The rules of this section relate to the limitation on the use of the cash receipts and disbursements method of accounting (cash method) by certain taxpayers applicable for taxable years beginning after December 31, 2017. For rules applicable to taxable years beginning before January 1, 2018, see §§ 1.448-1 and 1.448-1T.

(2) *Limitation rule.* Except as otherwise provided in this section, the computation of taxable income using the cash method is prohibited in the case of a:

(i) C corporation;

(ii) Partnership with a C corporation as a partner, or a partnership that had a C corporation as a partner at any time during the partnership’s taxable year beginning after December 31, 1986; or

(iii) Tax shelter.

(3) *Treatment of combination methods—(i) In general.* For purposes of this section, the use of a method of accounting that records some, but not all, items on the cash method is considered the use of the cash method. Thus, a C corporation that uses a combination of accounting methods including the use of the cash method is subject to this section.

(ii) *Example.* The following example illustrates the operation of this paragraph (a)(3). In 2020, A is a C corporation with average annual gross receipts for the prior three taxable years of greater than \$30 million, is not a tax shelter under section 448(a)(3) and does not qualify as a qualified personal service corporation, as defined in paragraph (e) of this section. For the last 20 years, A used an accrual method for items of income and expenses related to purchases and sales of inventory, and

the cash method for items related to its provision of services. A is using a combination of accounting methods that include the cash method. Thus, A is subject to section 448. A is prohibited from using the cash method for any item for 2020 and is required to change to a permissible method.

(b) *Definitions.* For purposes of this section—

(1) *C corporation—(i) In general.* The term *C corporation* means any corporation that is not an S corporation (as defined in section 1361(a)(1)). For example, a regulated investment company (as defined in section 851) or a real estate investment trust (as defined in section 856) is a C corporation for purposes of this section. In addition, a trust subject to tax under section 511(b) is treated, for purposes of this section, as a C corporation, but only with respect to the portion of its activities that constitute an unrelated trade or business. Similarly, for purposes of this section, a corporation that is exempt from Federal income taxes under section 501(a) is treated as a C corporation only with respect to the portion of its activities that constitute an unrelated trade or business. Moreover, for purposes of determining whether a partnership has a C corporation as a partner, any partnership described in paragraph (a)(2)(ii) of this section is treated as a C corporation. Thus, if partnership ABC has a partner that is a partnership with a C corporation, then, for purposes of this section, partnership ABC is treated as a partnership with a C corporation partner.

(ii) [Reserved]

(2) *Tax shelter—(i) In general.* The term *tax shelter* means any—

(A) Enterprise, other than a C corporation, if at any time (including taxable years beginning before January 1, 1987) interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or state agency having the authority to regulate the offering of securities for sale;

(B) Syndicate, within the meaning of paragraph (b)(2)(iii) of this section, or

(C) Tax shelter, within the meaning of section 6662(d)(2)(C).

(ii) *Requirement of registration.* For purposes of paragraph (b)(2)(i)(A) of this section, an offering is required to be registered with a Federal or state agency if, under the applicable Federal or state law, failure to register the offering would result in a violation of the applicable Federal or state law; this rule applies regardless of whether the offering is in fact registered. In addition, an offering is required to be registered with a Federal or state agency if, under

the applicable Federal or state law, failure to file a notice of exemption from registration would result in a violation of the applicable Federal or state law, regardless of whether the notice is in fact filed. However, an S corporation is not treated as a tax shelter for purposes of section 448(d)(3) or this section merely by reason of being required to file a notice of exemption from registration with a state agency described in section 461(i)(3)(A), but only if all corporations offering securities for sale in the state must file such a notice in order to be exempt from such registration.

(iii) *Syndicate*—(A) *In general.* For purposes of paragraph (b)(2)(i)(B) of this section, the term *syndicate* means a partnership or other entity (other than a C corporation) if more than 35 percent of the losses of such entity during the taxable year (for taxable years beginning after December 31, 1986) are allocated to limited partners or limited entrepreneurs. For purposes of this paragraph (b)(2)(iii), the term *limited entrepreneur* has the same meaning given such term in section 461(k)(4). In addition, in determining whether an interest in a partnership is held by a limited partner, or an interest in an entity or enterprise is held by a limited entrepreneur, section 461(k)(2) applies in the case of the trade or business of farming (as defined in paragraph (d)(2) of this section), and section 1256(e)(3)(C) applies in all other cases. Moreover, for purposes of paragraph (b)(2) of this section, the losses of a partnership, entity, or enterprise (entities) means the excess of the deductions allowable to the entities over the amount of income recognized by such entities under the entities' method of accounting used for Federal income tax purposes (determined without regard to this section). For this purpose, gains or losses from the sale of capital assets or assets described in section 1221(a)(2) are not taken into account.

(B) *Election to test the allocation of losses from prior taxable year.* For purposes of paragraph (b)(2)(iii)(A) of this section, to determine if more than 35 percent of the losses of a venture are allocated to limited partners or limited entrepreneurs, instead of using the current taxable year's allocation of losses, entities may elect to use the allocations made in the immediately preceding taxable year instead of using the current taxable year's allocation. An election under this paragraph (b)(2)(iii)(B) applies to the first taxable year for which the election is made and to all subsequent taxable years, unless the Commissioner of Internal Revenue or his delegate (Commissioner) permits

a revocation of the election in accordance with this paragraph. An election under this paragraph (b)(2)(iii)(B) may never be revoked earlier than the fifth taxable year following the first taxable year for which the election was made unless extraordinary circumstances are demonstrated to the satisfaction of the Commissioner. Once an election has been revoked, a new election under this paragraph (b)(2)(iii)(B) cannot be made until the fifth taxable year following the taxable year for which the previous election was revoked unless extraordinary circumstances are demonstrated to the satisfaction of the Commissioner. A taxpayer making this election must attach a statement to its timely filed Federal income tax return (including extension) that this election is made beginning with that taxable year. If such a statement is not attached, the election is not valid and has no effect for any purpose. No late elections will be permitted. Further, an election cannot be made by filing an amended Federal income tax return. In addition to section 448, this election also applies for purposes of all provisions of the Code that refer to section 448(a)(3) to define tax shelter. An election made under this paragraph (b)(2)(iii)(B) may only be revoked with the written consent of the Commissioner. Requests for consent must follow the applicable administrative procedures for requesting a letter ruling (for example, see Revenue Procedure 2020-1, 2020-01 IRB 1 (or its successor)).

(C) *Example.* Taxpayer B is a calendar year limited partnership, with no active management from its limited partner. In 2019, B is profitable and allocates 80 percent of its profits to its general partner and 20 percent of its profits to its limited partner. In 2020, B has a loss and allocates 60 percent of losses to its general partner and 40 percent of its losses to its limited partner. In 2020 B makes an election under paragraph (b)(2)(iii)(B) of this section to use its prior year allocated amounts. For 2020, B is not a syndicate because B is treated as having allocated 20 percent of its profits to its limited partner in 2020 for purposes of paragraph (b)(2)(iii) of this section. For 2021, B is a syndicate because B is treated as having allocated 40 percent of its losses to its limited partner for purposes of paragraph (b)(2)(iii) of this section.

(iv) *Presumed tax avoidance.* For purposes of (b)(2)(i)(C) of this section, marketed arrangements in which persons carrying on farming activities using the services of a common managerial or administrative service will be presumed to have the principal

purpose of tax avoidance if such persons use borrowed funds to prepay a substantial portion of their farming expenses (for example, payment for farm supplies that will not be used or consumed until a taxable year subsequent to the taxable year of payment).

(v) *Taxable year tax shelter must change accounting method.* A tax shelter must change from the cash method for the taxable year that it becomes a tax shelter, as determined under paragraph (b)(2) of this section.

(vi) *Determination of loss amount.* For purposes of section 448(d)(3), the amount of losses to be allocated under section 1256(e)(3)(B) is calculated without regard to section 163(j).

(c) *Exception for entities with gross receipts not in excess of the amount provided in section 448(c)*—(1) *In general.* Except in the case of a tax shelter, this section does not apply to any C corporation or partnership with a C corporation as a partner for any taxable year if such corporation or partnership (or any predecessor thereof) meets the gross receipts test of paragraph (c)(2) of this section.

(2) *Gross receipts test*—(i) *In general.* A corporation meets the gross receipts test of this paragraph (c)(2) if the average annual gross receipts of such corporation for the 3 taxable years (or, if shorter, the taxable years during which such corporation was in existence, annualized as required) ending with such prior taxable year does not exceed the gross receipts test amount provided in paragraph (c)(2)(v) of this section (section 448(c) gross receipts test). In the case of a C corporation exempt from Federal income taxes under section 501(a), or a trust subject to tax under section 511(b) that is treated as a C corporation under paragraph (b)(1) of this section, only gross receipts from the activities of such corporation or trust that constitute unrelated trades or businesses are taken into account in determining whether the gross receipts test is satisfied. A partnership with a C corporation as a partner meets the gross receipts test of paragraph (c)(2) of this section if the average annual gross receipts of such partnership for the 3 taxable years (or, if shorter, the taxable years during which such partnership was in existence annualized as required) ending with such prior year does not exceed the gross receipts test amount of paragraph (c)(2)(v) of this section. Except as provided in paragraph (c)(2)(ii) of this section, the gross receipts of the corporate partner are not taken into account in determining whether a partnership meets the gross

receipts test of paragraph (c)(2) of this section.

(ii) *Aggregation of gross receipts.* The aggregation rules in § 1.448-1T(f)(2)(ii) apply for purposes of aggregating gross receipts for purposes of this section.

(iii) *Treatment of short taxable year.* The short taxable year rules in § 1.448-1T(f)(2)(iii) apply for purposes of this section.

(iv) *Determination of gross receipts.* The determination of gross receipts rules in § 1.448-1T(f)(2)(iv) apply for purposes of this section.

(v) *Gross receipts test amount—(A) In general.* For purposes of paragraph (c) of this section, the term *gross receipts test amount* means \$25,000,000, adjusted annually for inflation in the manner provided in section 448(c)(4). The inflation adjusted gross receipts test amount is published annually in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(B) *Example.* Taxpayer A, a C corporation, is a plumbing contractor that installs plumbing fixtures in customers' homes or businesses. A's gross receipts for the 2017–2019 taxable years are \$20 million, \$16 million, and \$30 million, respectively. A's average annual gross receipts for the three taxable-year period preceding the 2020 taxable year is \$22 million ($[(\$20 \text{ million} + \$16 \text{ million} + \$30 \text{ million})/3 = \$22 \text{ million}]$). A may use the cash method for its trade or business for the 2020 taxable year because its average annual gross receipts for the preceding three taxable years is not more than the gross receipts test amount of paragraph (c)(2)(vi) of this section, which is \$26 million for 2020.

(d) *Exception for farming businesses—(1) In general.* Except in the case of a tax shelter, this section does not apply to any farming business. A taxpayer engaged in a farming business and a separate non-farming business is not prohibited by this section from using the cash method with respect to the farming business, even though the taxpayer may be prohibited by this section from using the cash method with respect to the non-farming business.

(2) *Farming business—(i) In general.* For purposes of paragraph (d) of this section, the term *farming business* means—

(A) The trade or business of farming as defined in section 263A(e)(4) (including the operation of a nursery or sod farm, or the raising or harvesting of trees bearing fruit, nuts or other crops, or ornamental trees),

(B) The raising, harvesting, or growing of trees described in section 263A(c)(5)

(relating to trees raised, harvested, or grown by the taxpayer other than trees described in paragraph (d)(2)(i)(A) of this section),

(C) The raising of timber, or

(D) Processing activities which are normally incident to the growing, raising, or harvesting of agricultural products.

(ii) *Example.* Assume a taxpayer is in the business of growing fruits and vegetables. When the fruits and vegetables are ready to be harvested, the taxpayer picks, washes, inspects, and packages the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the business of farming with respect to the growing of fruits and vegetables, and the processing activities incident to the harvest.

(iii) *Processing activities excluded from farming businesses—(A) In general.* For purposes of this section, a farming business does not include the processing of commodities or products beyond those activities normally incident to the growing, raising, or harvesting of such products.

(B) *Examples. (1) Example 1.* Assume that a C corporation taxpayer is in the business of growing and harvesting wheat and other grains. The taxpayer processes the harvested grains to produce breads, cereals, and similar food products which it sells to customers in the course of its business. Although the taxpayer is in the farming business with respect to the growing and harvesting of grain, the taxpayer is not in the farming business with respect to the processing of such grains to produce breads, cereals, and similar food products which the taxpayer sells to customers.

(2) *Example 2.* Assume that a taxpayer is in the business of raising livestock. The taxpayer uses the livestock in a meat processing operation in which the livestock are slaughtered, processed, and packaged or canned for sale to customers. Although the taxpayer is in the farming business with respect to the raising of livestock, the taxpayer is not in the farming business with respect to the meat processing operation.

(e) *Exception for qualified personal service corporation.* The rules in § 1.448-1T(e) relating to the exception for qualified personal service corporations apply for taxable years beginning after December 31, 2017.

(f) *Effect of section 448 on other provisions.* Except as provided in paragraph (b)(2)(iii)(B) of this section, nothing in section 448 shall have any effect on the application of any other provision of law that would otherwise

limit the use of the cash method, and no inference shall be drawn from section 448 with respect to the application of any such provision. For example, nothing in section 448 affects the requirement of section 447 that certain corporations must use an accrual method of accounting in computing taxable income from farming, or the requirement of § 1.446-1(c)(2) that, in general, an accrual method be used with regard to purchases and sales of inventory. Similarly, nothing in section 448 affects the authority of the Commissioner under section 446(b) to require the use of an accounting method that clearly reflects income, or the requirement under section 446(e) that a taxpayer secure the consent of the Commissioner before changing its method of accounting. For example, a taxpayer using the cash method may be required to change to an accrual method of accounting under section 446(b) because such method clearly reflects the taxpayer's income, even though the taxpayer is not prohibited by section 448 from using the cash method. Similarly, a taxpayer using an accrual method of accounting that is not prohibited by section 448 from using the cash method may not change to the cash method unless the taxpayer secures the consent of the Commissioner under section 446(e).

(g) *Treatment of accounting method change and rules for section 481(a) adjustment—(1) In general.* Any taxpayer to whom section 448 applies must change its method of accounting in accordance with the provisions of this paragraph (g). In the case of any taxpayer required by this section to change its method of accounting for any taxable year, the change shall be treated as a change initiated by the taxpayer. A taxpayer must change to an overall accrual method of accounting for the first taxable year the taxpayer is subject to this section or a subsequent taxable year in which the taxpayer is newly subject to this section after previously making a change in method of accounting that complies with section 448 (mandatory section 448 year). A taxpayer may have more than one mandatory section 448 year. For example, a taxpayer may exceed the gross receipts test of section 448(c) in non-consecutive taxable years. If the taxpayer complies with the provisions of paragraph (g)(3) of this section for its mandatory section 448 year, the change shall be treated as made with the consent of the Commissioner. The change shall be implemented pursuant to the applicable administrative procedures to obtain the automatic

consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (See Revenue Procedure 2015-13, 2015-5 IRB 419 (or successor) (see § 601.601(d)(2) of this chapter)). This paragraph (g) applies only to a taxpayer who changes from the cash method as required by this section. This paragraph (g) does not apply to a change in method of accounting required by any Code section (or applicable regulation) other than this section.

(2) *Section 481(a) adjustment.* The amount of the net section 481(a) adjustment and the adjustment period necessary to implement a change in method of accounting required under this section are determined under § 1.446-1(e) and the applicable administrative procedures to obtain the Commissioner's consent to change a method of accounting as published in the Internal Revenue Bulletin (see also § 601.601(d)(2) of this chapter).

(3) *Prior change in overall method of accounting under this section.* A taxpayer that otherwise meets the requirements of paragraph (c) of this section, and that had during any of the five taxable years ending with the taxable year changed its overall method of accounting from the cash method because it no longer met the gross receipts test of section 448(c) provided under paragraph (c) of this section or because it was a tax shelter as provided under paragraph (b)(2) of this section, may not change its overall method of accounting back to the cash method without the written consent of the Commissioner. Requests for consent must follow the applicable administrative procedures to obtain the written consent of the Commissioner to change a method of accounting under section 446(e) as published in the Internal Revenue Bulletin (see also § 601.601(d)(2) of this chapter). For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446-1.

(h) *Applicability dates.* The rules of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

■ **Par. 16.** Newly redesignated § 1.448-3 is amended by revising paragraphs (a)(2) and (h) to read as follows:

§ 1.448-3 Nonaccrual of certain amounts by service providers.

(a) * * *

(2) The taxpayer meets the gross receipts test of section 448(c) and

§ 1.448-1T(f)(2) (in the case of taxable years beginning before January 1, 2018), or § 1.448-2(c) (in the case of taxable years beginning after December 31, 2017) for all prior taxable years.

* * * * *

(h) *Applicability dates.* (1) Except as provided in paragraph (h)(2) of this section, this section is applicable for taxable years ending on or after August 31, 2006. (2) The rules of paragraph (a)(2) of this section apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before [date the Treasury Decision adopting these regulations as final is published in the **Federal Register**], see § 1.448-2 as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 17.** Section 1.460-0 is amended by:

■ 1. Adding an entry for § 1.460-1(h)(3).

■ 2. Revising the entries for § 1.460-3(b)(3), § 1.460-3(b)(3)(i) and (ii), and adding entries for § 1.460-3(b)(3)(ii)(A), (B), (C) and (D).

■ 3. Removing the entry for § 1.460-3(b)(3)(iii).

■ 4. Adding entries for § 1.460-3(d), § 1.460-4(i), and § 1.460-6(k).

The additions and revisions read as follows:

§ 1.460-0 Outline of regulations under section 460.

* * * * *

§ 1.460-1 Long-term contracts.

* * * * *

(h) * * *

(3) Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).

* * * * *

§ 1.460-3 Long-term construction contracts.

* * * * *

(b) * * *

(3) Gross receipts test of section 448(c)

(i) In general

(ii) Application of gross receipts test

(A) In general

(B) Gross receipts of individuals, etc.

(C) Partners and S corporation

shareholders

(D) Examples

(1) Example 1.

(2) Example 2.

* * * * *

(d) Applicability dates.

§ 1.460-4 Methods of Accounting for long-term contracts.

* * * * *

(i) Applicability date.

* * * * *

§ 1.460-6 Look-back method.

* * * * *

(k) Applicability date.

§ 1.460-1

■ **Par. 18.** Section 1.460-1 is amended by adding three sentences to the end of paragraph (f)(3) and adding paragraph (h)(3) to read as follows:

§ 1.460-1 Long-term contracts.

(f) * * *

(3) * * * A taxpayer may adopt any permissible method of accounting for each classification of contract. Such adoption is not a change in method of accounting under section 446 and the accompanying regulations. For example, a taxpayer that has had only contracts classified as nonexempt long-term contracts and has used the PCM for these contracts may adopt an exempt contract method in the taxable year it first enters into an exempt long-term contract.

* * * * *

(h) * * *

(3) *Changes made by Tax Cuts and Jobs Act (Pub. L. 115-97).* Paragraph (f)(3) of this section, and § 1.460-5(d)(1) and (d)(3), apply for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**].

* * * * *

■ **Par. 19.** Section 1.460-3 is amended by revising paragraphs (b)(1)(ii) and (b)(3) and adding paragraph (d) to read as follows:

§ 1.460-3 Long-term construction contracts.

* * * * *

(b) * * *

(1) * * *

(ii) Other construction contract, entered into after December 31, 2017, in a taxable year ending after December 31, 2017, by a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting (cash method) under section 448(a)(3), who estimates at the time such contract is entered into that such contract will be completed within the 2-year period beginning on the contract commencement date, and who meets the gross receipts test described in paragraph (b)(3) of this section.

(3) *Gross receipts test of section 448(c)*—(i) *In general.* A taxpayer, other than a tax shelter prohibited from using the cash method under section 448(a)(3), satisfies the gross receipts test of this paragraph (b)(3) if it meets the gross receipts test of section 448(c) and § 1.448-2(c)(2).

(ii) *Application of gross receipts test*—(A) *In general.* In the case of any taxpayer that is not a corporation or a

partnership, and except as provided in paragraphs (b)(3)(ii)(B) and (C) of this section, the gross receipts test of section 448(c) and the accompanying regulations are applied in the same manner as if each trade or business of such taxpayer were a corporation or partnership.

(B) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or business are excluded from the gross receipts the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W-2.

(C) *Partners and S corporation shareholders.* Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of partnership gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder includes the pro rata share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(D) *Example.* The operation of this paragraph (b)(3) is illustrated by the following examples:

(1) *Example 1.* Taxpayer A is an individual who operates two separate and distinct trades or business that are reported on Schedule C, *Profit or Loss from Business*, of A's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (b)(3)(ii)(B) of this section, for 2020, neither of A's trades or businesses meets the gross receipts test of paragraph (b)(3) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(2) *Example 2.* Taxpayer B is an individual who operates three separate and distinct trades or business that are reported on Schedule C of B's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business

Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (b)(3)(ii)(B) of this section, B's gross receipts are the combined amount derived from all three of B's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (b)(3)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(d) *Applicability Dates.* Paragraphs (b)(1)(ii) and (b)(3) of this section apply, for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For contracts entered into before January 1, 2018, see § 1.460-3(b)(1)(ii) and (b)(3) as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 20.** Section 1.460-4 is amended by revising the first sentence of paragraph (f)(1) and adding paragraph (i) to read as follows:

§ 1.460-4 Methods of Accounting for long-term contracts.

(f) * * *

(1) * * * Under section 56(a)(3), a taxpayer subject to the AMT must use the PCM to determine its AMTI from any long-term contract entered into on or after March 1, 1986, that is not a home construction contract, as defined in § 1.460-3(b)(2). * * *

(i) *Applicability date.* Paragraph (f)(1) of this section applies for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see § 1.460-4(f)(1) as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 21.** Section 1.460-5 is amended:

■ 1. In paragraph (d)(1), by removing the language "(concerning contracts of homebuilders that do not satisfy the \$10,000,000 gross receipts test described in § 1.460-3(b)(3) or will not be completed within two years of the contract commencement date)".

■ 2. By revising paragraph (d)(3).

The revision reads as follows:

§ 1.460-5 Cost allocation rules.

* * * * *

(d) * * *

(3) *Large homebuilders.* A taxpayer must capitalize the costs of home construction contracts under section

263A, unless the taxpayer estimates, when entering into the contract, that it will be completed within two years of the contract commencement date, and the taxpayer satisfies the gross receipts test of section 448(c) described in § 1.460-3(b)(3) for the taxable year in which the contract is entered into.

* * * * *

■ **Par. 22.** Section 1.460-6 is amended:

■ 1. In paragraph (b)(2) introductory text, by removing the language "section 460(e)(4)" and adding in its place the language "section 460(e)(3)".

■ 2. By revising the first and last sentences of paragraph (b)(2)(ii).

■ 3. By designating the undesignated text after paragraph (b)(3)(ii) as paragraph (b)(3)(iii).

■ 4. In newly designated paragraph (b)(3)(iii), by adding a sentence to the end of the paragraph.

■ 5. In paragraph (c)(1)(i), by revising the fifth sentence.

■ 6. In paragraph (c)(2)(i), by revising the third sentence.

■ 7. In paragraph (c)(2)(iv), by revising the first sentence.

■ 8. In paragraph (c)(3)(ii), by revising the first sentence.

■ 9. In paragraph (c)(3)(vi), by revising the first sentence.

■ 10. In paragraph (d)(2)(i), by removing the language "whether or not the taxpayer would have been subject to the alternative minimum tax" and adding in its place the language "for taxpayers subject to the alternative minimum tax without regard to whether tentative minimum tax exceeds regular tax for the redetermination year".

■ 11. By revising paragraph (d)(4)(i)(A).

■ 12. By designating paragraph (h)(8)(ii) *Example 7* as paragraph (h)(8)(iii).

■ 13. By revising newly designated paragraph (h)(8)(iii).

■ 14. By adding paragraph (k).

The revisions and additions read as follows:

§ 1.460-6 Look-back method.

* * * * *

(b) * * *

(2) * * *

(ii) is not a home construction contract but is estimated to be completed within a 2-year period by a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3), who meets the gross receipts test of section 448(c) and § 1.460-3(b)(3) for the taxable year in which such contract is entered into. * * * The look-back method, however, applies to the alternative minimum taxable income from a contract of this type, for those taxpayers subject to the AMT in taxable

years prior to the filing taxable year in which the look-back method is required, unless the contract is exempt from required use of the percentage of completion method under section 56(a)(3).

(3) * * *

(iii) * * * For contracts entered into after December 31, 2017, in a taxable year ending after December 31, 2017, a taxpayer's gross receipts are determined in the manner required by regulations under section 448(c).

* * * * *

(c) * * *

(1) * * *

(i) * * * Based on this reapplication, the taxpayer determines the amount of taxable income (and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c)) that would have been reported for each year prior to the filing year that is affected by contracts completed or adjusted in the filing year if the actual, rather than estimated, total contract price and costs had been used in applying the percentage of completion method to these contracts, and to any other contracts completed or adjusted in a year preceding the filing year. * * *

* * * * *

(2) * * *

(i) * * * The taxpayer then must determine the amount of taxable income (and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c)) that would have been reported for each affected tax year preceding the filing year if the percentage of completion method had been applied on the basis of actual contract price and contract costs in reporting income from all contracts completed or adjusted in the filing year and in any preceding year. * * *

* * * * *

(iv) * * * In general, because income under the percentage of completion method is generally reported as costs are incurred, the taxable income and, when applicable, alternative minimum taxable income and modified taxable income under section 59A(c), are recomputed only for each year in which allocable contract costs were incurred. * * *

* * * * *

(3) * * *

(ii) * * * Under the method described in this paragraph (c)(3) (actual method), a taxpayer first must determine what its regular and, when applicable, its alternative minimum tax and base erosion minimum tax liability would have been for each redetermination year if the amounts of

contract income allocated in Step One for all contracts completed or adjusted in the filing year and in any prior year were substituted for the amounts of contract income reported under the percentage of completion method on the taxpayer's original return (or as subsequently adjusted on examination, or by amended return). * * *

* * * * *

(vi) * * * For purposes of Step Two, the income tax liability must be redetermined by taking into account all applicable additions to tax, credits, and net operating loss carrybacks and carryovers. Thus, the taxes, if any, imposed under sections 55 and 59A (relating to alternative and base erosion minimum tax, respectively) must be taken into account. * * *

* * * * *

(d) * * *

(4) * * *

(i) * * *

(A) *General rule.* The simplified marginal impact method is required to be used with respect to income reported from domestic contracts by a pass-through entity that is either a partnership, an S corporation, or a trust, and that is not closely held. With respect to contracts described in the preceding sentence, the simplified marginal impact method is applied by the pass-through entity at the entity level. The pass-through entity determines the amount of any hypothetical underpayment or overpayment for a redetermination year using the highest rate of tax in effect for corporations under section 11. However, for redetermination years beginning before January 1, 2018, the pass-through entity uses the highest rates of tax in effect for corporations under section 11 and section 55(b)(1). Further, the pass-through entity uses the highest rates of tax imposed on individuals under section 1 and section 55(b)(1) if, at all times during the redetermination year involved (that is, the year in which the hypothetical increase or decrease in income arises), more than 50 percent of the interests in the entity were held by individuals directly or through 1 or more pass-through entities. * * *

* * * * *

(h) * * *

(8) * * *

(iii) *Example 7.* X, a calendar year C corporation, is engaged in the construction of real property under contracts that are completed within a 24-month period. Its average annual gross receipts for the prior 3-taxable-year period does not exceed \$25,000,000. As permitted by section 460(e)(1)(B), X uses the completed

contract method (CCM) for regular tax purposes. However, X is engaged in the construction of commercial real property and, for years beginning before January 1, 2018, is required to use the percentage of completion method (PCM) for alternative minimum tax (AMT) purposes. Assume that for 2017, 2018, and 2019, X has only one long-term contract, which is entered into in 2017 and completed in 2019 and that in 2017 X's average annual gross receipts for the prior 3-taxable-years do not exceed \$10,000,000. Assume further that X estimates gross income from the contract to be \$2,000, total contract costs to be \$1,000, and that the contract is 25 percent complete in 2017 and 70 percent complete in 2018, and 5 percent complete in 2019. In 2019, the year of completion, gross income from the contract is actually \$3,000, instead of \$2,000, and costs are actually \$1,000. Because X was required to use the PCM for 2017 for AMT purposes, X must apply the look-back method to its AMT reporting for that year. X has elected to use the simplified marginal impact method. For 2017, X's income using estimated contract price and costs is as follows:

TABLE 1 TO PARAGRAPH (h)(8)(III)

Estimates	2017
Gross Income	\$500 = (\$2,000 × 25%)
Deductions	\$(250) = (\$1,000 × 25%)
Contract Income—PCM.	\$250

(A) When X files its federal income tax return for 2019, the contract completion year, X applies the look-back method. For 2017, X's income using actual contract price and costs is as follows:

TABLE 2 TO PARAGRAPH (h)(8)(III)(A)

Actual	2017
Gross Income	\$750 = (\$3,000 × 25%)
Deductions	\$(250) = (\$1,000 × 25%)
Contract Income—PCM.	\$500

(B) Accordingly, the reallocation of contract income under the look-back method results in an increase of income for AMT purposes for 2017 of \$250 (\$500 – \$250). Under the simplified marginal impact method, X applies the highest rate of tax under section 55(b)(1) to this increase, which produces a hypothetical underpayment for 2017 of \$50 (.20 × \$250). Interest is charged to X on this \$50 underpayment from the

due date of X's 2017 return until the due date of X's 2019 return. X, a C corporation, is not subject to the AMT in 2018. X does not compute alternative minimum taxable income or use the PCM in that year. Accordingly, look-back does not apply to 2018.

* * * * *

(k) *Applicability date.* Paragraphs (b)(2), (b)(2)(ii), (b)(3)(ii), (c)(1)(i), (c)(2)(i), (c)(2)(iv), (c)(3)(ii), (c)(3)(vi), (d)(2)(i), (d)(4)(i)(A), and (h)(8)(iii) of this section, apply for taxable years beginning on or after [date the Treasury decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see §§ 1.460-6(b)(2), 1.460-6(b)(2)(ii), 1.460-6(b)(3)(ii), 1.460-6(c)(1)(i), 1.460-6(c)(2)(i) and (iv), 1.460-6(c)(3)(ii) and (vi), 1.460-6(d)(2)(i), 1.460-6(d)(4)(i)(A), and 1.460-6(h)(8)(iii) as contained in 26 CFR part 1, revised April 1, 2019.

■ **Par. 23.** § 1.471-1 is amended by:

- 1. Designating the undesignated paragraph as paragraph (a).
- 2. Adding a heading to newly designated paragraph (a) and revising the first sentence.
- 3. Adding paragraph (b).

The revision and addition read as follows:

§ 1.471-1 Need for inventories.

(a) *In general.* Except as provided in paragraph (b) of this section, in order to reflect taxable income correctly, inventories at the beginning and end of each taxable year are necessary in every case in which the production, purchase, or sale of merchandise is an income-producing factor. * * *

(b) *Exemption for certain small business taxpayers—(1) In general.* Paragraph (a) of this section shall not apply to a taxpayer, other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting (cash method) under section 448(a)(3), in any taxable year if the taxpayer meets the gross receipts test provided in paragraph (b)(2) of this section, and uses as a method of accounting for its inventory a method that is described in paragraph (b)(3) of this section.

(2) *Gross receipts test—(i) In general.* A taxpayer, other than a tax shelter prohibited from using the cash method under section 448(a)(3), meets the gross receipts test of paragraph (b)(1) of this section if it meets the gross receipts test of section 448(c) and § 1.448-2(c). The gross receipts test applies to determine whether a taxpayer is eligible to use the exemption provided in paragraph (b) of this section even if the taxpayer is not otherwise subject to section 448(a).

(ii) *Application of the gross receipts test—(A) In general.* In the case of any taxpayer that is not a corporation or partnership, and except as otherwise provided in paragraphs (b)(2)(ii)(B) and (C) of this section, the gross receipts test of section 448(c) and the accompanying regulations are applied in the same manner as each trade or business of the taxpayer were a corporation or partnership.

(B) *Gross receipts of individuals, etc.* Except when the aggregation rules of section 448(c)(2) apply, the gross receipts of a taxpayer other than a corporation or partnership are the amount derived from all trades or businesses of such taxpayer. Amounts not related to a trade or businesses are excluded from the gross receipts of the taxpayer. For example, an individual taxpayer's gross receipts do not include inherently personal amounts, such as: personal injury awards or settlements with respect to an injury of the individual taxpayer, disability benefits, Social Security benefits received by the taxpayer during the taxable year, and wages received as an employee that are reported on Form W-2.

(C) *Partners and S corporation shareholders—(1) In general.* Except when the aggregation rules of section 448(c)(2) apply, each partner in a partnership includes a share of the partnership's gross receipts in proportion to such partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703. Similarly, a shareholder includes the *pro rata* share of S corporation gross receipts taken into account by the S corporation under section 1363(b).

(2) [Reserved]

(D) *Examples.* The operation of this paragraph (b)(2) is illustrated by the following examples:

(1) *Example 1.* Taxpayer A, a calendar year S corporation, is a reseller and maintains inventories. In 2017, 2018, and 2019, S's gross receipts were \$10 million, \$11 million, and \$13 million respectively. A is not prohibited from using the cash method under section 448(a)(3). For 2020, A meets the gross receipts test of paragraph (b)(2) of this section.

(2) *Example 2.* Taxpayer B operates two separate and distinct trades or businesses that are reported on Schedule C, *Profit or Loss from Business*, of B's Federal income tax return. For 2020, one trade or business has annual average gross receipts of \$5 million, and the other trade or business has average annual gross receipts of \$35 million. Under paragraph (b)(2)(ii)(B) of

this section, for 2020, neither of B's trades or businesses meets the gross receipts test of paragraph (b)(2) of this section (\$5 million + \$35 million = \$40 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Example 3.* Taxpayer C is an individual who operates three separate and distinct trades or business that are reported on Schedule C of C's Federal income tax return. For 2020, Business X is a retail store with average annual gross receipts of \$15 million, Business Y is a dance studio with average annual gross receipts of \$6 million, and Business Z is a car repair shop with average annual gross receipts of \$12 million. Under paragraph (b)(2)(ii)(B) of this section, C's gross receipts are the combined amount derived from all three of C's trades or businesses. Therefore, for 2020, X, Y and Z do not meet the gross receipts test of paragraph (b)(2)(i) of this section (\$15 million + \$6 million + \$12 million = \$33 million, which is greater than the inflation-adjusted gross receipts test amount for 2020, which is \$26 million).

(3) *Methods of accounting under the small business taxpayer exemption.* A taxpayer eligible to use, and that chooses to use, the exemption described in paragraph (b) of this section may account for its inventory by either:

(i) Accounting for its inventory items as non-incidentals materials and supplies, as described in paragraph (b)(4) of this section; or

(ii) Using the method for each item that is reflected in the taxpayer's applicable financial statement (AFS) (AFS section 471(c) inventory method); or, if the taxpayer does not have an AFS for the taxable year, the books and records of the taxpayer prepared in accordance with the taxpayer's accounting procedures, as defined in paragraph (b)(6)(ii) of this section (non-AFS section 471(c) inventory method).

(4) *Inventory treated as non-incidentals materials and supplies—(i) In general.* Inventory treated as non-incidentals materials and supplies (section 471(c) materials and supplies) is recovered through costs of goods sold only in the taxable year in which such inventory is actually used or consumed in the taxpayer's business, or in the taxable year in which the taxpayer pays for or incurs the costs of the items, whichever is later. Section 471 materials and supplies are used or consumed in the taxable year in which the taxpayer provides the items to its customer. Inventory treated as non-incidentals materials and supplies under this paragraph (b)(4) is not eligible for the de

minimis safe harbor election under § 1.263(a)–1(f)(2).

(ii) *Identification and valuation of section 471(c) materials and supplies.* A taxpayer may determine the amount of the section 471(c) materials and supplies that are recoverable through costs of goods sold by using either a specific identification method, a first-in, first-out (FIFO) method, or an average cost method, provided that method is used consistently. See § 1.471–2(d). A taxpayer that uses the section 471 materials and supplies method may not use any other method described in the regulations under section 471, or the last-in, first-out (LIFO) method described in section 472 and the accompanying regulations, to either identify section 471(c) materials and supplies, or to value those section 471(c) materials and supplies. The inventory costs includible in the section 471(c) materials and supplies method are the direct costs of the property produced or property acquired for resale. However, an inventory cost does not include a cost for which a deduction would be disallowed, or that is not otherwise recoverable but for paragraph (b)(4) of this section, in whole or in part, under a provision of the Internal Revenue Code.

(iii) *Allocation methods.* The section 471 materials and supplies method may allocate the costs of such inventory items by using specific identification or using any reasonable method.

(iv) *Example.* Taxpayer D is a baker that reports its baking trade or business on Schedule C, *Profit or Loss From Business*, of the Form 1040, *Individual Tax Return*, and D's baking business has average annual gross receipts for the 3-taxable years prior to 2019 of less than \$100,000. D meets the gross receipts test of section 448(c) and is not prohibited from using the cash method under section 448(a)(3) in 2019. Therefore, D qualifies as a small business taxpayer under paragraph (b)(2) of this section. D uses the overall cash method, and the section 471(c) non-incident materials and supplies method. D purchases \$50 of peanut butter in November 2019. In December 2019, D uses all of the peanut butter to bake cookies available for immediate sale. D sells the peanut butter cookies to customers in January 2020. The peanut butter cookies are used or consumed under paragraph (b)(4)(i) of this section in January 2020 when the cookies are sold to customers, and D may recover the cost of the peanut butter in 2020.

(5) *AFS section 471(c) method—(i) In general.* A taxpayer that meets the gross receipts test described in paragraph (b)(2) of this section and that has an

AFS for such taxable year may use the AFS section 471(c) method described in this paragraph to account for its inventory costs for the taxable year. For purposes of the AFS section 471(c) method, an inventory cost is a cost that a taxpayer capitalizes to property produced or property acquired for resale in its AFS. However, an inventory cost does not include a cost that is neither deductible nor otherwise recoverable but for paragraph (b)(5) of this section, in whole or in part, under a provision of the Internal Revenue Code (for example, section 162(c), (e), (f), (g), or 274). In lieu of the inventory method described in section 471(a), a taxpayer using the AFS section 471(c) method recovers its inventory costs in accordance with the inventory method used in its AFS.

(ii) *Definition of AFS.* The term AFS is defined in section 451(b)(3) and the accompanying regulations. See § 1.451–3(c)(1). The rules relating to additional AFS issues provided in § 1.451–3(h) apply to the AFS section 471(c) method. A taxpayer has an AFS for the taxable year if all of the taxpayer's taxable year is covered by an AFS.

(iii) *Timing of inventory costs.* Notwithstanding the timing rules used in the taxpayer's AFS, the amount of any inventoriable cost may not be capitalized or otherwise taken into account for Federal income tax purposes any earlier than the taxable year during which the amount is paid or incurred under the taxpayer's overall method of accounting, as described in § 1.446–1(c)(1). For example, in the case of an accrual method taxpayer, inventoriable costs must satisfy the all events test, including economic performance, of section 461. See § 1.446–1(c)(1)(ii) and section 461 and the accompanying regulations.

(iv) *Example.* H is a calendar year C corporation that is engaged in the trade or business of selling office supplies and providing copier repair services. H meets the gross receipts test of section 448(c) and is not prohibited from using the cash method under section 448(a)(3) for 2019 or 2020. For Federal income tax purposes, H chooses to account for purchases and sales of inventory using an accrual method of accounting and for all other items using the cash method. For AFS purposes, H uses an overall accrual method of accounting. H uses the AFS section 471(c) method of accounting. In H's 2019 AFS, H incurred \$2 million in purchases of office supplies held for resale and recovered the \$2 million as cost of goods sold. On January 5, 2020, H makes payment on \$1.5 million of these office supplies. For purposes of the AFS section 471(c)

method of accounting, H can recover the \$2 million of office supplies in 2019 because the amount has been included in cost of goods sold in its AFS inventory method and section 461 has been satisfied.

(6) *Non-AFS section 471(c) method—(i) In general.* A taxpayer that meets the gross receipts test described in paragraph (b)(2) of this section for a taxable year and that does not have an AFS, as defined in paragraph (b)(5)(ii) of this section, for such taxable year may use the non-AFS section 471(c) method to account for its inventories for the taxable year in accordance with this paragraph (b)(6). The non-AFS section 471(c) method is the method of accounting used for inventory in the taxpayer's books and records that properly reflect its business activities for non-tax purposes and are prepared in accordance with the taxpayer's accounting procedures. For purposes of the non-AFS section 471(c) method, an inventory cost is a cost that the taxpayer capitalizes to property produced or property acquired for resale in its books and records, except as provided in paragraph (b)(6)(ii) of this section. In lieu of the inventory method described in section 471(a), a taxpayer using the non-AFS section 471(c) method recovers its costs through its book inventory method of accounting. A taxpayer that has an AFS for such taxable year may not use the non-AFS section 471(c) method.

(ii) *Timing and amounts of costs.* Notwithstanding the timing of costs reflected in the taxpayer's books and records, a taxpayer may not deduct or recover any costs that have not been paid or incurred under the taxpayer's overall method of accounting, as described in § 1.446–1(c)(1), or that are neither deductible nor otherwise recoverable but for the application of this paragraph (b)(6), in whole or in part, under a provision of the Internal Revenue Code (for example, section 162(c), (e), (f), (g) or 274). For example, in the case of an accrual method taxpayer or a taxpayer using an accrual method for purchases and sales, inventory costs must satisfy the all events test, including economic performance, under section 461(h). See § 1.446–1(c)(1)(ii), and section 461 and the accompanying regulations.

(iii) *Examples.* The following examples illustrate the rules of paragraph (b)(6) of this section.

(A) *Example 1.* Taxpayer E is a C corporation that is engaged in the retail trade or business of selling beer, wine, and liquor. In 2019, E has average annual gross receipts for the prior 3-taxable-years of less than \$15 million,

and is not otherwise prohibited from using the cash method under section 448(a)(3). E does not have an AFS for the 2019 taxable year. E is eligible to use the non-AFS section 471(c) method of accounting. E uses the overall cash method, and the non-AFS section 471(c) method of accounting for Federal income tax purposes. In E's electronic bookkeeping software, E treats all costs paid during the taxable year as presently deductible. As part of its regular business practice, E's employees take a physical count of inventory on E's selling floor and its warehouse on December 31, 2019, and E also makes representations to its creditor of the amount of inventory on hand for specific categories of product it sells. E may not expense all of its costs paid during the 2019 taxable year because its books and records do not accurately reflect the inventory records used for non-tax purposes in its regular business activity. E must use the physical inventory count taken at the end of 2019 to determine its ending inventory. E may include in cost of goods sold for 2019 those inventory costs that are not properly allocated to ending inventory.

(B) *Example 2.* F is a C corporation that is engaged in the manufacture of baseball bats. In 2019, F has average annual gross receipts for the prior 3-taxable-years of less than \$25 million, and is not otherwise prohibited from using the cash method under section 448(a)(3). F does not have an AFS for the 2019 taxable year. For Federal

income tax purposes, F uses the overall cash method of accounting, and the non-AFS section 471(c) method of accounting. For its books and records, F uses an overall accrual method and maintains inventories. In December 2019, F's financial statements show \$500,000 of direct and indirect material costs. F pays its supplier in January 2020. Under paragraph (b)(6)(ii) of this section, F recovers its direct and indirect material costs in 2020.

(7) *Effect of section 471(c) on other provisions.* Nothing in section 471(c) shall have any effect on the application of any other provision of law that would otherwise apply, and no inference shall be drawn from section 471(c) with respect to the application of any such provision. For example, a taxpayer that includes inventory costs in its AFS is required to satisfy section 461 before such cost can be included in cost of goods sold for the taxable year.

Similarly, nothing in section 471(c) affects the requirement under section 446(e) that a taxpayer secure the consent of the Commissioner before changing its method of accounting. If an item of income or expense is not treated consistently from year to year, that treatment may not clearly reflect income, notwithstanding the application of this section.

(8) *Method of accounting.* A change in the method of treating inventory under this paragraph (b) is a change in method of accounting under section 446 and the accompanying regulations. A taxpayer

may change its method of accounting only with the consent of the Commissioner as required under section 446(e) and § 1.446-1. For example, if a taxpayer is using the AFS section 471(c) method or non-AFS section 471(c) method, and that taxpayer changes the method of accounting for inventory in its AFS, or its books and records, respectively, is required to secure the consent of the Commissioner before using this new method for Federal income tax purposes. However, a change from having an AFS to not having an AFS, or vice versa, without a change in the underlying method for inventory for financial reporting purposes is not a change in method of accounting under section 446(e). For rules relating to the clear reflection of income and the pattern of consistent treatment of an item, see section 446 and § 1.446-1.

(c) *Applicability dates.* This section applies for taxable years beginning on or after [date the Treasury Decision adopting these proposed regulations as final is published in the **Federal Register**]. For taxable years beginning before January 1, 2018, see § 1.471-1 as contained in 26 CFR part 1, revised April 1, 2019.

Sunita Lough,

Deputy Commissioner of Services and Enforcement.

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7 CFR Part 205

National Organic Program; Strengthening Organic Enforcement; Proposed Rule

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 205**

[Document Number AMS–NOP–17–0065; NOP–17–02]

RIN 0581–AD09

**National Organic Program;
Strengthening Organic Enforcement****AGENCY:** Agricultural Marketing Service, USDA**ACTION:** Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) proposes amending the USDA organic regulations to strengthen oversight and enforcement of the production, handling, and sale of organic agricultural products. The proposed amendments are intended to protect integrity in the organic supply chain and build consumer and industry trust in the USDA organic label by strengthening organic control systems, improving farm to market traceability, and providing robust enforcement of the USDA organic regulations. Topics addressed in this proposed rule include: Applicability of the regulations and exemptions from organic certification; National Organic Program Import Certificates; recordkeeping and product traceability; certifying agent personnel qualifications and training; standardized certificates of organic operation; unannounced on-site inspections of certified operations; oversight of certification activities; foreign conformity assessment systems; certification of grower group operations; labeling of nonretail containers; annual update requirements for certified operations; compliance and appeals processes; and calculating organic content of multi-ingredient products.

DATES: Send comments on or before October 5, 2020.

ADDRESSES: You may send comments on this proposed rule to the Federal eRulemaking Portal at <https://www.regulations.gov/>. You can access this proposed rule and instructions for submitting public comments by searching for document number, AMS–NOP–17–0065. Comments may also be sent to Jennifer Tucker, Deputy Administrator, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–So., Ag Stop 0268, Washington, DC 20250–0268; (202) 260–9151 (Fax).

Instructions: All comments received must include the docket number AMS–NOP–17–0065; NOP–17–02, and/or

Regulatory Information Number (RIN) 0581–AD09 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers, state your position(s), offer any recommended language change(s), and include relevant information and data to support your position(s) (e.g., scientific, environmental, manufacturing, industry, or industry impact information, etc.). All comments and relevant background documents posted to <https://www.regulations.gov> will include any personal information provided.

In addition to the questions following each topic in the *Overview of Proposed Amendments* section of this proposed rule, AMS is requesting comments on the following general topics:

1. The clarity of the proposed requirements. Can certified operations, handlers, and certifying agents readily determine how to comply with the proposed regulations?

2. The implementation timeframe. AMS is proposing that all requirements in this proposed rule be implemented within ten months of the effective date of the final rule (this is also one year after publication of the final rule).

3. The accuracy of the estimates in the Regulatory Impact Analysis and Regulatory Flexibility Analysis, which describe the expected costs of this proposed rule on all affected entities and on small businesses, respectively.

4. Are there alternatives to regulations, or less stringent requirements, that could achieve the same objectives as this proposed rule?

5. How will certifying agents cover the costs of additional actions required under this rule, such as the required unannounced inspections and the issuing of NOP Import Certificates? Will certifying agents charge fees that are consistent for expanded handlers, brokers, importers and exporters?

FOR FURTHER INFORMATION CONTACT:

Jennifer Tucker, Ph.D., Deputy Administrator, National Organic Program. Telephone: 202–720–3252. Email: Jennifer.Tucker@usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Summary***A. Purpose of the Proposed Rule*

This proposed rule would amend several sections of the USDA organic regulations, 7 CFR part 205, to strengthen oversight of the production, handling, certification, marketing, and sale of organic agricultural products as established by the Organic Foods Production Act of 1990 (OFPA, or “the

Act”).¹ If implemented, this proposed rule will improve organic integrity across the organic supply chain, and benefit stakeholders throughout the organic industry. The proposed amendments will close gaps in the current regulations to build consistent certification practices to deter and detect organic fraud, and improve transparency and product traceability. In addition, the proposed amendments will assure consumers that organic products meet a robust, consistent standard and reinforce the value of the organic label.

The need for more consistent oversight to protect organic integrity is a product of the rapidly expanding organic market, increasingly complex organic supply chains, and price premiums for organic products. Total sales of organic agricultural products in the United States grew from \$3.4 billion in 1997 to \$55.1 billion in 2019.² This substantial market growth has allowed many additional types of business to participate in the organic supply chain, and organic agricultural products are now traded on a global scale. Today’s global organic marketplace is marked by a multifaceted supply chain with organic products increasingly sold and handled by entities not regulated by the USDA. The absence of direct enforcement authority over some entities in the organic supply chain, in combination with price premiums for organic products, presents the opportunity and incentive for organic fraud, which has been discovered in the organic sector by both the National Organic Program (NOP) and organic stakeholders. The amendments in this proposed rule are designed to mitigate the occurrence of organic fraud.

In response to their experiences in the organic system, stakeholders have repeatedly called for the NOP to take steps to improve oversight of organic systems and enforcement of the USDA organic regulations. Commonly cited areas for improvement include certification of excluded handlers, organic import oversight, fraud prevention, organic trade arrangements, and organic inspector qualifications. In addition, public discussions on many proposals included in this action occurred during multiple National

¹ The Organic Foods Production Act of 1990, 7 U.S.C. 6501–6524, is the statute from which the Agricultural Marketing Service derives authority to administer the NOP, and authority to amend the regulations as described in this proposed rule. This document is available at: <https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter94&edition=prelim>.

² Organic Trade Association, Organic Industry Survey, 2018–2020.

Organic Standards Board (NOSB) meetings.³

The NOP identified the need for many of the proposed amendments as part of its direct experience in administering this program, particularly during complaint investigations and audits of certifying agents. Other proposed amendments are based on recent amendments to the OFPA included in the Agriculture Improvement Act of 2018;⁴ the recommendations of a 2017 Office of Inspector General audit; the recommendations of a federal advisory committee, the NOSB; and industry stakeholder feedback. The amendments in this proposed rule are intended to: (1) Strengthen organic control systems; (2) improve organic import oversight; (3) clarify organic certification standards; and (4) enhance supply chain traceability.

B. Summary of Provisions

This proposed rule will strengthen enforcement of the USDA organic regulations through several actions mandated by the Agriculture Improvement Act of 2018:

1. Reduce the types of uncertified entities in the organic supply chain that operate without USDA oversight—including importers, brokers, and traders of organic products. This will safeguard organic product integrity and improve traceability.

2. Require the use of NOP Import Certificates, or equivalent data, for all organic products entering the United States. This proposed change will expand the use of NOP Import Certificates to all organic products imported into the United States, improving the oversight and traceability of imported organic products.

3. Clarify the NOP’s authority to oversee certification activities, including the authority to act against an agent or office of a certifying agent. Additionally, certifying agents must notify the NOP upon opening a new office, which will allow the NOP to provide more effective and consistent

oversight of certifying agents and their activities.

Additionally, this proposed rule includes several discretionary actions that work in alignment with the provisions above to further strengthen enforcement of the USDA organic regulations:

4. Clarify the labeling of nonretail containers used to ship or store organic products. Requiring additional information on nonretail containers will clearly identify organic products, reduce the mishandling of organic products, and support traceability. This is needed to maximize the linkage between operation certificates and import certificates and the organic product.

5. Specify the minimum number of unannounced inspections of certified operations that must be conducted annually by accredited certifying agents, and require that supply chain audits be completed during on-site inspections.

6. Require certifying agents to issue standardized certificates of organic operation generated from the USDA’s Organic Integrity Database (INTEGRITY) and to keep accurate and current certified operation data in INTEGRITY. Standardization will simplify the verification of valid organic certificates and import certificates. It will also reduce reporting, by eliminating the need to provide notices of approval or denial of certification and annual lists of certified operations to USDA.

7. Clarify that certified operations only need to submit changes to their organic system plan during annual updates, and clarify that certifying agents must conduct annual inspections of certified operations. This will reduce paperwork burden for organic operations and ensure that all organic operations are inspected at least once a year.

8. Establish specific qualification and training requirements for certifying agent personnel, including inspectors and certification reviewers. Requiring that personnel meet minimum education and experience qualifications

and requiring continuing education will ensure quality and consistency of certification activities performed by certifying agents.

9. Clarify conditions for establishing, evaluating, and terminating equivalence determinations with foreign government organic programs, based on an evaluation of their organic foreign conformity systems. This will ensure the compliance of organic products imported from countries that have organic equivalence determinations with the United States.

10. Clarify requirements to strengthen and streamline enforcement processes, specifically noting that the NOP may initiate enforcement action against any violator of the OFPA, including responsible parties; defining the term adverse action to clarify what actions may be appealed and by whom; and clarifying NOP’s appeal procedures and options for alternative dispute resolution.

11. Specify certification requirements for grower group operations, to provide consistent, enforceable standards and ensure compliance with the USDA organic regulations. Grower group certification would be restricted to crop production and handling only, and would require the use of an internal control system to monitor compliance.

12. Clarify the method of calculating the percentage of organic ingredients in a multi-ingredient product to promote consistent interpretation and application of the regulation.

13. Require certified operations and certifying agents to develop improved recordkeeping, organic fraud prevention, and trace-back audit processes. Information sharing between certifying agents and documented organic fraud prevention procedures are also required.

C. Costs and Benefits

AMS estimates the following costs and benefits of this proposed rule:

	Economic impact of SOE proposed rule	
	Annualized ^a	Total ^b
Costs	\$7,205,815–\$7,351,910	\$65,629,941–\$87,766,628
Benefits	\$83,992,975–\$86,874,833	\$765,000,793–\$1,037,106,112

^a Estimated 15-year annualized domestic costs for affected industry discounted at 3 and 7 percent.

^b Estimated total domestic costs for affected industry in Net Present Value discounted at 3 and 7 percent, 15 year.

³ The April 2019 NOSB meeting is the most recent example of a public discussion to address fraud concerns in the organic supply chain. A discussion document, meeting transcripts, and public comments are available at: <https://>

www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa.

⁴ The Agriculture Improvement Act of 2018 (Pub. L. 115–334), commonly known as the “2018 farm

bill,” is available at <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>. Organic certification is discussed in Title X, Section 10104.

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I. General Information

A. Does this proposed action apply to me?

You may be affected by this proposed action if you are engaged in the organic industry. Potentially affected entities may include, but are not limited to, the following:

- Individuals or business entities that are considering organic certification;
- Existing production and handling operations that are currently certified organic under the USDA organic regulations;
- Brokers, traders, and importers of organic products that are not currently certified under the USDA organic regulations;
- Operations that use non-retail containers for shipping or storing organic products;
- Retailers that sell organic products;
- Operations that receive or review organic certificates to verify compliance with USDA organic regulations;
- USDA-accredited certifying agents, inspectors, and reviewers;
- Operations that import organic products into the United States; and/or
- Operations that export organic products to the United States.

This listing is not intended to be exhaustive but identifies key entities likely to be affected by this proposed action. Other types of entities may also be affected. To determine whether you or your business may be affected by this proposed action, you should carefully examine the proposed regulatory text.

II. Background

The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6524), authorizes the Agricultural Marketing Service (AMS) to establish and maintain national standards governing the marketing of organically produced agricultural products. AMS administers these standards through the National Organic Program (NOP). Final regulations implementing the NOP, also referred to as the USDA organic regulations, were published on December 21, 2000 (65 FR 80548) and became effective on October 21, 2002.⁵ Through these regulations, AMS oversees national standards for the production, handling, labeling, and sale of organically produced agricultural products.

Since full implementation of the USDA organic regulations, the organic industry has experienced significant change. Both demand for and sales of organic products have risen steadily; total U.S. sales of organic products reached more than \$55 billion in 2019.⁶ The number of businesses producing, handling, marketing, and selling organic products has also grown to meet consumer demand. Rapid growth has attracted many businesses to the USDA organic label and increased the complexity of the global organic supply chain.

AMS is confident in the integrity and value of the USDA organic seal. Consumers can trust the organic label due to a rigorous oversight system that operates globally. However, the growth and complexity of the modern organic industry has exposed the limitations of the current organic regulations, revealing gaps in oversight and enforcement that the original regulations do not address. A lack of clear and specific standards in portions of the regulations has sometimes led to different interpretations of the regulations, inconsistent practices, and unequal enforcement across the industry. Increasingly complex organic supply chains reduce transparency and

complicate traceability, yet these elements are essential to trust in the organic label. In addition, businesses that operate in the organic supply chain without oversight from the NOP pose risks to organic integrity. This can lead to mishandling of organic product, loss of organic integrity, and fraud. The provisions in this proposed rule are designed to address these risks.

Complex Organic Supply Chains

The need for this proposed rule is driven partially by the increasing complexity of organic supply chains. When the organic regulations were published in 2000, organic products were marketed mostly locally or regionally, and supply chains tended to be short and transparent; for example, farm to wholesale to retail to consumer. Demand and sales have grown considerably since then. This significant market growth has attracted more producers, handlers, product suppliers, importers, brokers, distributors, and others to the organic market.

Consider the example of an organic egg supply chain in the United States, beginning with the production of certified organic corn and ending with the sale of eggs to the consumer. This demonstrates the typical entities and transactions in an organic supply chain under the existing regulations:

- A certified organic farm produces organic corn.
- The corn is transported via an uncertified truck to a local grain elevator, where it is aggregated with other organic corn from nearby producers.
- An uncertified commodity trader buys the corn.
- The corn is transported via uncertified truck to an uncertified storage facility; both transport and storage are subcontracted and are not owned by the commodity trader.
- The commodity trader sells the corn to a certified organic grain supplier; the two parties remain anonymous because they use an uncertified broker to facilitate the transaction.
- The corn is transported via uncertified rail and river barge to the grain supplier; it is transloaded and stored temporarily several times before being delivered to the certified grain supplier.
- The certified organic grain supplier stores the corn and combines it with imported organic corn purchased from an importer via an uncertified broker.
- The certified grain supplier sells the corn to a certified organic feed processor; the corn is transported via an uncertified truck.

⁵ 7 CFR part 205 National Organic Program; Final Rule. December 21, 2000. Available on the AMS website: <https://www.federalregister.gov/documents/2000/12/21/00-32257/national-organic-program>.

⁶ Organic Trade Association, Organic Industry Survey, 2020.

- The certified processor combines the corn with several other ingredients to create organic chicken feed.

- The certified processor sells the feed to a certified organic egg producer and transports it via an uncertified truck.

- The certified organic egg producer sells organic eggs to an uncertified distributor.

- The uncertified distributor sells the organic eggs to a retailer prior to final sale to the consumer.

This is just one example of a complex organic supply chain. It becomes even more complex if one considers that the processor combines several ingredients into the final chicken feed, sourced both domestically and imported. Each ingredient has its own unique supply chain—and together they weave a complex and dense web converging on a single organic product.

Organic Fraud

The risk of organic fraud has grown due to high demand for organic products, the absence of direct enforcement authority over some entities in the organic supply chain, and price premiums for organic products. Both the NOP and organic stakeholders have uncovered organic fraud in the organic supply chain. The following examples highlight the extent and complexity of organic fraud in organic grain and oilseed supply chains.

Organic Grain and Oilseed Fraud in the United States

In recent years, the NOP has identified fraud in both domestic and foreign organic grain and oilseed supply chains. These supply chains are generally complex and involve multiple changes in product ownership, creating additional risk and opportunity for fraud. Demand for organic grain and oilseed (especially for organic livestock feed) currently exceeds domestic production. In 2019, a private organic outlook firm predicted a double-digit decline in domestic organic corn and soybean production. The shortage of domestic organic commodities, combined with a projected shrinking supply, increases the incentive for organic fraud. Federal investigations show that organic grain and oilseed fraud can lead to tens of millions of dollars in fraudulent sales within just a few months. Below are several examples which outline the different actors, market complexities, and indicators of an increase in fraud.

In 2019, the U.S. Attorney's office of Northern Iowa sentenced five individuals to prison for their role in an organic grain fraud ring. The lead

defendant pled guilty to defrauding customers in a scheme involving at least \$142 million in nonorganic grains sold as organic. The lead defendant sold fraudulent grain to customers over a period of seven years, claiming the product was organically grown in Nebraska and Missouri.

In February 2020, a federal grand jury indicted an individual in South Dakota for allegedly selling \$71 million of nonorganic grains and oilseeds falsely labeled organic over five years. The fraud ring spanned multiple states. After the NOP revoked the organic business' organic certificates, the responsible parties established new brokerage firms to continue their fraud. Under the current organic regulations, these brokerages did not require organic certification; the NOP had no oversight of their activities. This proposed rule would require the certification and oversight of brokers like those involved in this case. This would allow the NOP to identify and prevent the fraud, minimizing damage to the U.S. market.

In addition to the examples above, the NOP continues to investigate multiple cases of organic grain and oilseed fraud at the production and handling levels. Continuing complaints of organic grain fraud received by the NOP demonstrate an ongoing need for stronger enforcement provisions to ensure integrity in organic supply chains.

Fraud Within Complex Supply Chains

Cases of organic fraud are often compounded by a complex supply chain. Uncertified entities acting within a complex supply chain can create significant oversight and enforcement challenges for both the NOP and accredited certifying agents. Recent fraud investigations have shown that the use of uncertified handlers can decrease the NOP's ability to prevent fraudulent grain sales in the organic market.

Fraudulent actors may obtain organic handler certification solely to take advantage of the regulatory exclusions at 7 CFR 205.101. Investigations have found fraudulent actors using these exclusions to funnel nonorganic feedstuffs through uncertified grain elevators. Because organic certifying agents sometimes consider elevators to be transportation, they are not required to obtain organic certification. In addition, because some grain elevators are not certified, the NOP cannot compel organic certifying agents to investigate the onsite activities at these elevators.

The above examples of actual fraud investigations demonstrate the complexity of organic supply chains, the certification status of the entities

involved, and the transactions where fraud occurred. It is also useful to consider the types of entities involved:

- Certified organic farms thought to supply little or none of the feedstuffs later sold as organic.

- Uncertified farms supplying non-GMO feedstuffs to uncertified grain elevators.

- Uncertified grain elevators currently excluded from certification requirements.

- Certified handlers that brokered the sale of nonorganic feedstuffs through an uncertified elevator to certified buyers, falsifying paperwork to represent the products for sale as organic.

- Certified organic handlers that consolidated fraudulent products from previous handlers, thinking the product was organic.

- Certified feed mills that purchased the nonorganic feedstuffs believing the products were organic.

- Livestock and poultry operations that purchased feed rations from the mills and thus unknowingly fed nonorganic feed to their animals, which are required to eat a diet of 100% certified organic feed.

The proposed rule would require the certification of some types of currently uncertified entities, such as the grain elevators in this example. Organic certification would subject these entities to regular, systematic oversight from accredited certifying agents and allow the NOP to monitor these entities' activities through on-site investigations, ensuring faster detection and prevention of millions of dollars in organic fraud.

Terminology and Objectives

Throughout this proposed rule, AMS refers to four concepts—organic integrity, organic fraud, audit trails, and supply chain traceability—which are integral to the purpose of this proposed rule. AMS is explaining these concepts upfront to assist reader understanding:⁷

1. *Organic integrity*: The unique attributes that make a product organic, and define its status as organic. A product that fully complies with the USDA organic regulations has integrity, and its organic qualities have not been compromised.

2. *Organic fraud*: Intentional deception for illicit economic gain, where nonorganic products are labeled, sold, or represented as organic. This may include substitutions or deliberate mislabeling; falsified records; and/or false statements given in applications or

⁷ These terms are explained only for use in this proposed rule and are not intended to represent any addition to 7 CFR part 205 or revision to the term *audit trail*.

organic system plans, or during inspections, investigations, and audits.

3. *Audit trail:* Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as “100 percent organic,” the organic ingredients of any agricultural product labeled as “organic” or “made with organic (specified ingredients)” or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement (7 CFR 205.2).

4. *Supply chain traceability:* The ability to identify and track a product (including its location, history, and organic nature) along its entire supply chain, from source to consumption, and/or “backwards” from consumption to source. A supply chain audit assesses

supply chain traceability for specific products, verifying whether records show all movement, transactions, custody, and activities involving the products.

The objective of this proposed rule is to strengthen enforcement of the USDA organic regulations and protect the integrity of the organic label by (1) strengthening organic control systems; (2) improving organic import oversight; (3) clarifying organic certification standards; and (4) enhancing supply chain traceability. AMS identified the need for these proposed changes from the following sources:

- Direct experience in administering the NOP, particularly complaint investigations and audits of accredited certifying agents;
- The Agriculture Improvement Act of 2018,⁸ which amended the OFPA.

- Recommendations of a 2017 Office of Inspector General report;⁹

- Recommendations of the NOP’s federal advisory committee, the National Organic Standards Board (NOSB); and

- Industry stakeholder and consumer feedback.

If implemented, AMS expects the amendments proposed in this rule will bring more effective oversight and enforcement, improve organic integrity and product traceability, clarify existing standards to ensure fair competition, bolster consumer trust in the organic label, reduce organic fraud, and support continued industry growth. Information about each amendment is described in more detail below.

III. Overview of Proposed Amendments

1—APPLICABILITY AND EXEMPTIONS FROM CERTIFICATION

Section	Action	Proposed text
205.2	Revise	<i>Handle.</i> To sell, process, or package agricultural products, including but not limited to trading, facilitating sale or trade, brokering, repackaging, labeling, combining, containerizing, storing, receiving, or loading.
205.2	Revise	<i>Handler.</i> Any person engaged in the business of handling agricultural products.
205.2	Revise	<i>Handling operation.</i> Any operation or portion of an operation that handles agricultural products, except for operations that are exempt from certification.
205.2	Revise	<i>Retail operation.</i> An operation that sells agricultural products directly to final consumers through in-person and/or virtual transactions.
205.100(a)	Revise	Except for the exempt operations described in §205.101, each operation, or portion of an operation, that produces or handles agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.
205.101	Revise	Exemptions from certification.
205.101	Revise	The following operations in subparagraphs (a) through (e) of this section are exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under §205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part, including the provisions for prevention of contact of organic products with prohibited substances set forth in §205.272, and the specific additional requirements stipulated in §205.101(a) through (f).
205.101(a)	Revise	A production or handling operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals \$5,000 or less annually. The products from such operations must not be used as ingredients identified as organic in processed products produced by another handling operation. Such operations must comply with the labeling provisions of §205.310.
205.101(b)	Revise	A retail operation or a portion of a retail operation that sells, but does not process, organically produced agricultural products.
205.101(c)	Revise	A retail operation or portion of a retail operation that processes agricultural products that were previously labeled for retail sale as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” provided that the products are processed onsite at the point of sale to the final consumer. Such operations must comply with the labeling provisions of §205.310, and must maintain records sufficient to: (1) Prove that agricultural products identified as organic were organically produced and handled; and (2) Verify quantities produced or sold from such agricultural products.
205.101(d)	Add	A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients (as described in §205.301(d)), or that only identifies organic ingredients on the information panel. Such operations must comply with the labeling provisions of §§205.305 and 205.310 and must maintain records sufficient to:

⁸The Agriculture Improvement Act of 2018, Public Law 115–334, is available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

⁹USDA Office of Inspector General Audit Report 01601–0001–21: National Organic Program International Trade Arrangements and Agreements.

September 2017: <https://www.usda.gov/oig/webdocs/01601-0001-21.pdf>.

1—APPLICABILITY AND EXEMPTIONS FROM CERTIFICATION—Continued

Section	Action	Proposed text
205.101(e)	Add	(1) Prove that agricultural products identified as organic were organically produced and handled; and (2) Verify quantities produced or sold from such agricultural products. An operation that only stores, receives, and/or loads agricultural products, but does not process or alter such agricultural products.
205.101(f)	Add	Records described in subparagraphs (a)–(d) of this section must be maintained for no less than 3 years beyond their creation, and the operations must allow representatives of the Secretary and the applicable State organic programs’ governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

AMS proposes amending §§ 205.2 and 205.100–101 of the USDA organic regulations to clarify the applicability of the regulations and limit the types of operations excluded from organic certification in the global supply chain. This includes revising the definitions of *handle*, *handler*, *handling operation*, and *retail food establishment*. The proposed amendments would require certification of operations that facilitate the sale or trade of organic products, including but not limited to brokers, importers, and traders.

In general, this proposed rule requires the certification of any handling operation whose activities may affect the organic status of agricultural products they handle or represent after production, as the products move from production source through a supply chain. The amendments also clearly specify which entities and activities are exempt from certification. Most notably, this includes exemptions for retail operations and entities that only store organic products; the current exclusions at § 205.101(b)(1) would be removed.

Authority

AMS’ authority to modify §§ 205.2, 205.100, and 205.101 of 7 CFR is established in the OFPA. The statute allows AMS to “establish an organic certification program for producers and handlers of agricultural products” (7 U.S.C. 6503(a)) and “require such other terms and conditions as may be determined . . . necessary” (7 U.S.C. 6506(a)(11)). The OFPA and the USDA organic regulations state that any operation that produces or handles certified organic agricultural products is required to be certified (7 U.S.C. 6503 and 7 CFR 205.100). Additionally, the Agriculture Improvement Act of 2018 (the “2018 farm bill”) requires that the USDA “issue regulations to limit the type of organic operations that are excluded from certification under

section 205.101” of the organic regulations.¹⁰

This proposed amendment clarifies the terms *handle*, *handler*, and *handling operation* to better align with the OFPA definition of *handle*, “to sell, process, or package agricultural products” (7 U.S.C. 6502(8)). Limiting handler exemptions is necessary to meet the basic purposes delineated in 7 U.S.C. 6501(2)–(3), “to assure consumers that organically produced products meet a consistent standard, and to facilitate interstate commerce in fresh and processed food that is organically produced.” As the current exclusions at § 205.101(b)(1) are no longer appropriate, AMS is exercising its authority, as mandated in the 2018 farm bill, to limit those exclusions in order to fully implement the national standards authorized by 7 U.S.C. 6504 and to ensure compliance with the OFPA and the USDA organic regulations.

History and Justification for Amendments

In addition to the 2018 farm bill, several factors compel regulatory changes to require the certification of many currently excluded operations. The present need for expanded oversight to protect organic integrity is primarily due to the emergence of complex global supply chains and business relationships, and price premiums for organic products. These factors present the opportunity and incentive for organic fraud, which has materialized in the organic sector, and which would be mitigated by reducing the types of entities excluded from certification.

Following full implementation of the NOP in 2002, AMS believed that organic product integrity would not be compromised or altered when handled by entities such as brokers, distributors, traders, storage professionals, receivers,

and loaders. As such, these handlers were not required to be certified. At that time, marketing was mostly local or regional, and organic market sales totaled a fraction of today’s figures. Additionally, the percentage of organic product handled by excluded entities was relatively low.

The organic market has grown considerably since the USDA organic regulations took effect in 2002. The Organic Trade Association reports that total U.S. organic sales grew from \$3.4 billion in 1997 to \$55.1 billion in 2019.¹¹ This significant market growth has created the opportunity for additional domestic and international producers, handlers, product suppliers, importers, brokers, distributors, and others to participate in the organic market. Interpretation of the current regulations has allowed many of these operations to remain uncertified. This has resulted in increased complexity of organic supply chains. Today’s organic marketplace is marked by multifaceted supply chains with organic products increasingly coordinated by entities not regulated by the USDA, creating risks that could impact the integrity of organic products.

Other contributors to risk include entities in the middle of supply chains that facilitate the sale or trade of organic products. These include domestic importers of products, brokers/traders, distributors, and other handlers who represent a link between certified parties. Although some of these handlers voluntarily seek certification, the current organic regulations do not require their certification. Handlers are responsible for the integrity of the organic products they handle, even if they never take ownership or possession of a product, because they frequently make decisions impacting the integrity of organic products. For example, they may file import and export permits; arrange sales to both certified and uncertified entities; and comply with

¹⁰ See section 10104(a) of the Agriculture Improvement Act of 2018, Public Law 115–334, available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>

¹¹ Organic Trade Association, Organic Industry Survey, 2018–2020.

mandatory import conditions such as fumigation or irradiation. The current lack of certification requirements for excluded handlers can negatively affect the organic status of products, and reduce the availability of auditable records needed to assess organic status.

The evolution of the organic industry has made clear that the current terms *handle*, *handler*, and *handling operation*, as defined at § 205.2 of the organic regulations, no longer adequately represent the full scope of organic supply chains. The allowance of uncertified handlers creates gaps in the organic supply chain, breaking chains of custody and complicating the verification of product origin. Expanding organic certification to cover a wider range of handling operations is critical to supply chain traceability. It would make more parties visible and accountable, require the generation and maintenance of auditable records, and improve the usefulness of audit trails and product verification. The NOP believes improved supply chain traceability is critical to the continuing success of the program and its ability to ensure the integrity of organic products. Supply chain traceability is discussed in more detail later in this proposed rule.

Previous Actions by AMS, the NOSB, and Stakeholders

In 2010, the NOSB provided AMS recommendations to address the risks to organic integrity created by handler exclusions.¹² The NOSB determined that handlers of unpackaged bulk agricultural products should not be excluded from certification and requested that the NOP define the scope of handling activities addressed by § 205.101(b) of the organic regulations. In 2014, the NOP issued guidance on the certification requirements for handling unpackaged organic products (NOP 5031)¹³ and provided clarification about the circumstances under which a handling operation is excluded from certification requirements. This guidance was based upon both the 2010 NOSB recommendations and the findings of two Office of Inspector General audits of the NOP's oversight of organic milk.¹⁴ Because the guidance in

NOP 5031 only addresses handlers of unpackaged organic products, it has not eliminated the audit trail gaps that prevent full product traceability from farm gate to consumer. Furthermore, NOP 5031 has not been consistently implemented by certifying agents, particularly with respect to less-typical handling activities (e.g., auguring commodities from vessels to rail cars at ports).

Clarification of Applicability

The proposed rule clarifies the applicability of the regulations by revising § 205.100 and the definitions of *handle*, *handler*, and *handling operation*. These proposed revisions clearly state which entities, operations, and activities require certification under the USDA organic regulations. Specifically, the proposed rule revises the definition of *handle* by including additional activities, most notably trading, brokering, and facilitating sale or trade. The revised definition of *handle* reflects the broad range of handling activities that take place in the modern organic industry, and can be generally described to include activities that affect the organic status or ownership of an agricultural product after production as it moves from production source through a supply chain.

Unless specifically exempted from certification, as discussed in a later section, any person or operation that conducts activities described in the revised definition of *handle* would need to be certified and comply with all applicable requirements for handlers. This would require the certification of certain types of excluded handlers that currently operate without regular systematic oversight from the USDA, most notably intermediate market actors such as brokers, traders, and importers. Certified organic products that are handled by an uncertified, non-exempt operation at any point in the supply chain will lose their certified organic status and may no longer be sold, labeled, or represented as organic. In turn, certified organic operations that receive products from uncertified, non-exempt handlers and subsequently label the products as organic, use as feed for organic livestock, or use as ingredients for organic products are in violation of USDA organic regulations, and may be subject to proposed suspension or revocation of certification and possible civil penalties.

The proposed rule also modifies the definitions of *handler* and *handling*

operation to include any person or operation that handles agricultural products. This includes handling operations such as importers, brokers, and traders. Accountability from these operations is required to maintain the integrity of organic products. Even if these operations do not take physical possession or ownership of the product they represent, their decisions affect the status of organic products; the operation's records are essential to demonstrate a product's compliance at that point in the supply chain. For example, uncertified brokers may receive notices of organic products being treated with substances prohibited for use on organic products, but might not provide those notices to certified importers or accredited certifying agents. Such critical breaks in the audit trail could allow products to be sold as organic, after being treated with substances prohibited for use on organic products.

Similarly, uncertified storage facilities may store and split or combine lots and loads. Certifying agents and certified importers may not be informed of the full range of activities conducted at such facilities; however, handlers at these locations have a critical role in maintaining the integrity and traceability of organic products. For this reason, the proposed rule would require the certification of these types of handlers.

Finally, because uncertified handlers are not required to maintain auditable records for five years, sales or transit records might not be available for inspection by the USDA or certifying agents. The U.S. Government has limited ability to obtain records from foreign businesses who are not certified to the USDA regulations. The current exclusion of these brokers from organic certification creates risks for organic integrity when they facilitate the sale of USDA-organic products produced overseas, prior to export to the United States.

Clarification of Exemptions From Certification

In addition to clearly stating who requires organic certification, the proposed rule also describes the activities that would not require certification to produce, handle, or sell organic agricultural products. The proposed rule modifies § 205.101 by renaming the section "Exemptions from certification," eliminating the exclusions currently listed at § 205.101(b), and listing in revised § 205.101 all operations that are exempt from organic certification. Eliminating reference to exclusion and excluded

¹² NOSB Formal Recommendation: Clarifying the Limits of 205.101(b), October 28, 2010: <https://www.ams.usda.gov/sites/default/files/media/NOP%20CACC%20Final%20Rec%20Clarifying%20the%20Limitations.pdf>.

¹³ NOP 5031—Guidance, Certification Requirements for Handling Unpackaged Organic Products, January 22, 2014: <https://www.ams.usda.gov/sites/default/files/media/5031.pdf>.

¹⁴ USDA Office of Inspector General Audit Report 01601-0001—Te: National Organic Program—

Organic Milk, February 2012: <https://www.usda.gov/oig/webdocs/01601-0001-Te.pdf>.

operations, and categorizing as exempt those operations that do not require organic certification, will reduce confusion and misinterpretation about who needs to be certified.

Although they do not require certification, exempt operations must comply with portions of the organic regulations. Exempt operations that are producing or handling organic products are responsible for maintaining organic integrity and must follow the production and handling requirements of the organic regulations that relate to their activities. Stakeholders have expressed concern about the clarity and consistent implementation of these requirements. The proposed rule addresses this concern by clearly stating what requirements each exempt operation must follow. In general, all exempt operations must follow the applicable organic production and handling requirements of subpart C of the regulations, including the provisions for prevention of contact of organic products with prohibited substances (§ 205.272). In addition, specific additional requirements are included for some exemptions, and recordkeeping requirements are explained in revised § 205.101.

Exemptions Retained by the Proposed Rule

The current exemption for operations with \$5,000 or less in annual income from organic sales is retained at revised § 205.101(a). To ensure the integrity of organic products, these operations are required to comply with the provisions for the prevention of contact of organic products with prohibited substances (§ 205.272) and the labeling provisions of § 205.310. The current exemptions for operations that handle products with less than 70 percent organic ingredients and operations that only identify organic ingredients on product labels are also retained at new § 205.101(d). These exempt handlers are required to comply with the labeling requirements of §§ 205.305 and 205.310, the comingling requirements of § 205.272, and must maintain records that (1) prove that agricultural products identified as organic were organically produced and handled, and (2) verify quantities produced or sold from such agricultural products.

Exclusions Removed From the Proposed Rule

The current exclusion at § 205.101(b)(1), for operations that only handle packaged organic products, is omitted from the proposed rule. This amendment will improve traceability of organic products through the supply

chain and reduce the potential mishandling of packaged organic products by uncertified operations. This modification also addresses many stakeholders' request that everyone in the supply chain producing or handling organic products must be certified, with very limited exceptions. Requiring certification of additional types of handling operations, including those previously excluded by the "packaged product" condition, would substantially enhance the integrity of organic products by eliminating record gaps in the supply chain and enabling more complete audit trails. Expanded certification also would reduce the risk of exposure of packaged organic products to prohibited methods such as ionizing radiation and fumigation with prohibited materials, processes that may compromise the product's organic status.

Clarification of the Retail Operation Exemption

The proposed rule renames the term *retail food establishment* as *retail operation* and expands the definition to include current modes of direct-to-consumer sales that commonly occur in the modern marketplace. The term *retail operation* is defined as an operation that sells agricultural products directly to final consumers through in-person and/or virtual transactions. This amended term is required to capture the full range of direct-to-consumer sales that may occur in the current era of electronic and internet commerce. "Virtual transaction" is used to describe any form of transaction that does not occur in person (e.g., telephone, mail-order, and/or online sales). Additionally, expanding the term to include food and other agricultural products is necessary to reflect the full range of certified organic products that may be sold directly to consumers in today's retail marketplace. Examples of retail operations include but are not limited to restaurants, delicatessens, bakeries, grocery stores, or any retail business with a restaurant, delicatessen, bakery, salad bar, bulk food self-service stations (e.g., grains, nuts), or other eat-in, carry-out, mail-order, or delivery service of raw or processed agricultural products.

The OFPA excludes final retailers that do not process agricultural products from the definition of "handler" and "handling operation." (7 U.S.C. 6502). Therefore, these types of retailers are not required to be certified in order to sell organic products. In the proposed rule, AMS is modifying and expanding the current provision in the USDA organic regulations which permits retailers that process raw and ready-to-

eat agricultural products to sell, label, or represent these products as organic. In the future, under its existing authority, AMS could consider requirements for the certification of retailers that process agricultural products intended to be sold, labeled, or represented as organic. We are retaining the exemption from certification for retailers that process unless and until we have more input from stakeholders on the need for and impact of removing this exemption and recommended standards for retailers.

The proposed rule would exempt retail operations from certification, including retail operations that sell, but do not process, organic agricultural products (proposed § 205.101(b)), and retail operations that process agricultural products previously labeled for retail sale as organic (proposed § 205.101(c)). These exemptions are very similar to the current exemption and exclusion for retail food establishments at current §§ 205.101(a)(2) and (b)(2). To qualify for the exemption at proposed § 205.101(c), any processing of organic products performed by a retail operation must occur in connection with the direct sale to the final consumer. This means that the products must be processed and sold in the same physical location. An operation processing a product for sale at another site would require certification. This would include retailers that sell virtually; the organic products which they sell, label or represent as organic must have been produced and processed by certified operations.

Retail operations may present risks to organic integrity. For example, a grocery store may accidentally mix or combine organic and nonorganic produce of the same type, or they may unintentionally place an organic label on a shelf that holds nonorganic products. Further, storing organic produce in a container that was previously used for nonorganic produce without first cleaning the container may expose the organic produce to a prohibited pesticide. Therefore, all exempt retail operations must comply with the requirements of § 205.272, which describe handling requirements to prevent comingling and contact with prohibited substances. Additionally, exempt retail operations that process organic products must follow the labeling provisions of § 205.310, and maintain records to (1) demonstrate that agricultural products identified as organic were organically produced and handled; and (2) verify quantities received, sold, or produced from such agricultural products. Following these requirements will help maintain organic integrity, even in the absence of certification.

Exemption for Storage of Organic Agricultural Products

There are many operations that store organic products; however, these operations are generally considered low-risk because of the type of activities they perform and because they may be identified in the organic system plan of a certified operation. Given that these operations are lower-risk and are subject to oversight by certified handlers in adjacent segments of the supply chain, AMS proposes exempting from organic certification operations that only store agricultural products, but do not process or alter such agricultural products (proposed § 205.101(e)).¹⁵ This approach is consistent with risk-based oversight models.

This exemption would apply to warehouses, storage facilities, and other operations whose only function is the temporary holding or storage of organic products, and the associated receiving and loading of organic products. An operation that processes or alters the organic products they store would not qualify for the exemption and must be certified. Storage operations claiming this exemption must not label/relabel, combine, split, containerize, pack/repack, treat, sort, open, enclose, or otherwise alter the organic products they handle. Like other exempt operations, the proposed rule would require storage operations exempted at proposed § 205.101(e) to comply with the requirements of § 205.272 for the prevention of commingling and contact with prohibited substances.

Transport of Organic Agricultural Products

Like storage, transport also qualifies as a low-risk activity and may be identified in the organic system plan of a certified handler. Because transport alone is not a handling activity (see 7 U.S.C. 6502(8) and 7 CFR 205.2), operations that only transport organic products are not required to be certified. Certifying agents have expressed confusion about which activities constitute transport versus which activities qualify as handling and, thus, require certification. Transport commonly refers to the movement of products in commerce; any activity that alters an agricultural product during transport would qualify as handling, and would require certification. Other activities that could occur adjacent to transport include, for example, combining, splitting, containerizing, packing/repacking, treating, sorting,

opening, enclosing, or labeling/relabeling. These activities are handling and would require certification. Permitted activity that does not require certification would be restricted to movement of agricultural products only.

Certified Operations' Verification and Recordkeeping Responsibilities

The exempt activities described in this proposed rule present relatively low risk to organic integrity; however, exempted operations are not without risk. To address this risk, AMS proposes that certified operations include in their organic system plans monitoring practices and procedures to verify their supply chains and the organic status of products they receive (see proposed amendments to § 205.201 and discussion on Supply Chain Traceability and Fraud Prevention later in this proposed rule). This includes verifying the organic status of products that are handled by exempt operations in a supply chain. Certified operations should carefully review the practices and records of operations in their supply chain, including transportation and storage operations. Certified operations that load/sell/export organic products and certified operations that receive/purchase/import organic products are ultimately responsible for verifying that organic status has not been compromised during transport or storage.

In addition to procedures in an organic system plan, certified operations must also maintain records to support the verification of organic integrity and facilitate supply chain audits. The current organic regulations at § 205.103 state that certified operations “must maintain records concerning the production, harvesting, and handling” of their products. Certified operations must keep records of these activities to “Fully disclose all activities and transactions of the certified operation in sufficient detail” to “demonstrate compliance with the Act and the regulations.” Therefore, to demonstrate compliance, certified operations must maintain records of products that were handled by operations in their supply chain, including transportation and storage operations.¹⁶

As a best practice, records covering these types of handling activities should (1) demonstrate that the organic integrity of the product is maintained during transport and/or storage, and (2) verify both the quantities and the

organic status of the product being transported and/or stored. Records could include clean truck affidavits; records of cleaning and sanitizing materials, and procedures used to clean trucks; bills of lading, manifests, transaction certificates, shipping records, delivery records, invoices, lot numbers, and other audit trail documents; and records documenting the audit trail, chain of custody, tanker seals, wash tags, truck and trailer numbers. Records such as these can be used by a certified operation to verify that organic products are properly handled by exempt transport or storage operations. Records can also be used for traceability, both by certified operations to verify the source of a product they receive, and by certifying agents to verify the origin of a product during a trace-back audit.

These recordkeeping requirements will ensure that certified operations maintain documents to demonstrate that the organic integrity of products is not compromised during transport and/or storage. Additionally, records will show the quantities of organic products transported and/or stored, and facilitate certifying agents in performing trace-back and mass-balance audits through a supply chain. Clarifying what activities that are exempt from certification—and clarifying recordkeeping responsibility—will enhance accountability for the integrity of both domestic and imported organic products by bolstering the NOP's oversight of handlers that affect the status of organic products.

Request for Comment

AMS seeks comment regarding the proposed amendments to §§ 205.2 and 205.100–101 discussed above, including answers to the following questions:

1. Are there additional activities that should be included in the proposed definition of *handle* (i.e., are there additional activities that require certification)? Are there any activities in the proposed definition of *handle* that should be exempt from certification?
2. Are there specific activities not included in the proposed rule that you believe should be exempt from organic certification?
3. Are there additional requirements that exempt handlers described in this proposed rule should follow?
4. Activities at ports may present a threat to the integrity of organic products due to the multiple types of handling activities performed in these locations. It is common for independent operations to perform specific physical handling activities within a port (e.g., loading, unloading, or transfer of

¹⁵ *Processing*, as defined by 7 CFR 205.2, includes “packaging. . . or otherwise enclosing food in a container.”

¹⁶ 7 U.S.C. 6519(a)(1) “. . . each person who sells, labels, or represents any agricultural product as having been produced or handled using organic methods shall make available. . . all records associated with the agricultural product.”

packaged, unpackaged, or bulk organic product). The proposed rule would require certification of these operations, who are often contractors. What other activities performed at ports should require certification and why?

2—IMPORTS TO THE UNITED STATES

Section	Action	Proposed text
205.2	Add new term	<i>Organic exporter.</i> The owner or final exporter of the organic product who facilitates the trade of, consigns, or arranges for the transport/shipping of the organic product from a foreign country.
205.2	Add new term	<i>Organic importer of record.</i> The operation responsible for accepting imported organic products within the United States.
205.273	Add new section	Imports to the United States.
205.273	Add	Each shipment of organic products imported into the United States through U.S. Ports of Entry must be certified pursuant to subpart E of this part, labeled pursuant to subpart D of this part, be declared as organic to U.S. Customs and Border Protection, and be associated with a valid NOP Import Certificate (Form NOP 2110–1) or equivalent data source.
205.273(a)	Add	Persons exporting organic products to the United States must request an NOP Import Certificate, or provide data through an equivalent data source, from a certifying agent, for each physical shipment of certified organic products prior to their export. Only certifying agents accredited by the USDA or foreign certifying agents authorized under an organic trade arrangement may issue an NOP Import Certificate or approve a listing in an equivalent data source (e.g., a third-party export system).
205.273(b)	Add	The certifying agent must review an NOP Import Certificate request, determine whether the shipment complies with the USDA organic regulations, and issue the NOP Import Certificate or equivalent within 30 calendar days of receipt if the shipment complies with the USDA organic regulations.
205.273(c)	Add	Each compliant organic shipment must be declared as organic to U.S. Customs and Border Protection through a U.S. Port of Entry by uploading the unique NOP Import Certificate, or equivalent electronic data entry, into the U.S. Customs and Border Protection’s Automated Commercial Environment system.
205.273(d)	Add	Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is accompanied by a verified NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to §205.272 or exposure to ionizing radiation pursuant to §205.105, since export.
205.273(e)	Add	The use of the term equivalent in this section refers to electronic data, documents, identification numbers, databases, or other systems verified as an equivalent data source to the NOP Import Certificate.
205.300(c)	Revise	Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part, labeled pursuant to this subpart D, and must comply with the requirements in §205.273, Imports to the United States.

AMS proposes amending the USDA organic regulations by adding a new section (205.273) discussing the use of the National Organic Program Import Certificate (“NOP Import Certificate”). Currently, NOP Import Certificates are only required for organic products imported from a country that the NOP has determined uses an equivalent system of organic certification, e.g., NOP Import Certificates are currently used for imports from the European Union, Switzerland, Japan, and South Korea. This proposed rule would require that any organic agricultural product imported to the United States be associated with a valid NOP Import Certificate or equivalent data source. The use of the term “equivalent” in this section refers to data and systems that are created, issued, or used by the United States or foreign governments to share trade-related information. Allowing for equivalent data and systems that harmonize with U.S. Government trade systems allows for the future development of interoperable

import and export systems that facilitate information exchange between governments or authorized entities.

What is an NOP import certificate?

The NOP Import Certificate, or equivalent, is a type of transaction certificate, or equivalent data source, that contains detailed information about the quantity and origin of organic product being imported into the United States. The purpose of the NOP Import Certificate is to document the organic status and quantity of a specific physical shipment of imported organic products. The NOP Import Certificate is associated with a specific shipment of imported organic products as it travels from a certified organic exporter in a foreign country to a certified organic importer in the United States. The NOP Import Certificate is used to ensure a smooth, auditable business transaction by documenting that the products in the shipment are organic and may be sold, represented, and distributed as organic within the United States.

NOP Import Certificates are currently used for organic products imported from countries that the NOP has determined to be equivalent (OMB Approval No. 1651–0022). The USDA has established equivalency with Canada, the European Union, Switzerland, Japan, South Korea, Taiwan, and the United Kingdom.¹⁷ Organic imports from Canada are accompanied by an attestation statement that the products comply with the terms of the United States-Canada Organic Equivalency Arrangement. Organic imports from the European Union, Switzerland, Japan, South Korea, Taiwan, and the United Kingdom are accompanied by an NOP Import Certificate. The certifying agent evaluates the request for an NOP Import Certificate, and upon verification of the organic shipment, completes and issues an NOP Import Certificate. Form NOP 2110–1 (OMB Control Number 0581–0191) is currently used for this purpose.

¹⁷ The United States–United Kingdom equivalency will be effective in January 2021.

AMS does not currently require NOP Import Certificates for organic imports from countries that the United States does not have organic equivalency with. This proposed rule would expand and make compulsory the use of NOP Import Certificates, regardless of an imported product's country of origin. Specifically, this proposed rule would require that all imported products intended to be sold, represented, or labeled as organic in the United States must be declared as organic to U.S. Customs and Border Protection (CBP), and that each physical shipment passing through a U.S. Port of Entry must be associated with an NOP Import Certificate, or equivalent data source. Requiring an NOP Import Certificate provides trackable and auditable verification that a specific shipment of imported organic products complies with the USDA organic regulations. It will also support investigations if noncompliant products are exported and misrepresented as organic for sale in the United States.

Authority and Justification for the Mandatory Use of NOP Import Certificates

The mandatory use of NOP Import Certificates is authorized by the OFPA, as amended by the Agriculture Improvement Act of 2018.¹⁸ The OFPA specifies what information an NOP Import Certificate must include (7 U.S.C. 6502(13)), and also stipulates that the NOP Import Certificate must “be available as an electronic record” and captured in a tracking system maintained by the U.S. Government (7 U.S.C. 6514(d)). The OFPA also provides the Secretary with broad authority to establish appropriate and adequate enforcement procedures and any other requirements that the Secretary may determine to be necessary (7 U.S.C. 6506).

Both the OFPA and the USDA organic regulations require certified operations to maintain and make available to the Secretary records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as organic (7 U.S.C. 6519, 7 CFR 205.103, and 7 CFR 205.400(d)). This includes sufficient records to provide an audit trail to determine the source, type and quantity, transfer of ownership, and transportation of any agricultural product labeled as organic (7 CFR 205.2). Likewise, both the OFPA

and the USDA organic regulations require certifying agents to maintain and make available to the Secretary records concerning its activities (7 U.S.C. 6519, 7 CFR 205.501(a)(9), 7 CFR 205.510(b)).

NOP Import Certificate Format and Tracking System

AMS proposes that NOP Import Certificates must be provided in a standardized electronic format to ensure consistency. AMS anticipates that Form NOP 2110–1, or an electronic equivalent that provides the same data, will serve this purpose, because it includes fields for the information needed to meet the requirements of an NOP Import Certificate as defined in the OFPA: Origin; destination; the certifying agent issuing the NOP Import Certificate; harmonized tariff code, when applicable; total weight; and the organic standard the product was certified to (7 U.S.C. 6502(13)). For the purposes of uploading and tracking NOP Import Certificates, Form 2110–1 must be available as an electronic format to meet the requirements of the OFPA (7 U.S.C. 6514(d)(1)).

The OFPA, as amended by the 2018 farm bill, also states that AMS must establish a system of tracking NOP Import Certificates, and that AMS “may integrate the system into any existing information tracking systems for imports of agricultural products” (7 U.S.C. 6514(d) and 6522(c)).¹⁹ Because the OFPA enables AMS to access information available in CBP’s Automated Commercial Environment system (ACE) (7 U.S.C. 6521(c)), AMS expects that ACE will be used to track and store NOP Import Certificates, or equivalent electronic data.²⁰ ACE is an automated and electronic system for processing commercial trade data. ACE is the primary system through which the global trade community files information about imports and exports so that admissibility into the United States may be determined by government agencies (including AMS) to ensure compliance.

Use of the NOP Import Certificate

The proposed rule includes two new terms, *organic exporter* and *organic importer of record*, that describe businesses that facilitate the international trade of organic products. An *organic exporter* is responsible for

facilitating the trading, selling, consigning, shipping or exporting of organic product from a foreign country to the United States. An organic exporter must be certified organic by certifying agents accredited by the USDA or certifying agents authorized by a trade arrangement, and must maintain records required under § 205.103. Organic exporters may be the final physical handler of organic products within a foreign country or they may be the entities that facilitate, sell, or arrange the sale of organic products shipped to the United States.

An *organic importer of record* is the entity responsible for receiving organic products within the United States. An organic importer of record must be certified and must maintain records required under 7 CFR 205.103. The proposed rule would specify that there is a consistent party, the organic importer of record, that is responsible for ensuring the compliance of organic agricultural products imported into the United States.

This proposed rule would require that a certified organic exporter sending organic products to the United States request an NOP Import Certificate, or equivalent, from their certifying agent for the organic products intended for export. As discussed in the proposed amendments to the USDA organic regulation at § 205.2, Terms defined, and § 205.101, Exemptions from certification, entities that facilitate the sale of organic products and arrange for the transport of organic products into the United States (e.g., organic exporters) would need to be certified. The request for an NOP Import Certificate must include information required for the organic exporter’s certifying agent to complete the NOP Import Certificate or equivalent.

The organic exporter’s certifying agent would issue the NOP Import Certificate, or equivalent, provided it has verified that the shipment complies with the USDA organic regulations or an equivalent standard. This means that: (1) The information submitted on the NOP Import Certificate, or equivalent, is accurate, including confirmation of the organic status of each product listed on the NOP Import Certificate; and (2) the final handler has the capacity to produce or handle the quantity of organic product to be exported. The final handler would typically be the exporter or the last handler that processed the product. Verifying that the product complies with the organic standards includes, but is not limited to, verifying that the import has not been exposed to a prohibited substance, treated with a prohibited substance as a

¹⁸ See sections 10104(b)(3) and 10104(c) of the Agriculture Improvement Act of 2018, Public Law No. 115–334. Available at: <https://www.congress.gov/115/plaws/pub115/publ334/PLAW-115publ334.pdf>.

¹⁹ See section 10104(c) of the Agriculture Improvement Act of 2018, Public Law No. 115–334. Available at: <https://www.congress.gov/115/plaws/pub115/publ334/PLAW-115publ334.pdf>.

²⁰ See sections 10104(h) and (j) of the Agriculture Improvement Act of 2018, Public Law No. 115–334. Available at: <https://www.congress.gov/115/plaws/pub115/publ334/PLAW-115publ334.pdf>.

result of fumigation or treated with ionizing radiation at any point in the products' movements across country borders.

Upon receiving a shipment, an organic importer of record must verify that the organic product(s) comply with the USDA organic regulations. This includes, but is not limited to, verifying that the import has not been treated with a prohibited substance as a result of fumigation or treated with ionizing radiation at any point in the products' movements across country borders.

Both the organic exporter and organic importer of record must maintain records of NOP Import Certificates, and these records must be available for inspection by the NOP and certifying agents in accordance with § 205.103.

Only certifying agents accredited by the USDA, or foreign certifying agents authorized by a trade arrangement, may prepare and issue an NOP Import Certificate or equivalent. Once completed by the certifying agent, an NOP Import Certificate or equivalent is provided to the organic exporter, and the organic exporter must provide the data associated with the NOP Import Certificate to CBP by uploading the data into the ACE system as an electronic record.

An NOP Import Certificate, or equivalent, would also require use of the 10-digit NOP operation ID, or equivalent ID, name, and address of the organic importer of record in the United States, and the 10-digit NOP operation ID, or equivalent ID issued by a foreign certifying agent authorized under a trade arrangement, for the organic exporter of the product to be exported to the United States. The NOP Operation ID, or an equivalent ID, is a critical piece of data because it is a unique number generated in the Organic INTEGRITY Database for certifying agents accredited by the USDA, or in an equivalent system for foreign certifying agents authorized under a trade arrangement. This unique ID for each certified operation will link the exported organic product to the organic importer of record in the United States. This will strengthen the audit trail by ensuring that handlers on both sides of the transaction are known to Federal agents and can be linked when an organic product is imported into the United States.

AMS acknowledges the concern that using NOP Import Certificates may slow the importation of organic product. Therefore, AMS is requiring that organic imports that pass through U.S. Ports of Entry be associated with, but not accompanied by, an NOP Import Certificate. This means that a shipment

containing organic products may enter the United States without an NOP Import Certificate at the time of entry. However, the NOP Import Certificate, or equivalent data, must be uploaded into the ACE system within 10 calendar days of the shipment entering the United States. This is consistent with existing trade filing timeframes in ACE using the Entry Summary process.²¹ AMS expects that this 10-day timeframe will result in little to no impact to the timely importation of organic products. Regardless of when an NOP Import Certificate is completed, the organic exporter and organic importer of record are fully accountable for the compliance of the imported product(s).

Cooperation With U.S. Customs and Border Protection

The OFPA, as amended by the Agriculture Improvement Act of 2018, requires the establishment of an Organic Agricultural Product Imports Interagency Working Group, consisting of members of both the USDA and CBP (see 7 U.S.C. 6521a).²² The mandatory use of NOP Import Certificates supports the working group's goal to ensure the compliance of organic agricultural products imported to the United States, and builds upon ongoing cooperation between the USDA and CBP.

AMS is working with CBP to verify that shipments of imported organic products are associated with unique NOP Import Certificates. In April 2020, the electronic version of the NOP Import Certificate (or "message set") was deployed in ACE as an optional filing step for organic imports. The use of the electronic NOP Import Certificate will be mandatory when the SOE final rule is implemented.

AMS expects some of the information collected via the NOP Import Certificate may be modified. In addition to the NOP Operation ID mentioned above, AMS is considering adding fields for the U.S. Customs Entry Number and the Purchase Order (PO) number to assist with tracking organic imports.

Other fields may be eliminated to avoid collecting duplicate information already collected through the ACE database.

Once established, the availability of the electronic NOP Import Certificate in ACE would notify CBP officials of organic shipments and provide AMS

with more data to identify specific shipments of organic imports.

Alignment With Other Supply Chain Traceability Norms

One of the goals of this action is to harmonize USDA regulatory requirements for importing organic products with international guidelines and norms. NOP considered international standards established by the Codex Alimentarius Commission (Codex)²³ and norms published by the International Federation of Organic Agriculture Movements (IFOAM).²⁴ Both provide for and support the use of transaction shipment certificates such as the NOP Import Certificate.

Future Harmonization With Sanitary and Phytosanitary Data Systems

Further, the use of health certificates, sanitary certificates, phytosanitary certificates, and other regulatory requirements in place to contain certain plant and animal pests or diseases may offer a possible resource for the NOP and other government agencies to document the movement of organic products across national borders. Over time, it is expected that the United States and foreign countries will automate and harmonize systems to support the more seamless exchange of electronic import and export data in organic trade. AMS will continue to work to improve, adapt to, and support seamless electronic paperless supply chain traceability and transparency using the International Trade Data System (ITDS) and other technologies as they evolve.

Request for Comment

AMS seeks comment regarding the use of NOP Import Certificates discussed in this proposed rule, including answers to the following questions:

1. Is the 30-day timeframe for certifying agents to review and issue an NOP Import Certificate appropriate? Why or why not?
2. How could the mode of transportation and frequency of shipments affect the use of the NOP Import Certificate?

²³ Section 7 of the *Codex Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* recommends imported organic products to be marketed only where the competent authority or designated body in the exporting country has issued a certificate of inspection stating that the lot designated in the certificate was obtained within an organic system of production, preparation, marketing and inspection.

²⁴ IFOAM Norms define a transaction certificate as a "document issued by a certification body or by the operator, declaring that a specified lot or consignment of goods is certified."

²¹ CBP Form 7501: Entry Summary. Available on the U.S. Customs and Border Protection website: <https://www.cbp.gov/trade/programs-administration/entry-summary/cbp-form-7501>.

²² See section 10104(i) of the Agriculture Improvement Act of 2018, Public Law No: 115–334. Available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

3—LABELING OF NONRETAIL CONTAINERS

Section	Action	Proposed text
205.307	Revise title	Labeling of nonretail containers.
205.307 (a)	Revise	Nonretail containers used to ship or store certified organic product must display the following: <ol style="list-style-type: none"> (1) The term, “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” as applicable, to identify the product; (2) The statement, “Certified organic by (name of certifying agent),” or similar phrase, to identify the name of the certifying agent that certified the producer of the product, or, if processed, the certifying agent that certified the last handler that processed the product; and (3) The production lot number of the product, shipping identification, or other information needed to ensure traceability.
205.307 (b)	Revise	Nonretail containers used to ship or store certified organic product may display the following: <ol style="list-style-type: none"> (1) Special handling instructions needed to maintain the organic integrity of the product; (2) The USDA seal. Use of the USDA seal must comply with § 205.311; (3) The name and contact information of the certified producer of the product, or if processed, the last certified handler that processed the product; (4) The seal, logo, or other identifying mark of the certifying agent that certified the producer of the product, or if processed, the last handler that processed the product; and/or (5) The business address, website, and/or contact information of the certifying agent.

Accurate labeling of non-retail containers used to ship or store organic products is critical to organic integrity. Detailed labeling reduces misidentification and mishandling, facilitates traceability through the supply chain, reduces the potential for organic fraud, and allows accurate identification of organic product by customs officials and transportation agents. Therefore, AMS proposes amending § 205.307 to add new requirements for the labeling of nonretail containers.

If implemented, this proposed action will require that nonretail containers used to ship or store organic products are labeled with two additional pieces of information: (1) A statement identifying the product as organic; and (2) the name of the certifying agent that certified either the producer of the product, or, if the product is processed, the last handler that processed the product. In addition, the current requirement to show the production lot number on nonretail containers will be expanded, the option to include the name of the certified operation that produced or handled the product will be added, and the use of the USDA seal on nonretail containers will be clarified.

Nonretail containers are defined under § 205.2 of the USDA organic regulations as “any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.” Nonretail containers are used to ship or store either packaged or unpackaged organic products, and may include the following:

1. Produce boxes, totes, bulk containers, bulk bags, flexible bulk containers, harvest crates and bins; and

2. Boxes, crates, cartons, and master cases of wholesale packaged products.

Section 205.307 does not apply to large nonretail containers that are associated with a mode of transportation or storage, such as trailers, tanks, railcars, shipping containers, grain elevators/silos, vessels, cargo holds, freighters, barges, or other method of bulk transport or storage. As labeling of these types of large containers may be impractical, they do not need to be labeled with the information described in § 205.307. However, this information must be evident in documentation associated with and traceable to the container, to ensure that organic integrity is maintained during transport, storage, and handling.

The current regulations require only one piece of information on nonretail container labeling: A production lot number. Other information elements—such as identification of the product as organic, certifying agent information, and special handling instructions—are optional, but not required on nonretail container labels. Lack of this information creates gaps in the organic chain of custody, complicates the verification of organic integrity, and increases the vulnerability to organic fraud.

Nonretail containers labeled with only a production lot number provide no identifying information about the entity that provided that number. This can create problems when nonretail containers are used to store or ship unlabeled unpackaged product (e.g., produce or bulk commodities), because a production lot number alone is not sufficient to immediately identify the product as organic or conventional. An organic product stored or shipped in a

nonretail container labeled with only a production lot number is at risk of having its organic integrity compromised, including treatment with a prohibited substance during border crossings, or comingling with conventional product during transport and aggregation.

This proposed amendment will provide an additional safeguard for organic integrity by alerting certifying agents, handlers, and border agents to the contents of nonretail containers, and by helping prevent unintentional mishandling of organic product. This proposed action also aligns with the OFPA requirement that an agricultural product which is sold or labeled as organic must have been produced and handled without prohibited synthetic chemicals (7 U.S.C. 6504(1)).

Some stakeholders have asked AMS to limit the applicability of § 205.307 to packaged organic products described in §§ 205.303–304, i.e., products labeled “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” AMS believes that amending the regulations to require a statement of organic status on all nonretail containers, including those which contain unpackaged and/or unlabeled product, is a more comprehensive and enforceable solution. Further, this will support the requirement for certified operations to maintain auditable records (§ 205.103(b)(2)). An *audit trail*, as defined by the regulations, includes documents that show the source, transfer of ownership, and transportation of any agricultural product with an organic label (§ 205.2). Obscuring the “organic” status of any product during a segment of the supply

chain disrupts the audit trail. By clearly stating that nonretail containers must be labeled with the product's organic status and the name of the certifying agent (both currently optional), this proposed amendment will ensure that all organic product in nonretail containers is identifiable.

Organic products often pass through multiple handlers in the supply chain as they move from production source to consumer. However, the proposed rule does not require nonretail container labels to list the certifying agent of every operation that handled the product. The proposed amendments to § 205.307 require that nonretail container labels list either (1) the certifying agent that certified the producer, or, if the product is processed, (2) the certifying agent that certified the operation that last processed the product.²⁵ This means that:

1. If a product is not processed between production and sale, then the certifying agent of the producer must be listed on the nonretail container label;

2. If a product is processed after production, then the certifying agent of the processor must be listed on the nonretail container label;

3. If a product is processed sequentially by different operations (A, B, and C) after production, then only the certifying agent of the last processor (operation C) must be listed on the nonretail container label; and

4. The certifying agents of operations that handle, but do not process, organic products after production do not need to be listed on the nonretail container label.

Listing the certifying agent of the producer or last processor on nonretail container labels will provide a point of contact to verify the organic status of a product, without adding surplus information to the label. However, to maintain a complete audit trail, all operations that produced, processed, handled, or transported the organic product must be visible in the product's audit trail documentation.

Clearly labeling a nonretail container with organic identification, certifying agent, and production lot number will ease product traceability during audits, help to prevent unintentional contact with prohibited substances (e.g., fumigation) and comingling with conventional product, and help to ensure accurate representation of the product at the point of sale. In addition, this proposed amendment is also expected to reduce the vulnerability to organic fraud by ensuring that organic product status is visible throughout the supply chain.

Request for Comment

AMS seeks comment regarding the proposed amendments to the labeling of nonretail containers, specifically whether or not the certified operation that produced or last processed the product must be listed (i.e., not optional) on all nonretail container labels.

4—ON-SITE INSPECTIONS

Section	Action	Proposed text
205.403(b)–(e)	Redesignate	Redesignate paragraphs (b)–(e) as paragraphs (c)–(f).
205.403(b)	Add	<i>Unannounced inspections.</i>
205.403(b)(1)	Add	A certifying agent must, on an annual basis, conduct unannounced inspections of a minimum of five percent of the operations it certifies, rounded up to the nearest whole number.
205.403(b)(2)	Add	Certifying agents must be able to conduct unannounced inspections of any operation it certifies and must not accept applications or continue certification with operations located in areas where they are unable to conduct unannounced inspections.
205.403(c)	Redesignate as 205.403(d).	<i>Verification of information.</i> The on-site inspection of an operation must verify:
205.403(d)(4)	Add	That sufficient quantities of organic product and ingredients are produced or purchased to account for organic product sold or transported; and
205.403(d)(5)	Add	That organic products and ingredients are traceable by the operation from the time of production or purchase to sale or transport; and that certifying agents can verify traceability back to the source per § 205.501(a)(21).

Unannounced Inspections

Unannounced inspections are a critical enforcement tool for ensuring ongoing compliance by organic operations. AMS proposes amending § 205.403 of the organic regulations to require a minimum number of unannounced inspections that certifying agents must perform annually. The current regulations allow for, but do not require, unannounced inspections, leaving this to the discretion of the certifying agent. NOP has issued an instruction to certifying agents (NOP Instruction 2609) on unannounced

inspections, which recommends that certifying agents conduct unannounced inspections of 5 percent of their total certified operations per year as a tool in ensuring compliance with the regulations.²⁶ This NOP instruction was supported by a recommendation made by the NOSB in December 2011.²⁷ The majority of USDA-accredited certifying agents currently complete unannounced inspections at this frequency.²⁸ This provision would make these inspections a regulatory requirement.

Unannounced inspections are an effective and useful tool in the USDA

organic regulations to ensure compliance across certified operations and bolster consumer trust in the organic label. Therefore, AMS is proposing to codify a requirement for certifying agents to conduct a minimum number of unannounced inspections annually of certified operations. This proposed amendment, consistent with NOP Instruction 2609, would require certifying agents to conduct unannounced inspections annually on a minimum of 5 percent of operations they certify. The operations may be selected randomly, risk-based, and/or in

²⁵ See definition of *processing* in § 205.2 of the USDA organic regulations.

²⁶ NOP 2609, Instruction, Unannounced Inspections. September 12, 2012. Available in the NOP Program Handbook: <https://>

www.ams.usda.gov/sites/default/files/media/2609.pdf.

²⁷ NOSB Recommendation, Unannounced Inspections. December 2, 2011. Available on the AMS website: <https://www.ams.usda.gov/sites/default/files/media/>

[NOP%20CACC%20Final%20Rec%20on%20Unannounced%20Inspections.pdf](https://www.ams.usda.gov/sites/default/files/media/NOP%20CACC%20Final%20Rec%20on%20Unannounced%20Inspections.pdf).

²⁸ 42 of the 49 USDA-accredited certifying agents the NOP audited in calendar years 2018 and 2019 completed unannounced inspections of 5% of the operations they certify.

response to a complaint or investigation. The proposed requirement specifies that the number of unannounced inspections should be calculated by rounding up to the nearest whole number, so that certifying agents with very few certified operations (e.g., under 20 operations) would still be required to conduct at least one unannounced inspection per year.

The OFPA requires that organic operations make their records available at all times for inspection by the Secretary, the certifying agent, and State officials (7 U.S.C. 6506(b)(1)(B)). Additionally, the OFPA requires that certifying agents employ a sufficient number of inspectors to implement the organic regulations (7 U.S.C. 6515(b)). By establishing a baseline requirement for unannounced inspection activities, AMS can verify that certifying agents employ a sufficient number of inspectors (i.e., enough inspectors to perform annual inspections and unannounced inspections) and will ensure, through unannounced inspections, that organic operations keep records related to their organic activities and comply with other requirements of the OFPA and the USDA organic regulations.

AMS also proposes a requirement that certifying agents only accept applications for certification from operations located where the certifying agent is able to conduct unannounced inspections. Further, certifying agents must be able to conduct unannounced inspections of any operation it continues to certify. To ensure consistency, transparency, and accountability, certifying agents would be expected to describe the areas where they operate in the written materials they provide to both applicants and certified operations, and review the locations of all operations during their application review or annual review. This proposed requirement is also based on recommended practice in the NOP Instruction 2609 and was recommended by the NOSB in December 2011.

AMS proposes this requirement to ensure that all certified operations are subject to unannounced inspections, regardless of location. A certifying agent that cannot conduct unannounced inspections in an applicant's or certified operation's location due to logistical challenges, staffing, security, or other reasons, is considered to not have or no longer have the administrative capacity for certification activities in that area, consistent with § 205.501(a)(19). In this case, the certifying agent would need to document the specific reasons it does not have, or no longer has, the administrative capacity to certify in that area, and would need to inform the applicant or certified operation to seek certification from another certifying agent. If new certification is not obtained, the operation's certification would be suspended. This process would be similar to the current procedures used when a certifying agent surrenders its accreditation or is suspended; however, it would be limited to a specific well-defined location, with justifications specific to that area.

Supply Chain Audits During On-Site Inspections

Additionally, AMS proposes two new requirements in § 205.403 to clarify the responsibilities of inspectors and certifying agents related to on-site inspections. AMS has consistently provided training to certifying agents which specifies that supply chain audits must be conducted at on-site inspections, but the types of audits required are not explicit in the current regulations. Audits can help detect organic fraud and should be routine practice during inspections. These proposed audit requirements are needed to ensure that AMS can take appropriate action against certifying agents that are not conducting adequate audits during inspections.

First, AMS proposes a requirement that certifying agents must verify that the quantity of organic product sold

does not exceed the quantity of organic product that is produced or purchased. Second, AMS proposes a requirement that certifying agents verify that organic products and organic ingredients are traceable from the time of production or purchase to the time of sale or movement of product from the operation and vice versa. These new verification requirements are also referred to as "mass-balance" and "trace-back" audits. Certifying agents should determine the minimum number of products to review to assess whether the operation is compliant with the regulations. This should involve a risk-based sampling of products that span different time ranges and products.

For example, the inspection of a grain milling operation is to include an examination of the transaction and processing records for various commodities and time ranges. An inspection of a manufacturer of organic frozen meals, or other multi-ingredient products, is to examine records for various types of products to cover a range of ingredients and production dates.

During an on-site inspection, a certifying agent may also choose to conduct a broader review of an entire supply chain for an operation's product(s), to fulfill the proposed requirement at § 205.501(a)(21) to conduct risk-based supply chain audits according to the certifying agent's written procedures to meet that audit requirement (see proposed § 205.504(b)(7)). Full supply chain audits are discussed in more detail later in this proposed rule.

The OFPA requires that organic operations maintain all records associated with the production and handling of organic products and make these records available to certifying agents at all times (7 U.S.C. 6519(a) and 6506(b)(1)(B)). The proposed inspection requirements support the review and verification of these required records.

5—CERTIFICATES OF ORGANIC OPERATION

Section	Action	Proposed text
205.2	Add new term	<i>INTEGRITY</i> . The National Organic Program's electronic, web-based reporting tool for the submission of data, completion of certificates of organic operation, and other information, or its successors.
205.404(b)	Revise	The certifying agent must issue a certificate of organic operation. The certificate of organic operation must be generated from <i>INTEGRITY</i> and may be provided to certified operations electronically.
205.404(c)	Redesignate	Redesignate as paragraph (d).
205.404(c)	Add	In addition to the certificate of organic operation provided for in § 205.404(b), a certifying agent may issue its own addenda to the certificate of organic operation. If issued, any addenda must include: (1) Name, address, and contact information for the certified operation;

5—CERTIFICATES OF ORGANIC OPERATION—Continued

Section	Action	Proposed text
		<p>(2) The certified operation's unique ID number/code that corresponds to the certified operation's ID number/code in USDA Organic INTEGRITY;</p> <p>(3) A link to USDA Organic INTEGRITY or a link to the certified operation's profile in USDA Organic INTEGRITY, along with a statement, "You may verify the certification of this operation at USDA Organic INTEGRITY," or a similar statement;</p> <p>(4) Name, address, and contact information of the certifying agent;</p> <p>(5) "Addendum issue date;" and</p> <p>(6) "Addendum expiration date," which must not exceed the expiration date of the certificate of organic operation.</p>

The certificate of organic operation ("organic certificate") communicates information about the organic certification of an operation and the raw and processed products it is permitted to represent as organic. The proposed rule would require certifying agents to provide organic certificates that are uniform in appearance. To achieve this uniformity, the proposed rule would require that certifying agents create and provide organic certificates that are generated from a USDA-hosted electronic web-based system known as the Organic INTEGRITY Database ("INTEGRITY"). In this way, AMS would be responsible for the functionality of INTEGRITY and ensure consistent content and style of all organic certificates. Buyers of organic products would be able to recognize and validate legitimate organic certificates. This is currently difficult due to wide variability in the content and style of certifying agent-generated organic certificates.

The appearance and format of current organic certificates vary depending upon which certifying agent issued the organic certificate. Currently, AMS accredits almost 80 certifying agents; only a few create organic certificates through INTEGRITY. As a result, more than 70 distinct formats of organic certificates exist in the market. This variation increases the chance of alteration and organic fraud. In addition, AMS consistently cites noncompliances to certifying agents who do not currently include all the required information on their own organic certificates. Of the 49 USDA-accredited certifying agents audited by the NOP in calendar years 2018 and 2019, 16 were cited for issuing organic certificates not consistent with USDA organic regulation and instruction. The use of a uniform organic certificate generated through INTEGRITY would eliminate these inconsistencies.

The changes are proposed under AMS' authority provided in the OFPA to establish a program for organic certification (7 U.S.C. 6503(a)) and to

facilitate interstate commerce of organic foods (7 U.S.C. 6501(3)). The proposed changes are also consistent with recommendations made by the NOSB between 2005 and 2007, including a recommendation that all certifying agents use a common database to issue and maintain organic certificates and that organic certificates include expiration dates.²⁹

The Organic INTEGRITY Database

The OFPA was amended in 2014 to, among other things, require the USDA to modernize database and technology systems. To that end, the NOP created the Organic Integrity Database. INTEGRITY contains information about certified operations as well as information about operations that have surrendered their organic certification or had their organic certification suspended or revoked. The data or information is provided directly from certifying agents. The information can be viewed and searched by the general public online at <https://organic.ams.usda.gov/Integrity/Default.aspx>.

INTEGRITY and Organic Certificates

In 2016, NOP enhanced the functionality of INTEGRITY to allow for the generation of organic certificates. When the currently optional function is activated, INTEGRITY generates a one-page organic certificate and an accompanying detailed product list (together referred to as the "organic certificate"). Few certifying agents

²⁹ NOSB Formal Recommendation: Information on Certificates of Organic Operation, March 2005: <https://www.ams.usda.gov/sites/default/files/media/NOSB%20Rec%20Standardize%20Organic%20Certifications%20Certificates.pdf>.

NOSB Formal Recommendation: Expiration Dates on Certificates of Organic Operation, November 2006: <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Use%20of%20Expiration%20Dates%20on%20Certificates%20of%20Organic%20Op.pdf>.

NOSB Formal Recommendation: Standardized Certificates, November 2007: <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Standardization%20of%20Certificates.pdf>.

currently use INTEGRITY to generate organic certificates. This proposed rule would require all certifying agents to generate organic certificates through INTEGRITY. Foreign-based certifying agents that are accredited to and certify operations to the USDA organic regulations would be required to enter data in INTEGRITY to generate the organic certificates for USDA-certified operations. The proposed changes would adopt a March 2005 NOSB recommendation that the NOP establish a common database for all certifying agents to issue and maintain organic certificates and that the database allow certifying agents to upload data from their existing systems.³⁰ INTEGRITY is the system that certifying agents would use to perform these functions.

Once created in INTEGRITY, an organic certificate is available online via a unique link where it can be electronically downloaded or printed as a hard copy. A permalink to the online certificate is included on every organic certificate, including downloaded and printed organic certificates. If an operation's certification has been suspended, revoked, or surrendered, information from the linked web page will indicate that a valid organic certificate is no longer available.

AMS expects the proposed changes would promote access to robust information about individual operations and support timely verification of the organic status of operations and products. Additionally, we expect the changes would encourage a move toward sharing of real-time electronic documents and away from paper-based documents, which can quickly become outdated and can be more easily falsified. AMS also expects that the proposed change would reduce the administrative burden on operations in the supply chain that must verify the validity of organic certificates,

³⁰ NOSB Formal Recommendation: Information on Certificates of Organic Operation; March 2005: <https://www.ams.usda.gov/sites/default/files/media/NOSB%20Rec%20Standardize%20Organic%20Certifications%20Certificates.pdf>.

especially for companies that purchase from many different organic operations.

Certifying agents that are not currently using INTEGRITY to generate organic certificates would need to modify their practices to routinely enter information in INTEGRITY before issuing organic certificates. Specifically, these certifying agents may need to provide additional information in INTEGRITY to populate all fields that appear on the organic certificate, including: Effective date of certification status, scope of organic certification (e.g., crops, handling), details about certified products (e.g., organic labeling category, brands), acreage, and livestock details. AMS would be responsible for the functionality of INTEGRITY, including the style and content of organic certificates.

Expiration Dates on Organic Certificates

The USDA organic regulations do not currently require expiration dates on organic certificates, and an operation’s organic certification does not expire—once granted, it may only be suspended, revoked, or surrendered. Through this proposed rule, AMS intends to include certificate expiration dates on the organic certificates generated via INTEGRITY. AMS sees this as an important measure to establish a clear and consistent method for assessing whether an organic certificate is current and valid. This change was recommended by the NOSB in a November 11, 2006 recommendation titled “Expiration Dates on Certificates of Organic Operation.”³¹ Expiration dates would ensure the data on an organic certificate is up to date and current. Using current (i.e., unexpired) certificates would support verification of an operation’s organic status. Expiration dates are intended to prompt

the generation of an updated organic certificate, rather than to void or have any effect on the operation’s certification status; an operation could remain certified even if their organic certificate has expired.

AMS intends to allow organic certificates to remain valid for 12 months from the date they are issued. The expiration date would be calculated automatically by INTEGRITY and appear on all organic certificates. Certifying agents could validate information and create a new organic certificate in INTEGRITY at any time to generate a new organic certificate with a new expiration dated 12 months from the creation of the certificate. AMS believes this flexibility would allow certified operations to obtain valid organic certificates from their certifying agent in a timely fashion. Operations that are certified (i.e., that have not surrendered their certification or had their certification suspended or revoked) would continue to have a right to obtain a valid organic certificate from their certifying agent to demonstrate their certification.

Allowance for Additional Addenda to Certificates of Organic Operation

AMS recognizes that certifying agents have invested in systems to create their own unique addenda to organic certificates; AMS is not seeking to eliminate these unique sources of value offered by certifying agents. Under the proposed rule, certifying agents could continue to provide their own certification addenda that would communicate additional information about an operation’s certification in a different format than generated by INTEGRITY.

For example, an addendum may include information about the

compliance of the operation’s crops or products with various international organic standards that may not be included on the INTEGRITY organic certificate. AMS is proposing six required elements (proposed § 205.404(c)) on any organic certificate addenda issued by certifying agents to deter organic fraud and provide consistency across certifying agents. Primarily, the proposed requirements are intended to ensure that someone viewing the document is aware that the certification may be verified in INTEGRITY.

As with organic certificates from INTEGRITY, this proposed rule requires that any organic certificate addenda include an expiration date. Certifying agents would need to ensure that the expiration date of the addendum does not extend beyond the expiration date of the most recent organic certificate generated by INTEGRITY, to ensure an operation does not simultaneously possess a valid addendum and an expired organic certificate, which could cause confusion.

Request for Comment

AMS seeks comment on the proposed amendments regarding certificates of organic operation discussed above, including answers to the following questions:

1. How frequently should accredited certifying agents update the information in an operation’s organic certificate?
2. Should a minimum reporting frequency (e.g., monthly, quarterly, etc.) be added to the regulations?
3. Should an expiration date be included on all certificates of organic operation? Would this make them more useful?

6—CONTINUATION OF CERTIFICATION

Section	Action	Proposed text
205.406(a)	Revise	To continue certification, a certified operation must annually pay the certification fees and submit the following information to the certifying agent: (1) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the organic system plan submitted during the previous year; and (2) Any additions or deletions to the previous year’s organic system plan, intended to be undertaken in the coming year, detailed pursuant to § 205.201; (3) Any additions to or deletions from the information required pursuant to § 205.401(b); and (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.
205.406(b)	Revise	The certifying agent must arrange and conduct an on-site inspection, pursuant to § 205.403, of the certified operation at least once per calendar year.

³¹ NOSB Formal Recommendation: Expiration Dates on Certificates of Organic Operation, November 2006: <https://www.ams.usda.gov/sites/>

[default/files/media/NOP%20Final%20Rec%20Use%20of%20](#)

[Expiration%20Dates%20on%20Certificates%20of%20Organic%20Op.pdf.](#)

AMS proposes amending § 205.406 to clarify the annual update requirements for certified operations and to clarify that certifying agents must conduct annual inspections of certified operations.

The current regulations require that certified operations annually submit an updated organic production or handling system plan (§ 205.400(b)). Some certifying agents require that certified operations submit an organic system plan (OSP) in its entirety every year, while other certifying agents only require that operations annually submit revisions to the OSP. Clarifying in the regulations that operations are only required to submit sections of the OSP that have changed will eliminate unnecessary paperwork without compromising oversight of organic operations. The NOP previously described this approach in published certifying agent Instructions (NOP 2615 and NOP 2601).³² These proposed changes are necessary to ensure legal enforceability, consistent practices between certifying agents, and reduce the paperwork burden of organic certification. The proposed changes in this section will not impact the requirements for certified operations to maintain an updated OSP or the requirement for an operation to notify their certifying agent of changes in their operation that may affect its compliance with the organic regulations (§ 205.400(f)). Further, the on-site

inspection must verify that the entire OSP is implemented as described.

AMS also proposes removing current paragraph § 205.406(a)(3) to reduce paperwork and simplify the certification process. Section 205.406(a)(3) requires that certified operations provide, along with their annual update, an update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification. This requirement is duplicative and unnecessary, as certifying agents (when issuing a notice of noncompliance) must specify a date by which a certified operation must rebut or correct noncompliances (§§ 205.662(a)(3) and 205.404(a)). Certifying agents should establish this due date in accordance with the severity of the noncompliance. If a certified operation does not resolve noncompliances by the due date, their certifying agent should take further action (*i.e.*, issue a notice of proposed suspension); therefore, AMS sees no benefit to requiring a partial response (*i.e.*, an update) as part of the annual renewal. While removing this requirement, AMS proposes to maintain the allowance in this section for certifying agents to require other information from certified operations during the annual renewal process that they determine is necessary to assess compliance. AMS believes this will provide certifying agents with the

flexibility they require to verify compliance.

Additionally, AMS proposes revising paragraph § 205.406(b) to simplify the regulatory text and to clarify that inspections are to be conducted on an annual basis. Current requirements at paragraph (b) could be interpreted to mean that an operation may be inspected once every 18 months on an ongoing basis (*i.e.*, two inspections over a 36-month period compared to three inspections if conducted annually). Revision of paragraph (b) would clarify that all certified operations must be inspected at least annually, regardless of (1) when the certified operation was last inspected and (2) when, or if, the certified operation provided its annual updates. Additional inspections may be needed to ensure full compliance of complex operations (*e.g.*, during and outside the grazing season for livestock operations). This requirement does not replace the need for additional unannounced inspections.

This revision would allow certifying agents flexibility to conduct on-site inspections at any time during the year (essential for verifying activities throughout the growing season, for example) while ensuring that an inspection is conducted every single calendar year. Annual inspection cycles are essential to vigilant oversight and AMS seeks to eliminate confusion around and deviations from alternative timing of on-site inspections.

7—PAPERWORK SUBMISSIONS TO THE ADMINISTRATOR

Section	Current text	Action	Proposed text
205.405(c)(3) ... 205.501(a)(15)	Provide notice of approval or denial to the Administrator, pursuant to § 205.501(a)(14). Submit to the Administrator a copy of: (i) Any notice of denial of certification issued pursuant to § 205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to § 205.662 simultaneously with its issuance; and (ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;	Remove. Revise	Maintain current and accurate data in INTEGRITY for each operation which it certifies;

AMS proposes amending § 205.405 and § 205.501 to reduce the paperwork burden of accredited certifying agents. In addition, AMS is proposing that certifying agents must maintain current data in INTEGRITY on all operations which they certify. The availability of

accurate and current information about certified operations is an essential tool for certifying agents and operations in the organic supply chain to support the verification of specific organic products.

The proposed removal of paragraph (c)(3) of § 205.405 will eliminate the

need to provide notices of approval or denial of certification to the Administrator following the issuance of a notice of noncompliance to an applicant for certification. The proposed rule would also amend provisions at § 205.501(a)(15) regarding information

³² NOP 2601 The Organic Certification Process, December 16, 2013: <https://www.ams.usda.gov/sites/default/files/media/2601.pdf>.

NOP 2615 Organic System Plans, Organic System Plan Updates, and Notification of Changes,

December 16, 2013: <https://www.ams.usda.gov/sites/default/files/media/2615.pdf>.

that accredited certifying agents must submit to the Administrator. The proposal removes the requirement for submission of any notices of denial of certification, notifications of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, or notification of suspension or revocation. Also, the proposed rule removes the annual requirement for certifying agents to submit by January 2 an annual list of operations certified during the preceding year.

These two requirements will be replaced by a requirement for certifying agents to maintain updated data in INTEGRITY for each operation they certify; these mandatory data requirements will include listings of

items and certified acreage, among other data fields. This proposed rule would require certifying agents to generate organic certificates in INTEGRITY, as discussed above in the proposed amendments to § 205.404. The organic industry, including certifying agents, certified operations, consumers, AMS, and other regulatory agencies, use INTEGRITY to confirm the certification status of an operation, organic status of a product, find product information about specific operations, and obtain data for investigation and enforcement. Timely updates to maintain data reflecting an operation's current status, including certified products and acreage, is critical to commerce and enforcement. As discussed later in this

proposed rule, amendments to § 205.662 would require certifying agents to update INTEGRITY within three business days of accepting an operation's surrender, or suspending or revoking an operation's certification.

AMS believes the availability of complete data on certified operations, including complete information on certified items and acreage, will reduce the time certifying agents and AMS spend responding to inquiries about specific operations and will enable interested parties to obtain information with less time and effort. Therefore, we propose including INTEGRITY reporting as a general requirement for accreditation to reinforce that data reporting is a mandatory practice.

8—PERSONNEL TRAINING AND QUALIFICATIONS

Section	Action	Proposed text
205.2	Add new term	<i>Certification review.</i> The act of reviewing and evaluating a certified operation or applicant for certification and determining compliance with the USDA organic regulations. This does not include performing an inspection.
205.501(a)(4)	Revise	Continuously use a sufficient number of qualified and adequately trained personnel, including inspectors and persons who conduct certification review, to comply with and implement the USDA organic standards; (i) Certifying agents must demonstrate that all inspectors, including staff, volunteers, and contractors, have the required knowledge, skills, and experience to inspect operations of the scope and scale as assigned and to evaluate compliance with the applicable regulations of this part; and (A) Certifying agents must demonstrate that inspectors continuously maintain adequate knowledge and skills about the current USDA organic standards, production and handling practices, certification and inspection, import and/or export requirements, auditing practices and skills in written and oral communications, sample collection, investigation techniques, and preparation of technically accurate inspection documents; and (B) Initially and every year thereafter, inspectors must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to inspection. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and (C) Certifying agents must demonstrate that inspectors have a minimum of 1 year of field-based experience related to both the scope and scale of operations they will inspect before assigning inspection responsibilities; (ii) Certifying agents must demonstrate that all persons who conduct certification review, including staff, volunteers, or contractors, have the knowledge, skills, and experience required to perform certification review of operations of the scope and scale assigned and to evaluate compliance with the applicable regulations of this part; and (A) Certifying agents must demonstrate that all certification review personnel continuously maintain adequate knowledge and skills in the current USDA organic standards, certification and compliance processes, and practices applicable to the type, volume, and range of review activities assigned; and (B) Initially and every year thereafter, all persons who conduct certification review activities must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to certification system review. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and (iii) Certifying agents must maintain current training requirements, training procedures, and training records for all inspectors and persons who conduct certification review activities.
205.501(a)(5)	Revise	Demonstrate that all persons with inspection or certification review responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned; (i) Sufficient expertise must include knowledge of certification to USDA organic standards and evidence of formal education, training, or professional experience in the fields of agriculture, science, or organic production and handling that directly relates to assigned duties.
205.501(a)(6)	Revise	Conduct an annual performance evaluation of all persons who conduct inspections, certification review, or implement measures to correct any deficiencies in certification services; (i) On-site evaluation of inspectors—Certifying agents must observe each inspector performing on-site inspections at least once every three years, or more frequently if warranted; and

8—PERSONNEL TRAINING AND QUALIFICATIONS—Continued

Section	Action	Proposed text
		(A) On-site inspector evaluations must be performed by certifying agent personnel who are qualified to evaluate inspectors; (ii) Certifying agents must maintain documented policies, procedures, and records for annual performance evaluations and on-site inspector evaluations.

The USDA organic regulations at 7 CFR 205.501, General Requirements for Accreditation, require certifying agents and their inspection and certification personnel to have sufficient expertise in organic production and handling techniques to fully comply with and implement the USDA organic regulations. The OFPA establishes AMS' authority to modify the USDA organic regulations at 7 CFR 205.501. The proposed rule amends § 205.501 to specify minimum qualifications and training requirements for inspectors and persons who perform certification review activities. The OFPA states that to be accredited as a certifying agent, the certifying agent will have sufficient expertise in organic farming and handling techniques as determined by the Secretary (7 U.S.C. 6514(b)(2)).

Organic inspectors and review staff are the most direct form of enforcement and verification in the organic system. Inspectors protect organic integrity by inspecting certified organic operations onsite and reporting their findings to certifying agents. Persons performing certification review activities also ensure organic integrity by reviewing organic system plans, inputs, inspection reports, and other certification documents. It is essential that these personnel have knowledge, skills, and experience related to the scope and scale of the organic operations they inspect and review. The role of inspectors and reviewers has grown more critical as organic operations and supply chains become more complex and diverse.

The USDA organic regulations currently require that certifying agents "have sufficient expertise in organic production or handling techniques," and maintain "a sufficient number of adequately trained personnel." However, the regulations lack specific detail about qualifications, experience, and continual training for inspectors and reviewers. Certifying agents set their own policies and minimum qualifications to hire inspectors and reviewers. This can result in variability of inspection and certification review between certifying agents. Further, many inspectors are independent contractors who are responsible for establishing and maintaining their own

knowledge base. This diversity of background and training creates an inconsistent baseline of knowledge and skill, exposing a potential weakness at one of the most critical points in the organic certification system.

This proposed rule would clearly define expertise requirements to ensure that all inspectors are capable of verifying an organic operation's compliance with the USDA organic regulations. The requirements would ensure that all inspectors can identify non-compliant or fraudulent practices when observed during inspection and produce a technically accurate inspection report that is sent to the certifying agent. The requirements would also ensure that persons performing certification review are competent in identifying any non-compliant or fraudulent practices of operations when reviewing inspection reports prepared by an inspector, organic system plans, or other certification documents. Examples of certification review includes reviewing applications for certification, reviewing certification documents, evaluating qualifications for certification, making recommendations concerning certification, or making certification decisions and implementing measures to correct any deficiencies in certification services. Establishing baseline criteria for qualifications and training of inspectors and certification review personnel would create a uniform level of scrutiny in inspections and certification compliance reviews for all USDA certified organic operations, leading to greater consistency and integrity in organic certification.

In a 2012 memo, the NOP notified certifying agents that all inspectors and reviewers, whether staff or independent contractors, must possess the expertise and qualifications needed to evaluate compliance with the USDA organic standards.³³ During audits performed twice every five years, AMS has observed that inspectors and certification review staff currently receive at least 10 hours of training per

³³ NOP Memo: Criteria and Qualifications for Organic Inspectors; April 2012: <https://www.ams.usda.gov/sites/default/files/media/NOP-Notice-OrganicInspectorCriteria.pdf>.

year from certifying agents on topics related to the USDA organic regulations.³⁴ In 2018, the NOSB provided recommendations for the specific qualification and training requirements for inspectors and persons performing certification review.³⁵ AMS has considered these recommendations and determined that the proposed changes align with the OFPA and would bolster the integrity of organic products.

The USDA organic regulations stipulate that accredited certifying agents must have sufficient expertise in organic production and handling techniques to fully comply with and implement the terms and conditions of the organic certification program. The regulations at § 205.501(a)(4) require that certifying agents use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and fully implement the organic certification program. It is essential that certifying agents maintain adequate staffing levels and the range of expertise needed to perform the full range of certification activities, including inspections and reviews. This includes maintaining an inspection staff to timely complete initial on-site inspections, annual inspections for all operations it certifies, unannounced inspections on a minimum of 5 percent of the operations it certifies annually, and any other inspections that may be warranted for investigations or reinstatements. If certifying agents reduce staffing levels, if the number of certified operations increases, or if certifying agents add new certification scopes to the certification services they provide, then the number and qualifications of personnel used by certifying agents may become insufficient to fully comply with the organic regulations.

³⁴ Paperwork burden attributed to current training is accounted for in the NOP's 2020 Information Collections Renewal (ICR) (AMS-NOP-19-0090; OMB Control #: 0581-0191). Also, please see Paperwork Reduction Act chapter and Information Collection Request (ICR) package associated with this proposed rule for additional details regarding this proposed burden.

³⁵ NOSB Formal Recommendation, Inspector Qualifications and Training, May 29, 2018: <https://www.ams.usda.gov/sites/default/files/media/CACSInspectorQualificationsRec.pdf>.

Therefore, this proposed rule amends § 205.501(a)(4) to clarify that certifying agents must continuously use a sufficient number of qualified and adequately trained personnel. This proposed rule also specifies and strengthens requirements for organic inspectors and certification review personnel. These additional qualification and training requirements will help certifying agents meet their obligation to provide sufficient expertise in organic production and handling techniques. The new proposed requirements would specify the areas of knowledge, skills, and expertise required for certifying agents in using adequately trained inspection and certification review personnel for organic inspection and review activities.

Inspector Qualifications and Training

The regulations at § 205.501(a)(4) currently do not contain requirements for specific qualifications or training of inspectors. Certifying agents depend on qualified inspectors who are experienced with the complexity of the organic market to verify the integrity of organic products. Organic inspections, a critical component for ensuring organic integrity, are an assessment of an entire production system, not just the final product. Therefore, when conducting organic inspections, inspectors must continuously maintain adequate knowledge and skills about the current USDA organic standards, production and handling practices, certification and inspection, import and/or export requirements, auditing practices and skills in written and oral communications, sample collection, investigation techniques, and preparation of technically accurate inspection documents. In addition, the knowledge, skills, and experience in these areas must be relevant to the scope and scale of the operation seeking or continuing organic certification.

Given that certifying agents may use a variety of inspectors, including staff, volunteers, and contract inspectors, there is variability in the level of experience and qualifications of inspectors performing the key function of ensuring organic integrity at the source of production and through the supply chain. This proposed rule adds subparagraph (i) requiring certifying agents to ensure all inspectors have the level of knowledge, skills, and experience needed to conduct the specific inspections assigned, based on the scope and scale of the operations to be inspected. The proposed rule clarifies that the requirement applies not only to staff inspectors, but to all inspectors (*i.e.*, including volunteers

and contractors) and further requires certifying agents to provide evidence of inspectors' qualifications, matching the scope and scale of inspection assignments.

This proposed rule at § 205.501(a)(4)(i)(A) describes the general scope of the knowledge and skills required for inspectors to be deemed adequately qualified. Inspections of organic operations provide information to certifying agents to verify whether the practices and inputs used in an operation's implemented organic system plan are compliant with the USDA organic regulations. To ensure an adequate organic inspection, each inspector must be knowledgeable and competent both in inspection and auditing procedures, as well as in the processes of organic certification and inspection. Organic inspectors must know the USDA organic regulations and have expertise in the scope of the agricultural or processing system (*i.e.*, crops, wild crops, livestock, or handling) being inspected.

In addition, inspectors must have sufficient knowledge of organic and general agricultural practices, as well as a general awareness of other rules and regulations that may be applicable to the operation being inspected. Qualified organic inspectors must also have skills in written and oral communications, auditing, investigation and observation techniques which support fraud detection, and sample collection. Inspectors must be proficient in orally communicating inspection findings both during the inspection closing meeting with the inspected operation, and in writing to provide detailed and technically accurate descriptions of the inspection findings in the report to the certifying agent. The inspection report is a critical tool used by certifying agents to verify if on-site practices are in compliance with the USDA organic regulations. As such, the quality and depth of the inspection report directly affects the integrity of organic products. An adequately qualified inspector would know how to independently apply knowledge in the above areas to assess whether an operation is complying with all applicable parts of the regulations and clearly communicate those findings to the certifying agent.

AMS proposes strengthening and specifying training requirements to § 205.501(a)(4)(i)(B) for all inspectors currently inspecting organic operations or seeking to become qualified to conduct organic inspections. For inspectors to remain qualified or to become qualified in any scope of organic inspection, they must obtain

and continuously update knowledge, skills, and experience relevant to the types of operations they inspect. Organic training hours should include: Organic and general agricultural practices; USDA organic regulations and guidance; inputs allowed for organic production and handling (*i.e.*, changes to the National List); new technology that may be used in organic production and handling; investigation and auditing techniques; and new developments in marketing organic products. To ensure consistency in inspector training and qualifications across the organic industry, this proposed rule requires that inspectors initially, and every year thereafter, complete at least 20 hours of training that may include material delivered via the NOP learning management system, certifying agents, or other relevant training providers.

In their 2018 recommendation, NOSB did not specify the number of hours of training that inspectors must complete annually. However, they requested that the NOP set the minimum training guidelines. A minimum of 20 hours of annual training for inspectors is consistent with standards established by other agencies or organizations (*e.g.*, Preventive Controls Qualified Individuals per 2011 Food Safety Modernization Act; ISO 9001 Global Certified Lead Auditor). The proposed training requirements will ensure that inspectors meet the training requirements recommended by the NOSB, which state that continuing education is essential to "professional competence."³⁶ Establishing baseline training criteria for inspectors across the organic industry is essential for ensuring that compliance with USDA organic standards would be assessed in all sectors of this rapidly growing and diversifying global industry. Additionally, requiring inspectors to continuously supplement their knowledge with a minimum annual training requirement is vital to ensuring the integrity of organic products amidst rapidly changing technologies and product supply chain practices.

Each scope of organic certification, as well as the scale and type of operation being inspected, provides different challenges to ensuring a comprehensive and sufficient organic inspection. Inspectors who are inexperienced with an agricultural production or handling system may underestimate the scale of an operation or may miss components of

³⁶ NOSB Formal Recommendation, Inspector Qualifications and Training, May 29, 2018: <https://www.ams.usda.gov/sites/default/files/media/CACSIInspectorQualificationsRec.pdf>.

that system during the inspection. Varied quality of inspections can result in an inconsistent organic certification process. In addition, to enhance inspection consistency and organic certification integrity, this rule proposes to add the requirement, in § 205.501(a)(4)(i)(C), that certifying agents must ensure and demonstrate an inspector has a minimum of one year of on-site experience related to the scope and size of the operation being inspected. The proposed requirement aligns with recommendations developed by the NOSB.

Certification Review Personnel Qualifications and Training

The regulations in § 205.501(a)(4) currently do not contain requirements for specific qualifications or training of persons who conduct certification review. Certification review personnel are critical to ensuring organic integrity. Certification review activities include, but are not limited to, review of organic system plans, inputs (e.g., production aids, fertilizers, pesticides), seeds, planting stock, inspection reports, and residue tests for compliance with the USDA organic standards. Certification review personnel are responsible for verifying whether the procedures being implemented at the point of production or handling are compliant with the USDA organic standards. Certification review personnel must continuously maintain adequate knowledge about the current USDA organic standards, certification and compliance processes, and practices applicable to the type, volume, and range of review activities assigned. The level of knowledge, skills, and experience of certification review personnel must be relevant to the scope and scale of the operations seeking or continuing organic certification.

In addition, certification review personnel play a crucial role in determining if an operation is granted organic certification initially, if continued certification is warranted, and/or if issuing a non-compliance, proposed suspension, or revocation. In cases where an operation has been issued a non-compliance or has been suspended, the certification review personnel determine if sufficient corrective actions have been taken to bring the operation into compliance. As such, the certification review personnel are integral to maintaining organic integrity. Therefore, this proposed rule adds a requirement at § 205.501(a)(4)(ii) that certifying agents are responsible for demonstrating that all certification review personnel, whether staff, volunteers, or contractors, have the knowledge, skills, and experience

needed to conduct the specific reviews assigned.

This proposed rule at § 205.501(a)(4)(ii)(A) specifies the types of knowledge and essential skills in which certification review personnel must be proficient to be deemed qualified. To verify the integrity of organic products, reviewers must be knowledgeable and competent in current USDA organic regulations, guidance, and instructions; certification procedures; and practices specific to the type, volume, and range of review activities assigned by the certifying agent. To remain current with changes in technology, new developments in marketing or importing organic products, changes in organic standards, novel input materials, or changes to the National List, reviewers must continuously update knowledge, skills, and experience directly related to their specific review responsibilities.

To ensure consistency in reviewer training and qualifications across the organic industry, this proposed rule in § 205.501(a)(4)(ii)(B) requires that all persons conducting certification review activities initially, and every year thereafter, complete at least 20 hours of training that can include material delivered via the NOP learning management system, certifying agents, or other relevant training providers. A minimum of 20 hours of annual training for certification review personnel is consistent with training required by other agencies or organizations (e.g., Preventive Controls Qualified Individuals per 2011 Food Safety Modernization Act; ISO 9001 Global Certified Lead Auditor). Establishing baseline training criteria for certification review personnel across the organic industry is essential for ensuring that compliance with USDA organic standards would be assessed in all sectors of this rapidly growing and diversifying global industry. Additionally, requiring certification review personnel to continuously supplement their knowledge with a minimum annual training requirement is vital to ensuring the integrity of organic products amidst rapidly changing technologies and product supply chain practices.

Documented Training Requirements and Procedures

The current regulations at § 205.504(a) require certifying agents to provide descriptions of personnel qualifications and training but do not contain requirements for documenting training procedures. This proposed rule adds § 205.501(a)(4)(iii) to require certifying agents to maintain current documented

training requirements, procedures, and records for all inspectors and certification review personnel. This requirement would enable the NOP to verify if accredited certifying agents are meeting the requirement in § 205.501(a)(4) to maintain a sufficient number of qualified and adequately trained personnel to comply with and implement the organic certification program established under the Act.

Expertise

The regulations in § 205.501(a)(5) require that certifying agents ensure that all persons with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production and handling techniques. However, the regulations currently do not contain requirements for specific expertise areas needed to ensure the integrity of organic products. This proposed rule adds § 205.501(a)(5)(i) to clarify the areas of expertise required. The change specifies that expertise must include knowledge of certification to USDA organic standards, as well as evidence of formal education, training, or professional experience in the fields of agriculture, science, or organic production and handling that directly relates to assigned duties. This clarification will assist certifying agents in evaluating potential hires for adequate expertise needed to perform certification duties. The added specificity regarding areas of expertise and the need for formal education or training aligns with recommendations proposed by the NOSB.³⁷ AMS evaluated the proposed recommendations and found them to be consistent with the OFPA and therefore has included similar requirements in this proposed rule.

Performance Evaluations

The proposed rule also revises the requirements for annual performance evaluations, described in § 205.501(a)(6), to include requirements for regular field evaluation of inspectors and documentation of annual performance and field evaluation procedures and results. The proposed rule amends § 205.501(a)(6) to clarify the requirements for annual performance evaluations conducted by accredited certifying agents. Subparagraph (i) is added to address the evaluation of inspectors while performing on-site inspections. The proposed rule ensures that inspectors

³⁷ "Training and Oversight of Inspector and Certification Review Personnel" proposal, August 17, 2018: <https://www.ams.usda.gov/sites/default/files/media/CACSTrainingOversightInspectorsProposalOct2018Web.pdf>.

are evaluated regularly in the field (*i.e.*, while performing an inspection on a farm, in a processing facility, etc.). The proposed change specifies a minimum frequency of every three years for on-site inspection evaluation, unless higher frequency is warranted based on experience level or past performance of the individual inspector. For inspectors that work for or contract with multiple certifying agents, the on-site evaluation conducted by one certifying agent may fulfill the on-site evaluation requirements for all certifying agents, provided that the report of the evaluation is shared. Another certifying agent may choose to independently conduct an on-site evaluation in addition to one performed by another certifying agent within the 3-year period. All certifying agents are required to ensure that all inspectors they employ or contract with have been evaluated during an on-site inspection at least once every three years. The proposed frequency of on-site inspection evaluation is based upon the frequency recommended in the NOSB proposal “Personnel Performance Evaluations of Inspectors”³⁸ and aligns with the “Guidance on Organic Inspector Qualifications” published by the Accredited Certifiers Association, Inc.³⁹ (February 2018). AMS considered

requiring more frequent on-site evaluations. However, the NOSB has indicated that requiring inspector on-site evaluations on a more frequent basis worldwide may pose undue financial burden on certifying agents. AMS also determined that inspector evaluations every year would create a significant resource constraint on certifying agents.

On-site evaluations of inspectors are necessary to verify that inspectors possess the knowledge and skills to evaluate the compliance of certified organic operations and to produce technically accurate inspection reports. Requiring recurring, on-site evaluations of inspectors would enhance the integrity of organic products by verifying competence of organic inspectors and ensuring consistency in organic certification inspections. Subparagraph (i)(A) is added to ensure that inspector on-site evaluations are performed by certifying agent personnel who are qualified to evaluate inspectors. This could include for example, a person who has prior experience as an inspector, conducts training for inspectors, and/or evaluates inspection reports to determine compliance.

Subparagraph (ii) is added to address the need for certifying agents to maintain detailed procedures regarding how performance evaluations are

conducted. The text also requires certifying agents to document results of on-site inspector performance evaluations and results of annual performance evaluations for all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services. This change would ensure uniformity in scope and frequency of performance evaluations implemented across certifying agents, thereby enhancing organic integrity.

Request for Comment

AMS seeks comment regarding certifying agent personnel qualifications and training, including answers to the following questions:

1. Is 20 training hours a year an appropriate amount of continuing education for organic inspectors and certification review personnel?
2. Should organic inspectors be evaluated on-site more frequently than once every three years?
3. Should any other types of knowledge, skills, and experience be specified?

9—OVERSIGHT OF CERTIFICATION ACTIVITIES

Section	Action	Proposed text
205.2	Add new term	<i>Certification activity.</i> Any business conducted by a certifying agent, or by a person acting on behalf of a certifying agent, including but not limited to: Certification management; administration; application review; inspection planning; inspections; sampling; inspection report review; material review; label review; records retention; compliance review; investigating complaints and taking adverse actions; certification decisions; and issuing transaction certificates.
205.2	Add new term	<i>Certification office.</i> Any site or facility where certification activities are conducted, except for certification activities that occur at certified operations or applicants for certification, such as inspections and sampling.
205.501(a)(22)	Add	Notify AMS not later than 90 calendar days after certification activities begin in a new certification office. The notification must include the countries where the certification activities are being provided, the nature of the certification activities, and the qualifications of the personnel providing the certification activities.
205.640	Revise	Fees and other charges equal as nearly as may be to the cost of the services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be reviewed, assessed, and collected from applicants in accordance with the following provisions:
205.665(a)	Revise	<i>Notification.</i> (1) A written notification of noncompliance will be sent to the certifying agent when: (i) An inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any noncompliance with the Act or regulations in this part; or (ii) The Program Manager determines that the certification activities of the certifying agent, or any person performing certification activities on behalf of the certifying agent, are not compliant with the Act or the regulations in this part; or (iii) The Program Manager determines that the certification activities at a certification office, and/in specific countries, are not compliant with the Act or the regulations in this part. (2) Such notification must provide: (i) A description of each noncompliance;

³⁸ “Personnel Performance Evaluations of Inspectors” proposal, December 13, 2016: <https://www.ams.usda.gov/sites/default/files/media/CACSIInspectorsProposal.pdf>.

³⁹ The Accredited Certifiers Association, Inc. is a 501(c)(3) non-profit educational organization created to benefit the accredited organic certifying

agent community and the organic industry: <https://www.accreditedcertifiers.org/>.

9—OVERSIGHT OF CERTIFICATION ACTIVITIES—Continued

Section	Action	Proposed text
		(ii) The facts upon which the notification of noncompliance is based; and (iii) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

AMS proposes amending §§ 205.2, 205.501, and 205.665 of the USDA organic regulations to strengthen oversight and enforcement of certifying agents and their activities. These proposed changes are primarily intended to address recent changes to the OFPA, as amended by the Agriculture Improvement Act of 2018 (see 7 U.S.C. 6515(i)–(j)).⁴⁰ Clarifying the oversight of certifying agents is a critical component of this proposed rule, because it will allow the NOP to provide robust enforcement of the USDA organic regulations, and ensure a level playing field for all accredited certifying agents and certified operations.

General Clarification of Oversight

To clarify the USDA's oversight of the certifying agents it accredits, AMS proposes adding the new term *certification activities* to the organic regulations. This new term defines the general activities which are considered essential to the function of a certifying agent, and therefore subject to oversight by the NOP. Any business operation conducted by a certifying agent as they implement the USDA organic regulations is considered a certification activity, including review, inspection, and certification of organic operations. The new term also clarifies that NOP oversight extends to the activities of any person performing work on behalf of the certifying agent (e.g., a specific office operating in specific countries, or a subcontractor or subcontractor organization). Because the use of subcontractors is very common in the organic industry, effective enforcement depends upon oversight that reaches all persons involved in the certification of organic operations. This is reinforced by the proposed revision of § 205.665, at paragraph (a)(1)(ii), which clarifies the Program's authority to send notifications of noncompliance to a certifying agent based upon review of

certification activities, including those of a person acting on behalf of the certifying agent.

Certifying Agents With Multiple Offices of Operation

Certifying agents commonly operate multiple offices to ensure adequate service (e.g., sufficient capacity or proximity) to the operations they certify. This can result in a single certifying agent with multiple offices spread across several different countries, many of which act independently and are quite remote from the central office. NOP is aware that several certifying agents accredited by the USDA use multiple offices to perform certification activities. As part of our ongoing efforts to improve enforcement, AMS has requested information about certification offices and the types of certification activities that are conducted at those offices. The lack of specificity in the USDA organic regulations and the dynamic nature of relationships between a certifying agent and its offices create oversight challenges for the USDA. This has led to inconsistent application and enforcement of the regulations amongst certifying agents and offices.

To clarify the USDA's authority to oversee certification offices, AMS proposes the addition of the new term *certification office*, and the previously mentioned term *certification activities*. A certification office is defined as any site or facility where certification activities take place (except for activities that take place at certified operations or other specialized facilities, such as inspection, sampling, and testing). In combination with the proposed revisions to § 205.665 at paragraph (a)(1)(iii), this allows the NOP to send notices of noncompliance to a certifying agent, based upon the certification activities at a specific certification office and in specific countries.

Another gap in the oversight of certification offices is the current lack of

requirements to notify the NOP of the opening of new certification offices. Because of this, the NOP has difficulty readily quantifying how many certification offices exist; this is compounded by reports of offices opening and closing frequently and unpredictably, complicating the NOP's ability to effectively oversee the activities of these offices. To ensure more robust enforcement of certification offices, AMS proposes adding a new paragraph, (a)(22), to § 205.501, which will require that certifying agents notify the NOP within 90 calendar days of the opening of any office performing certification activities. The notification must include basic information to assist the NOP in effectively overseeing the office, including the countries serviced, location and nature of the certification activities, and the qualifications of the personnel that will provide the certification activities. Information on the location of new offices will enable AMS to more efficiently utilize personnel and travel resources to schedule on-site evaluations, and to specify countries in which the certifying agent's certification activities must cease should a certifying agent's office be suspended or revoked based on failure to resolve its noncompliances. Information on the types of certification activities being conducted will allow AMS to better evaluate the need for additional oversight; for instance, a new office located in a high-risk area with a history of organic fraud may require additional oversight.

The proposed rule, if finalized, will codify this practice and ensure that certifying agents are providing complete information about their certification offices in a timely manner. Accurate and timely reporting of information about certification activities will bolster the NOP's ability to oversee certifying agents, and provide for more equitable enforcement of the Act and the USDA organic regulations.

⁴⁰ See section 10104(d) of the Agriculture Improvement Act of 2018, Public Law No: 115–334,

available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

10—ACCEPTING FOREIGN CONFORMITY ASSESSMENT SYSTEMS

Section	Action	Proposed text
205.2	Add new term	<i>Conformity assessment system.</i> All activities undertaken by a government to ensure that the applicable technical requirements for the production, handling, and processing of organic agricultural products are fully and consistently applied from product to product.
205.2	Add new term	<i>Technical requirements.</i> A system of relevant laws, regulations, regulatory practices, and procedures that address the production, handling, and processing of organic agricultural products.
205.500(c)	Remove	
205.511	Add new section	Accepting foreign conformity assessment systems.
205.511(a)	Add	Foreign product may be certified under the USDA organic regulations by a USDA-accredited certifying agent and imported for sale in the United States. Foreign product that is produced and handled under another country's organic certification program may be sold, labeled, or represented as organically produced in the United States if AMS determines that such organic certification program provides technical requirements and a conformity assessment system governing the production and handling of such products that are at least equivalent to the requirements of the Act and the regulations in this part ("equivalence determination").
205.511(b)	Add	Countries desiring to establish eligibility of product certified under that country's organic certification program to be sold, labeled or represented as organically produced in the United States may request an equivalence determination from AMS. A foreign government must maintain compliance and enforcement mechanisms to ensure that its organic certification program is fully meeting the terms and conditions of any equivalence determination provided by AMS pursuant to this section. To request this determination, the requesting country must submit documentation that fully describes its technical requirements and conformity assessment system. If AMS determines it can proceed, AMS will conduct an assessment of the country's organic certification program to evaluate whether it is equivalent.
205.511(c)	Add	AMS will describe the scope of an equivalence determination.
205.511(d)	Add	AMS will conduct reviews on a two-year cycle, beginning at the close of the prior review, to assess the effectiveness of the foreign government's organic certification program. AMS will reassess a country's organic certification program that AMS has recognized as equivalent every five years to verify that the foreign government's technical requirements and conformity assessment program continue to be at least equivalent to the requirements of the Act and the regulations of this part, and will determine whether the equivalence determination should be continued.
205.511(e)	Add	AMS may terminate an equivalence determination if the terms or conditions established under the determination are not met; if AMS determines that the country's technical requirements and/or conformity assessment program are no longer equivalent; if AMS determines that the foreign government's organic control system is inadequate to ensure that the country's organic certification program is fully meeting the terms and conditions under the determination; or for other good cause.

AMS proposes adding a new section to the USDA organic regulations, § 205.511, on accepting foreign conformity assessment systems that oversee organic production in foreign countries. If this proposed rule is implemented, new § 205.511 will replace current § 205.500(c), which will be removed.

International trade is critically important to the economic vitality of the organic sector. The OFPA, under 7 U.S.C. 6505(b), allows imported products to be sold or labeled as organically produced if the Secretary determines that the products have been produced and handled under an organic certification program with requirements and oversight determined to be at least equivalent to those described in the OFPA. Under this authority, AMS has developed a process for determining the equivalence of foreign organic certification programs. AMS' equivalence determination process is based on the similar processes used by

other U.S. government agencies and foreign trading partners, and on guidelines from international organizations such as the World Trade Organization (WTO), the International Standards Organization (ISO), the Food and Agriculture Organization (FAO), and the International Federation of Organic Agriculture Movements (IFOAM). AMS' process was roughly described in two previous certifying agent Instruction documents in the National Organic Program Handbook: NOP 2100—Equivalence Determination Procedure; and NOP 2200—Recognition and Monitoring of Foreign Government Conformity Assessment Systems.

AMS has used its equivalence determination process to establish trade arrangements for organic products with 10 other countries.⁴¹ These

⁴¹ The United States has seven organic equivalence arrangements: Canada, the European Union, Japan, South Korea, Switzerland, Taiwan, and the United Kingdom. The United Kingdom equivalency will be effective in January 2021. The

arrangements facilitate trade and are an important mechanism for ensuring robust oversight of imported organic products. The most common type of trade arrangement is a full organic equivalence determination, in which AMS determines a country's entire organic certification program to be equivalent to that of the United States. AMS has also established recognition agreements, where AMS determines that a foreign government's ability to accredit certifying agents and enforce standards is equivalent and authorizes that government to oversee certification of products to the USDA organic standards.

The USDA has direct oversight over the certifying agents it accredits under the NOP. In contrast, certifying agents accredited by a foreign government whose organic certification program has been determined to be equivalent are

United States also has three recognition agreements: India, Israel, and New Zealand.

accredited by the foreign government or by an agent of that government. The USDA has no direct oversight of these certifying agents and relies upon the conditions of the equivalence determination to ensure compliance with the Act and the regulations.

The current USDA organic regulations address the USDA's authority to make equivalence determinations in general terms under § 205.500(c), but do not describe the criteria, scope, and other parameters to establish, oversee, or terminate such equivalence determinations, all of which are critical to the enforcement of organic imports. This proposed new section is necessary to adequately address AMS' authority and clarify the procedures that the agency follows for organic equivalence determinations. Importantly, the section codifies the agency's existing practices and does not establish any new requirements. The new regulatory language will strengthen AMS oversight and enforcement capacity of organic imports. Clear language in the regulations regarding equivalence determination will support AMS authority to determine the scope of equivalence determinations. It will also support AMS' authority in reassessing, and either continuing or terminating equivalence determinations, as necessary. Finally, additional clarity in the regulations will increase transparency for stakeholders and foreign governments by establishing a foundation for AMS to develop more detailed documents that describe the process and requirements for equivalence determinations. Without adding this new section to the regulations, AMS could face challenges establishing and enforcing terms under current and future equivalence determinations that are critical to ensuring the integrity of imported organic products.

To support proposed new § 205.511, AMS proposes adding two new terms to

§ 205.2: *Conformity assessment system*; and *technical requirements*. These terms are defined to ensure that the process and requirements described in new § 205.511 are clear.

The term *conformity assessment system* would be defined as all activities undertaken by a government to ensure that the applicable technical requirements for the production, handling, and processing of organic agricultural products are fully and consistently applied from product to product. *Technical requirements* would be defined as a system of relevant laws, regulations, regulatory practices, and procedures that address the production, handling, and processing of organic agricultural products. A government's conformity assessment system and technical requirements would cover the full range of activities associated with administering a federal organic program (*i.e.*, development of standards, policies and procedures, accreditation and oversight of certifying agents, and compliance and enforcement activities).

New § 205.511(a) describes AMS' authority under the OFPA to make equivalence determinations. New § 205.511(b) describes the process for initiating a request for equivalence used by AMS and other foreign governments. Since there are several factors that may impact whether AMS moves forward to review an equivalence request (*i.e.*, agency resources, capacity to oversee the potential trade arrangement, relative benefits for the U.S. organic sector), this section clarifies that AMS will determine if it can proceed with the evaluation process in each case.

New § 205.511(c) clarifies that AMS will determine the scope of each equivalence determination that it makes. It is important to make this clarification because not all determinations must cover the same organic products and activities and they may include different terms or conditions. These differences depend

upon AMS' evaluation of each foreign government's unique technical requirements and conformity assessment system and are important to AMS' ability to ensure the integrity of organic products produced under different systems.

New § 205.511(d) lays out the current process that AMS and other foreign governments use to monitor equivalence determinations that have been made. The review cycles mirror ISO standards, which include a five-year reassessment cycle and mid-cycle reviews. The section provides some flexibility in the timing of the mid-cycle reviews to accommodate unavoidable factors in both countries that can impact timing (*e.g.*, federal budgets, election cycles, growing seasons).

New § 205.511(e) describes the conditions under which AMS may terminate equivalence determinations. These conditions for termination are commonly accepted among countries that maintain equivalence determinations and are based upon the core concepts underlying equivalence. AMS must be able to terminate equivalence determinations under these conditions in order to fulfill its statutory obligation to assure that organic products sold in the United States are compliant with OFPA and the USDA organic regulations and maintain a level playing field for U.S. farms and businesses.

Request for Comment

AMS seeks comment regarding whether the public sees a differential risk to enforcement associated with certain organic trade relationships. Specifically, compared with organic equivalence determinations, are there increased risks associated with recognition agreements where other countries' governments oversee the implementation of NOP certification?

11—COMPLIANCE—GENERAL

Section	Action	Proposed text
205.660(c)–(d)	Redesignate	Redesignate paragraphs (c)–(d) as paragraphs (d)–(e). The Program Manager may initiate enforcement action against any person who sells, labels, or provides other market information concerning an agricultural product if such label or information implies, directly or indirectly, that such product is produced or handled using organic methods, if the product was produced or handled in violation of the Organic Foods Production Act or the regulations in this part.
205.660(c)	Add	
205.661	Revise section title	Investigation.

AMS proposes adding new paragraph (c) to § 205.660, to clarify that the NOP Program Manager may initiate an enforcement action against any violator

of the OFPA, as amended (7 U.S.C. 6501 et. al). The proposed change will clarify that the OFPA grants the Secretary administrative powers to enforce the

Act against any violator, regardless of certification status. This clarification is important because noncertified status does not protect an operation that

commits organic fraud from enforcement action. The NOP currently pursues enforcement actions against uncertified parties for which AMS has evidence of OFPA violations.

This proposed change is consistent with the enforcement authority granted to the Secretary in the OFPA. All agricultural products sold, labeled, or represented as organic must be produced and handled in compliance with the USDA organic regulations. The OFPA at 7 U.S.C. 6505(a)(1) states: (A) A person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this chapter; and (B) no person

may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter. Further, the OFPA at 7 U.S.C. 6506(a)(7) requires that the NOP provide for appropriate and adequate enforcement procedures, as determined by the Secretary to be necessary and consistent with this chapter.

AMS also proposes amending the title of § 205.661 from “Investigation of certified operations” to “Investigation.” The proposed change is intended to further clarify that the OFPA grants the

Secretary administrative powers to enforce the Act against any violator, regardless of the person’s certification status.

The proposed changes are necessary to emphasize the Secretary’s administrative powers to investigate and enforce against operations who are not certified to the USDA organic standards. During calendar years 2011–2017, over 70% of complaints received by the NOP alleging violations of the OFPA involved uncertified operations representing products as organic. Therefore, continued AMS enforcement against uncertified operations is central to the effective administration of the OFPA.

12—NONCOMPLIANCE PROCEDURE FOR CERTIFIED OPERATIONS

Section	Action	Proposed text
205.100(c) 205.662(e)(3)	Revise Add	Any person or responsibly connected person that: Within 3 business days of issuing a notification of suspension or revocation, or the effective date of an operation’s surrender, the certifying agent must update the operation’s status in INTEGRITY.
205.662(f)(1)	Revise	A certified operation or a person responsibly connected with an operation whose certification has been suspended may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification, or submit a request for eligibility to be certified. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.
205.662(g)(1)	Revise	Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in § 3.91(b)(1)(xxxvii) of this title per violation.

AMS proposes amending §§ 205.100 and 205.662 to clarify that a person who is responsibly connected to an operation that violates the OFPA or the USDA organic regulations may be subject to a suspension of certification (if the responsibly connected person is certified), or civil penalties or criminal charges and/or may be ineligible to receive certification. This will bolster the enforcement capacity of AMS by ensuring that penalties for violations of the OFPA extend to all accountable parties.

The USDA organic regulations, at section § 205.2, define *responsibly connected* as “Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.” The OFPA provides that any person who (1) attempts to label a product as organic and who knows or should have known that the product is noncompliant; or (2) makes a false statement to the USDA; or (3) otherwise does not comply with the USDA organic regulations is ineligible to receive organic certification for 5 years (7 U.S.C. 6519(c)(3)). In addition, the OFPA states that any person who knowingly sells or

labels a nonorganic product as organic, or makes a false statement to the Secretary, a State organic program, or a certifying agent, shall be subject to civil penalty fines or imprisonment, respectively (7 U.S.C. 6519(c)(1)–(2)).

This proposed rule clarifies that a person responsibly connected to a violator of the OFPA may be complicit in the OFPA violation(s) because of that association, and may be ineligible to receive certification. This parallels the current provisions in the USDA organic regulations for revocation of certification, where a certified operation or person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for 5 years (§ 205.662(f)(2)). AMS expects that when issuing a proposed suspension, certifying agents will identify all persons responsibly connected, and when such persons exist, notify the appropriate certifying agent(s) or the NOP, as applicable.

This proposed rule also clarifies that a person responsibly connected to a person that knowingly sells nonorganic product as organic or makes a false statement to authorities about compliance with the OFPA, may be

subject to fines and/or imprisonment (18 U.S.C. 1001). This will enable AMS to take comprehensive enforcement action to hold all responsible individuals accountable and prevent persons that enable or assist in activities that violate the OFPA from continuing that activity.

AMS also proposes adding new paragraph § 205.662(e)(3) to require certifying agents to timely update the status of an operation that has been suspended or revoked, or that has surrendered its certification. The updates should be completed within three business days of issuing a notification of suspension or revocation, or from the effective date of a surrender. Timely updates to INTEGRITY are critical to inform other certifying agents, operations in the supply chain, and consumers when an operation is no longer certified and can help prevent noncompliant products from entering or continuing in the stream of commerce.

Finally, AMS proposes amending § 205.662(g)(1) to update the citation which specifies the maximum civil penalty amount for violations of the OFPA. This aligns with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. On March

14, 2018, the USDA published in the **Federal Register** its annual inflation adjustment for 2018 (83 FR 11129). This

most recent adjustment increased the civil penalty amount from \$11,000 to \$17,952 for violations of the OFPA

which occurred on or after March 14, 2018.

13—MEDIATION

Section	Action	Proposed text
205.663	Revise	<p>(a) A certifying agent must submit with its administrative policies and procedures provided in § 205.504(b): Decision criteria for acceptance of mediation, and a process for identifying personnel conducting mediation and setting up mediation sessions.</p> <p>(b) A certified operation or applicant for certification may request mediation to resolve a denial of certification or proposed suspension or proposed revocation of certification issued by a certifying agent or State organic program.</p> <p>(1) A certified operation or applicant for certification must submit any request for mediation in writing to the applicable certifying agent or State organic program within 30 calendar days of receipt of the notice of proposed suspension or proposed revocation of certification or denial of certification.</p> <p>(2) A certifying agent or State organic program may accept or reject a request for mediation based on its own decision criteria.</p> <p>(i) If a certifying agent rejects a mediation request, it must provide this rejection in writing to the applicant for certification or certified operation. The rejection must include the right to request an appeal, pursuant to § 205.681, within 30 calendar days of the date of the written notification of rejection of the request for mediation.</p> <p>(c) Both parties must agree on the person conducting the mediation.</p> <p>(d) If a State organic program is in effect, the parties must follow the mediation procedures established in the State organic program and approved by the Secretary.</p> <p>(e) The parties to the mediation have a maximum of 30 calendar days to reach an agreement following a mediation session. Successful mediation results in a settlement agreement agreed to in writing by both the certifying agent and the certified operation. If mediation is unsuccessful, the applicant for certification or certified operation has 30 calendar days from termination of mediation to appeal the denial of certification or proposed suspension or revocation pursuant to § 205.681.</p> <p>(f) Any settlement agreement reached through mediation must comply with the Act and the regulations in this part. The Secretary may review any mediated settlement agreement for conformity to the Act and the regulations in this part and may reject any agreement or provision not in conformance with the Act or the regulations in this part.</p> <p>(g) The Program Manager may propose mediation and enter into a settlement agreement at any time to resolve any adverse action notice that it has issued.</p>

AMS proposes revising § 205.663 to improve the general readability of this section and to more clearly explain how mediation may be used in noncompliance procedures. When successful, mediation is an efficient way to bring operations into compliance and resolve conflicts among certifying agents and operations. The USDA organic regulations require that certifying agents and State organic programs provide applicants for certification and certified operations the right to request mediation when they issue a denial of certification, notice of proposed suspension, or proposed revocation of certification (§§ 205.405(d) and 205.662(c)). Section 205.663 provides requirements for requesting mediation, responding to a mediation request, the time frame for reaching an agreement, and what happens when mediation is unsuccessful.⁴²

The USDA organic regulations require certifying agents and State organic programs to notify operations of the option to request mediation as an alternative dispute resolution to resolve noncompliance findings that have led to a proposed suspension, revocation, or denial of certification. This will facilitate resolution of these issues before they escalate to an appeal to AMS or a State organic program.

AMS proposes revising the existing requirements for mediation to support a process that is efficient and accessible to producers and handlers who want to resolve a denial of certification, proposed suspension, or revocation of certification. Mediation should be a collaborative process between a certifying agent and an operation. A successful mediation addresses the noncompliance(s) and leads to full compliance with the USDA organic regulations. In summary, the proposed changes would clarify the process for engaging in mediation and would clarify that a settlement agreement is the outcome of successful mediation. The revised rule would permit certifying agents and certified operations or

applicants to engage in mediation without a third-party mediator, provided that all parties agree upon the person who will serve as the mediator.

After a certifying agent issues a denial of certification, proposed suspension, or revocation of certification, a certified operation and certifying agent may discuss the option of mediation prior to receiving a request for mediation. However, for mediation to proceed as a form of alternative dispute resolution, an operation must request mediation in writing to the certifying agent. This proposed rule provides 30 calendar days to request mediation. This aligns with the length of time provided to submit an appeal of a proposed adverse action.

A certifying agent determines whether to accept or reject a written request for mediation. This proposed rule requires certifying agents to include mediation acceptance decision criteria as part of the administrative policies and procedures which certifying agents are required to submit under § 205.504(b). Parties to the mediation may develop conditions, such as cost, timeframes to reach a settlement agreement, and any incremental steps, only after a certifying

⁴²The OFPA does not specifically mention mediation. The OFPA does require that the USDA have procedures for producers and handlers to appeal adverse determinations. The right to request mediation in the regulations provides an additional opportunity for producers and handlers to resolve adverse actions while preserving their right to appeal if mediation is unsuccessful.

agent accepts a mediation request. A certifying agent must not impose any preconditions for the acceptance of mediation (*i.e.*, the certifying agent cannot require that the operation take a specific action—other than submitting a written request for mediation—before it will consider mediation).

In accepting mediation, a certifying agent may also, at its discretion, offer a settlement agreement for an operation to consider. A settlement offer may be useful when the corrective action(s) is clear and the noncompliance(s) is not recurrent. As part of the mediation, an operation may accept or reject the settlement agreement, negotiate the terms with the certifying agent, or request a mediator to try and reach a settlement agreement. Settlement agreements may impose additional compliance requirements or may include agreed-upon suspensions or revocations of organic certificates, as appropriate to the noncompliance.

This proposed rule clarifies that mediation does not require a third-party mediator to reach a settlement agreement. The certifying agent and operation may agree that mediation will be between only those two parties. For example, mediation may consist of a phone call or series of phone calls

between the operator and the certifying agent to discuss the terms of a settlement offer prior to signing the agreement.

In some cases, the use of a mediator may be appropriate, either because the operation initially requested this, or the operation rejected a settlement offer and then requested a mediator. To accommodate this situation, the proposed rule would require each certifying agent submit a process to identify a qualified mediator and set the time and location of mediation session(s), mediation format (in-person, video, phone), and mediation fees and payment.

The outcome of a successful mediation is a settlement agreement that brings an operation into compliance with the USDA organic regulations. A settlement agreement must clearly describe the corrective actions and timeframes for implementing corrective actions, and may impose additional actions (*e.g.*, unannounced inspections, sampling for residue testing) to ensure the operation maintains compliance. A settlement may also include a suspension of organic certification.

This proposed rule would also clarify that the Secretary does not require, manage, or otherwise participate in

mediation between operations and certifying agents or State organic programs. This does not change the authority of the Secretary to review an agreement that results from the mediation for conformity to the OFPA and the USDA organic regulations and reject any nonconforming provision or agreement.

This proposed change is needed to clarify and emphasize that mediation under the USDA organic regulations is an alternative dispute resolution mechanism, conducted between a certified operation or applicant for certification and a certifying agent or State organic program. The Secretary is not involved in determining the outcome of a mediation, notwithstanding his or her authority to review dispute resolution terms for conformity with the OFPA and the USDA organic regulations.

This proposed change would not affect AMS' ability to carry out oversight, compliance, and enforcement activities on behalf of the Secretary. For example, AMS may conduct informal mediation, at its discretion, and enter into mutually agreeable settlement agreements with parties that receive an NOP-issued proposed adverse action.

14—ADVERSE ACTION APPEAL PROCESS—GENERAL

Section	Action	Proposed text
205.2	Add new term	<i>Adverse action.</i> A noncompliance decision that adversely affects certification, accreditation, or a person subject to the Act, including a proposed suspension or revocation; a denial of certification, accreditation, or reinstatement; a cease and desist notice; or a civil penalty.
205.680(a)	Revise	Persons subject to the Act who believe they are adversely affected by an adverse action of the National Organic Program's Program Manager, may appeal such decision to the Administrator.
205.680(b)	Revise	Persons subject to the Act who believe they are adversely affected by an adverse action of a State organic program may appeal such decision to the State organic program's governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.
205.680(c)	Revise	Persons subject to the Act who believe they are adversely affected by an adverse action of a certifying agent may appeal such decision to the Administrator, Except, That when the person is subject to an approved State organic program, the appeal must be made to the State organic program.
205.680(d)	Redesignate	Redesignate as paragraph (f).
205.680(d)	Add	Persons subject to the Act who believe they are adversely affected by an adverse action of a certifying agent or a State organic program may request mediation as provided in §205.663.
205.680(e)	Revise and redesignate as paragraph (g).	All appeals must be reviewed, heard, and decided by persons not involved with the adverse action being appealed.
205.680(e)	Add	All appeals must comply with the procedural requirements in §205.681(c) and (d) of the USDA organic regulations.

AMS proposes to revise and clarify parts of the adverse action appeals process in §§ 205.680 and 205.681. In summary, these changes will clarify which actions can be appealed, recognize the use of alternative dispute resolution practices in lieu of a formal administrative proceeding to resolve an

appeal, and reinforce that appeal submissions need to comply with the basic requirements in the regulations. We expect that these changes will support an expedited appeals process.

The OFPA authorizes an expedited appeals procedure that gives persons the opportunity to appeal actions that

adversely affect the person(s) (7 U.S.C. 6520). The current USDA organic regulations describe how certified operations, accredited certifying agents, and applicants for certification or accreditation may appeal a noncompliance decision that would affect their certification or accreditation

status or eligibility to become certified or accredited (§ 205.680(a)). The current regulations explain when an appeal may be submitted, how it must be submitted, and what the appeal submission must contain. Specifically, appeals of noncompliance decisions of a certifying agent or the NOP are appealable to the AMS Administrator, or to the State organic program if the appellant is located in a State with an approved State organic program.⁴³ In addition, the current regulations explain that a decision to sustain an appeal results in a favorable action with respect to the appellant's certification or accreditation, and a decision to deny an appeal requires AMS to initiate a formal administrative proceeding (*i.e.*, a hearing). AMS explains how it administers the adverse action appeal process, the status of an appellant during an appeal, and the possible

outcomes of an appeal in NOP 4011, Adverse Action Appeal Process.⁴⁴ The proposed rule would add the new term *adverse action* to clarify which actions may be appealed under the USDA organic regulations. *Adverse action* would be defined as a noncompliance decision that adversely affects certification, accreditation, or a person subject to the Act, including a proposed suspension or revocation; a denial of certification, accreditation, or reinstatement; a cease and desist notice; or a civil penalty.⁴⁵ This term would replace the use of "noncompliance decision" throughout this section. AMS is proposing to change "noncompliance decision" in the current regulation to *adverse action*. This clarifies the scope of actions which may be appealed. This proposed rule would add a new provision that reminds operations of the option to request mediation when a certifying agent or State organic program

has issued an adverse action. The option to request mediation is provided in addition to the option to appeal (mediation is covered in § 205.663, and proposed changes to this section are discussed above). The mediation process can be a viable path to resolve noncompliances that are correctable, and not willful or recurrent. If mediation is rejected or is not successful, the operation maintains the right to appeal. Finally, this proposed rule would add an explicit requirement that appeals must be properly filed, as described in paragraphs (c) and (d) of § 205.681. This means that an appeal must be timely filed, sent to the correct address, include a copy of the adverse action, and explain why the adverse action is incorrect. In effect, this requirement will help to expedite the review of appeals and supports AMS' decisions to dismiss appeals which are not timely filed.

15—ADVERSE ACTION APPEAL PROCESS—APPEALS

Section	Action	Proposed text
205.681(a)	Revise	<i>Adverse actions by certifying agents.</i> An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or proposed revocation of certification to the Administrator. Except, That, when the applicant or certified operation is subject to an approved State organic program, the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.
205.681(a)(2)	Revise	If the Administrator or State organic program denies an appeal, a formal administrative proceeding may be initiated to deny, suspend, or revoke the certification. Such proceeding must be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR part 1, subpart H, or the State organic program's rules of procedure.
205.681(b)	Revise	<i>Adverse actions by the NOP Program Manager.</i> A person affected by an adverse action, as defined by 205.2, issued by the NOP Program Manager, may appeal to the Administrator.
205.681(b)(1)	Revise	If the Administrator sustains an appeal, an applicant will be issued accreditation, a certifying agent will continue its accreditation, or an operation will continue its certification, a civil penalty will be waived and a cease-and-desist notice will be withdrawn, as applicable to the operation.
205.681(b)(2)	Revise	If the Administrator denies an appeal, a formal administrative proceeding may be initiated to deny, suspend, or revoke the accreditation or certification and/or levy civil penalties. Such proceeding must be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR part 1, subpart H.
205.681(c)	Revise	<i>Filing period.</i> An appeal must be filed in writing within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the Administrator or by the State organic program. An adverse action will become final and nonappealable unless an appeal is timely filed.
205.681(d)(1)	Revise	Appeals to the Administrator and Requests for Hearing must be filed in writing and addressed to: 1400 Independence Ave. SW, Room 2642, Stop 0268, Washington, DC 20250, or electronic transmission, NOPAppeals@ams.usda.gov .
205.681(d)(3)	Revise	All appeals must include a copy of the adverse action and a statement of the appellant's reasons for believing that the action was not proper or made in accordance with applicable program regulations, policies, or procedures.

AMS is proposing several changes to § 205.681 to revise and clarify appeal procedures. We propose revising the title of paragraph (a) from "Certification appeals" to "Adverse actions by

certifying agents," and the title of paragraph (b) from "Accreditation appeals" to "Adverse actions by the NOP Program Manager." This is necessary because certifying agents and

the NOP Program Manager may issue different types of adverse actions, and the respective appeal decisions will have different effects.

⁴³ As of the publication of this proposed rule, California is the only approved State organic program.

⁴⁴ NOP 4011, Adverse Action Appeal Process. December 23, 2011: <https://www.ams.usda.gov/sites/default/files/media/4011.pdf>.

⁴⁵ Only AMS issues civil penalties.

AMS proposes clarifying the process when the Administrator denies an appeal and upholds an adverse action. The current regulations, at §§ 205.681(a)(2) and (b)(2), state that the USDA will initiate a formal administrative proceeding (hearing) to finalize the action, *i.e.*, suspend, revoke or deny certification. AMS proposes changing “will” to “may” to reflect actual practice and to recognize that AMS may pursue the resolution of appeals through expedited, alternative means, such as settlement agreements, before initiating a formal administrative proceeding. In current practice, an appellant whose appeal is denied by the Administrator has the option to request or waive a hearing. If the appellant does not request a hearing, AMS does not initiate a formal administrative proceeding and the Administrator’s appeal decision is final and takes effect.⁴⁶ When an appellant requests a hearing, AMS and the appellant may

enter into a settlement agreement prior to the hearing. This proposed revision provides flexibility to resolve appeals outside of the formal administrative process.

AMS also proposes revising current paragraph (b), “Accreditation appeals,” to address the scope of adverse actions issued by the NOP which may be appealed to the Administrator. This could include appeals of proposed suspensions or revocations of accreditation or certification, denials of accreditation, denials of reinstatement, or civil penalties.

AMS proposes clarifying the requirement for the appeal filing period in paragraph § 205.681(c). The wording, “noncompliance decision” is removed because that term is being removed or replaced throughout the Adverse Action Appeal Process section. In addition, we are proposing to replace the phrase, “A decision to deny, suspend, or revoke certification or accreditation will

become final” with “An adverse action will become final” because the use of the term “adverse action” is broader and includes denials of reinstatement, cease and desist notices, and other actions that could affect certification.

Additionally, this proposed rule would update the address for filing appeals and provide an email address for submitting appeals electronically in § 205.681(d)(1). The address in the current regulation is outdated and does not provide an option for electronic submission, even though this occurs in practice.⁴⁷

Finally, this proposed rule would revise the term “adverse decision” to “adverse action” in § 205.681(d)(3) to be consistent with the use of the term “adverse action” throughout this section. This maintains the requirement that an appellant must submit a copy of the adverse action which they are contesting with their appeal.

16—GROWER GROUP OPERATIONS

Section	Action	Proposed text
205.2	Add new term	<i>Grower group member.</i> A person engaged in the activity of growing or gathering a crop and/or wild crop as a member of a grower group operation.
205.2	Add new term	<i>Grower group operation.</i> A single producer consisting of grower group members in geographical proximity governed by an internal control system under an organic system plan certified as a single crop and/or wild crop production and handling operation.
205.2	Add new term	<i>Grower group production unit.</i> A defined subgroup of grower group members in geographical proximity as a part of a single grower group operation that use similar practices and shared resources to grow or gather similar crops and/or wild crops.
205.2	Add new term	<i>Internal control system.</i> An internal quality management system that establishes and governs the review, monitoring, training, and inspection of the grower group operation and the procurement and distribution of shared production and handling inputs and resources, to maintain compliance with the USDA organic regulations as a single producer.
205.201(c)	Add	In addition to paragraph (a) of this section, a grower group operation’s organic system plan must describe its internal control system. The description of the internal control system must: (1) Define the organizational structure, roles, and responsibilities of all personnel; (2) Identify grower group production units and locations; (3) Define geographical proximity criteria for grower group members and grower group production units; (4) Describe characteristics of high-risk grower group members and grower group production units; (5) Describe shared production practices and inputs; (6) Describe the internal monitoring, surveillance, and auditing methods used to assess the compliance of all grower group members; (7) Describe the system of sanctions for noncompliant grower group members, including procedures to address noncompliances detected among grower group members, impose sanctions, and remove grower group members when warranted, and procedures for reporting noncompliances to the certifying agent; (8) Describe measures to protect against potential conflicts of interest; (9) Describe how training, production and handling inputs, and other resources are procured and provided to all grower group members and personnel; (10) Have clear policies and procedures to verify the grower group operation’s and grower group members’ compliance with the USDA organic regulations; and (11) Address any other terms or conditions determined by the Administrator to be necessary to enforce compliance with the USDA organic regulations and the Act.
205.400(g)	Add	In addition to paragraphs (a) through (f) of this section, a grower group operation must: (1) Be a single producer organized as a person; (2) Sell, label, or represent only crops and/or wild crops as organic; (3) Use centralized processing, distribution, and marketing facilities and systems; (4) Be organized into grower group production units;

⁴⁶This is described in NOP 4011.

⁴⁷ The AMS website has the current information for filing an appeal either by mail or electronically:

<https://www.ams.usda.gov/services/enforcement/organic/appeals>.

16—GROWER GROUP OPERATIONS—Continued

Section	Action	Proposed text
205.403(a)(2)	Redesignate	(5) Ensure that all crops and/or wild crops sold, labeled, or represented as organic are from grower group members only; (6) Ensure that grower group members do not sell, label, or represent their crops and/or wild crops as organic outside of the grower group operation unless they are individually certified; (7) Report to the certifying agent on an annual basis the name and location of all grower group members and grower group production units, and the crops, wild crops, estimated yield, and size of production and harvesting areas of each grower group member and grower group production unit; (8) Conduct internal inspections of each grower group member, at least annually, by internal inspectors, which must include mass-balance audits and reconciliation of each grower group member's and grower group production unit's production yield and group sales; (9) Document and report to the certifying agent the use of sanctions to address noncompliant grower group members, at least annually; and (10) Implement procedures to ensure all production and handling by the grower group operation is compliant with the USDA organic regulations and the Act, including recordkeeping requirements to ensure a complete audit trail from each grower group member and grower group production unit to sale and distribution.
205.403(a)(2)	Add	Redesignate as paragraph (a)(3). Initial and annual on-site inspections of a grower group operation as defined in § 205.2 must: (i) Assess the compliance of the internal control system of the organic system plan, or its capability to comply, with the requirements of § 205.400(g)(8). This must include review of the internal inspections conducted by the internal control system. (ii) Conduct witness audits of internal control system inspectors performing inspections of the grower group operation. (iii) Individually inspect at least 1.4 times the square root of the total number of grower group members. This must include an inspection of all grower group members determined to be high risk according to criteria in 205.201(c)(4). At least one grower group member in each grower group production unit as defined in § 205.2 must be inspected. (iv) Inspect each handling facility.

AMS proposes clarifying regulatory requirements for crop and/or wild crop production and handling operations with multiple member growers that are certified as a single producer. Operations with multiple grower and gatherer members can pose higher risks to traceability and organic integrity because of their unique structure and composition, longer and more complex supply chains, and reliance upon internal quality control systems. Specific certification requirements are therefore needed to ensure adequate and consistent oversight of these types of operations and facilitate enforcement action.

Grower Group Structure and Function

In this proposed rule, operations with multiple growers organized and certified as a single crop and/or wild crop producer are referred to as grower group operations, also commonly known as grower groups. Individual growers, known as grower group members, grow or gather the same crops and/or wild crops in geographical proximity to one another using similar practices with centralized handling, processing, and marketing. Shared farming or gathering practices may include fertility management, pest control, acceptable inputs (including

seeds), and post-harvest handling practices. There is one organic certificate for the grower group operation and the certification applies only to the grower group operation as a whole; individual members do not independently sell or market their own crops and/or wild crops using the grower group's organic certificate. There is one organic system plan for the grower group operation as a single producer using shared handling and marketing facilities, and a common recordkeeping system.

Grower group structure is different than traditional, individually certified organic operations. As such, they require special controls to ensure compliance with the USDA organic regulations. Central to the function of a grower group is an internal control system (ICS). An ICS consists of both personnel and procedure that act a grower group's internal governance and verification system. The ICS is described in the grower group operation's organic system plan, and ensures that grower group production and handling activities are compliant with the USDA organic regulations. The ICS is unique to grower groups; it acts as a third tier of enforcement and verification between the grower group members and the certifying agent. The

ICS is responsible for direct enforcement of the grower group and its members, including inspection of all grower group members. In grower group certification, the certifying agent's primary role is to assess and enforce the function of the ICS, not the individual members.

Unique Certification Challenges of Grower Groups

Grower group operations present unique certification challenges relative to traditional, individually certified organic operations. Grower groups are inherently more complex because they are collectives of many members organized under a single organic certification. Grower groups commonly have thousands of members spread across a large area, and utilize centralized collection, handling, processing, and marketing. This complicates all aspects of enforcement, including inspection, product traceability, and mass-balance assessment. Most significantly, this complexity demands the use of an ICS as an additional tier of enforcement.

The current USDA organic regulations do not include specific provisions addressing the certification of grower groups. In particular, the regulations lack grower group eligibility criteria and

requirements describing ICS function and organization. As a result, the NOP regularly observes inconsistent grower group certification practices during audits and certification appeals.

NOP staff accompanying certifying agents during witness audits frequently report that grower groups lack a functioning ICS. This often results in poorly trained ICS personnel that do not use effective sanctions policies to enforce against noncompliant members, fail to inspect all members, and do not complete mass-balance audits. The lack of specific requirements in the organic regulations inhibits the effective function of an ICS, which in turn threatens the integrity of products produced by grower group operations.

The NOP also often cites noncompliances to certifying agents who fail to adequately assess the structure of a grower group and the function of an ICS. In the absence of specific regulation, some certifying agents struggle to define the acceptable limits of grower groups (geographical, numerical, and scope). This can result in too many members distributed over too large an area, complicating effective enforcement. A lack of specific requirements also makes it difficult for certifying agents to adequately assess the ICS's ability to enforce all members of a grower group operation. Some certifying agents also attempt to directly enforce grower group members, not the ICS, leading to inadequate oversight. There is a clear need for specific criteria grower groups must meet to qualify for organic certification, and practices certifying agents should use to inspect grower groups and assess compliance of an ICS. Describing these requirements in the organic regulations would allow for more effective oversight of grower groups and their organic products.

Authority and Background

The OFPA authorizes the certification of groups because it defines *person* as an "individual, groups of individuals, corporation, association, organization, cooperative, or other entity." (7 U.S.C. 6502). The OFPA also defines *handler* and *producer* as persons. Further, the OFPA provides for producers and handlers to seek certification (7 U.S.C. 6503(a)). Therefore, grower group operations are production and handling operations which are eligible for organic certification as a single producer.

Grower group certification was developed in the 1990s to reduce barriers for small-scale farms in developing countries entering the global organic market. Initially, organic farmer associations obtained group certification for organic coffee and cacao operations

to export products to the United States and Europe. Presently, growers organized as grower group operations export many organic agricultural products to the United States, such as coffee, cocoa, bananas, tea, and spices. This method of certification gives small growers or gatherers organized into grower groups access to organic markets while expanding consumer choices. Grower group certification supports U.S. consumer demand for organic products that are not produced in the United States, such as coffee, cacao, and bananas.

The International Federation of Organic Agriculture Movements (IFOAM)⁴⁸ Organics International started to develop criteria for grower group certification in 1994, and in 2003 published its position on "Small Holder Group Certification for organic production and processing" to support the concept.⁴⁹ The criteria formed the basis for acceptance of grower group certification in the European Union and United States. Grower group operation certification is also utilized by other standards organizations, such as the International Accreditation Forum and GlobalG.A.P., to provide small-holder farming operations access to markets while ensuring the integrity of the supply chain.⁵⁰

On January 21, 2011, the NOP issued Policy Memorandum 11-10, "Certification of Grower Groups,"⁵¹ which specified how certifying agents could certify grower group operations, using 2002 and 2008 NOSB recommendations.⁵² The NOSB recommendations identified criteria for grower group operations to qualify for certification, and auditing practices and methodologies for certifying agents to inspect grower groups and assess the compliance of the internal control system.

This proposed rule codifies many of the requirements described in the 2002

and 2008 NOSB recommendations, and adds several requirements, including more detail about documentation requirements and inspection methods. AMS and certifying agents need clear standards for the certification of grower group operations as a single producer to effectively identify and enforce against noncompliant activities. Grower group operations present an elevated risk to organic integrity because of their structure (numerous growers conform to one organic system plan), longer and more complex supply chains, and use of an internal control system for oversight of grower group members, grower group production units, and handling facilities. Therefore, requirements for consistent certification practices for grower group operations are critical. AMS' proposed requirements for grower group operations will strengthen the oversight of organic supply chains by enabling certifying agents to more readily assess whether a grower group operation is complying with the USDA organic regulations and supporting enforcement actions when necessary.

Definitions

AMS proposes adding four new terms to the USDA organic regulations to clarify the certification of a grower group operation as a single producer: *grower group operation*, *internal control system*, *grower group member*, and *grower group production unit*.

A *grower group operation* would be defined as a single producer consisting of grower group members in geographical proximity governed by an internal control system under an organic system plan certified as a single crop and/or wild crop production and handling operation. Therefore, the requirements for production and handling operations throughout the regulations would apply to a grower group operation as a single producer. AMS has not committed to a specific maximum distance for geographic proximity and is not proposing parameters for the physical extent of a grower group operation. Certifying agents will need to determine if the locations of grower group members within a grower group production unit and grower group operation meet the "geographical proximity" requirement based on the conditions of an operation. Generally, this will vary depending on site-specific conditions and crops.

A *grower group member* would be defined as a person engaged in the activity of growing or gathering a crop and/or wild crop as a member of a grower group operation. The practices of each grower group member would need to align with the organic system plan.

⁴⁸ <http://www.ifoam.bio/>.

⁴⁹ https://www.ifoam-eu.org/sites/default/files/page/files/small_holder_group_certification_0.pdf.

⁵⁰ <https://www.iaf.nu/>; https://www.globalgap.org/uk_en/.

⁵¹ Policy Memorandum 11-10, Certification of Grower Groups. January 21, 2011: <https://www.ams.usda.gov/sites/default/files/media/NOP-11-10-GroupGrowerCert.pdf>.

⁵² NOSB Recommendation: Criteria for Certification of Grower Groups. October 20, 2002: <https://www.ams.usda.gov/sites/default/files/media/Rec%20Criteria%20for%20Certification%20of%20Grower%20Groups.pdf>. NOSB Recommendation: Certifying Operations with Multiple Production Units, Sites, and Facilities under the National Organic Program. November 19, 2008: <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Certifying%20Operations%20with%20Multiple%20Sites.pdf>.

The requirements for producers and handlers throughout the regulations would also apply to grower group members, although some requirements may be met collectively by the grower group operation, such as the organic production and handling system plan.

The proposed rule defines an *internal control system (ICS)* as an internal quality management system that establishes and governs the review, monitoring, training, and inspection of the grower group operation and the procurement and distribution of shared production and handling inputs and resources, to maintain compliance with the USDA organic regulations as a single producer. The ICS is a key component of a grower group operation certified as a single producer. The ICS verifies that the grower group operation is implementing the organic system plan, ensuring that growers or gatherers and handling facilities know how to comply. The ICS is responsible for the overall compliance of the grower group operation and its adherence to the organic system plan.

Finally, this rule proposes adding the term *grower group production unit*: A defined subgroup of grower group members in geographical proximity as a part of a single grower group operation that use similar practices and shared resources to grow or gather similar crops and/or wild crops. Adding this proposed term will clarify that each grower group production unit within a grower group operation requires an initial and annual inspection by the certifying agent, as required by § 205.403(a)(1) of the organic regulations. The term also clarifies that a grower group operation may produce and market more than one type of crop or wild crop, with each grower group production unit described and managed under a single organic system plan of a grower group operation.

Certification Requirements for Grower Group Operations

This proposed rule would add provisions to the general requirements for certification (§ 205.400) which are specific to grower group operations. These criteria would clarify the eligibility requirements for grower group operations. Entities that do not meet all criteria would need to be certified separately in order to sell, label, or market agricultural products certified to the USDA organic regulations.

The proposed rule would require that a grower group operation is a single producer legally organized as a person. The OFPA and the USDA organic regulations apply to a *person* as the

basic regulatory unit. The organization of a grower group operation as a person clarifies that certification is granted to the grower group operation as a single producer, rather than individual grower members engaged in the activity of growing or gathering within the grower group operation.

Under the proposed rule, a grower group operation may sell, label, or represent only crops or wild crops as organic; any non-crop agricultural products (*e.g.*, livestock or livestock products) would not be eligible for certification under the grower group operation. AMS acknowledges that many organic farming systems utilize integrated crop-livestock systems—especially operations in developing areas where grower group operation certification is more likely to occur. Therefore, the use of integrated or mixed crop-livestock systems is compatible with and would be permitted in certified grower group operations. However, the management of any non-crop agricultural products must not affect the integrity of the organic crops or wild crops produced and handled by the operation, and non-crop agricultural products must not be sold, labeled, or represented as organic by the grower group operation. Individual grower group members seeking to sell non-crop agricultural products would need their non-crop agricultural products certified independently from the grower group operation.

The proposed rule also specifies that grower group operations must use centralized processing, distribution, and marketing facilities and systems. In addition, AMS proposes a requirement that all crops and/or wild crops sold, labeled, or represented as organic by a grower group operation must be grown or gathered by grower group members only. A grower group operation may not buy crops and/or wild crops from non-member growers and sell, label, or represent them as organic using the grower group certification. In turn, AMS also proposes that grower group members must not market crops and/or wild crops as organic outside of the grower group operation unless they are individually certified.

Finally, this proposed rule would add a requirement that grower group operations provide their certifying agent with the name and location of all grower group members, grower group production units, and the crops, wild crops, estimated yield, and growing/gathering areas (acreage) of each grower group member and grower group production unit. This information must

be submitted at least annually as part of the organic system plan.

The Internal Control System

This proposed rule would add an additional requirement for organic system plans for grower group operations. Specifically, an organic system plan (OSP) for a grower group operation would need to include a description of the internal control system (ICS) and how it verifies the operation's compliance with the USDA organic regulations. For all operations, the OSP describes shared farming and handling practices, inputs to be used (including seeds), monitoring practices and procedures, recordkeeping systems, and practices to prevent commingling and contact with prohibited substances (§ 205.201(a)).

The ICS serves as the grower group operation's internal governance and verification system to ensure that grower group operation production and handling activities at every level are implemented in accordance with the OSP and are compliant with the USDA organic regulations. A grower group operation's OSP must describe the function of the ICS. This description must:

- (1) Define the organizational structure, roles and responsibilities of all personnel;
- (2) Identify grower group production units and locations;
- (3) Define geographical proximity criteria for grower group members and grower group production units;
- (4) Describe characteristics of high-risk grower group members and grower group production units;
- (5) Describe shared production practices and inputs;
- (6) Describe the internal monitoring, surveillance, and auditing methods used to assess the compliance of all grower group members;
- (7) Describe the system of sanctions for noncompliant grower group members, including procedures to address noncompliances detected among grower group members, impose sanctions, and remove grower group members when warranted; and procedures for reporting noncompliances to the certifying agent;
- (8) Describe measures to protect against potential conflicts of interest;
- (9) Describe how training, production and handling inputs, and other resources are procured and provided to all grower group members and personnel;
- (10) Have clear policies and procedures to verify the grower group operation's and grower group members'

compliance with the USDA organic regulations; and

(11) Address any other terms or conditions determined by the Administrator to be necessary to enforce compliance with the USDA organic regulations and the Act.

This proposed rule would set inspection and oversight requirements for the ICS. Specifically, the ICS would need to use qualified internal inspectors (ICS personnel) free of conflicts of interest to conduct independent and impartial inspections, at least annually. Consistent with the scope of an on-site inspection of any organic producer, the inspection of a grower group member should cover all areas of the organic system plan, including a review of all production or gathering areas managed by each grower group member, all post-harvest handling and storage facilities, inputs and resources used, and records maintained by each grower group member and grower group production unit. ICS personnel must also conduct mass-balance audits of each grower group member, grower group production unit, and handling facility, including reconciliation of individual grower group member and grower group production unit production with the grower group operation's sales. ICS personnel conducting inspections should focus on critical organic control points such as buffer areas, condition of crops and/or wild crops, soil quality indicators, input and equipment use and storage areas, and level of understanding of organic requirements by the grower group members. AMS expects that qualified ICS personnel would be familiar with the local production practices, general organic production and handling practices, the USDA organic regulations, ICS procedures and regulations, and be fluent in the language(s) of the grower group members and the ICS.

Finally, AMS proposes a requirement that the ICS must develop and implement procedures to ensure that all production and handling activities of the grower group operation are compliant with the USDA organic regulations. This includes recordkeeping which demonstrates complete audit trails for all crops and/or wild crops sold, labeled, or represented as organic by the grower group operation, and a system to sanction noncompliant members, production units, and handling facilities of the grower group operation so that those members, production units, and handling facilities do not jeopardize the compliance status of the grower group operation.

On-Site Inspections by the Certifying Agent

This proposed rule would establish requirements for how certifying agents must conduct annual on-site inspections of grower group operations. The certifying agent would need to inspect the ICS, review internal inspections conducted by the ICS, and observe ICS personnel conducting inspections. Certifying agents would need to inspect each handling facility and inspect at least 1.4 times the square root of the total number of grower group members. This number must include all high-risk members (determined according to the criteria in proposed § 205.400(g)(8)), and at least one grower member in each grower group production unit (as defined in § 205.2), to ensure all grower group production units are inspected.

Inspections should include a full inspection of the growing or gathering areas and records of the grower group members selected. Selection of members should include all high-risk members; however, the certifying agent should also select members from across the risk spectrum—including lower-risk members. This may require a sample size larger than the minimum required by the proposed regulation (*i.e.*, more than 1.4 times the square root of the number of grower group members). As a best practice, after all risk-based and other inspection selection criteria are satisfied, certifying agents should randomly select the remaining member inspections so that different lower-risk grower group members are inspected each year.

The square root sampling methodology was formalized for use by agricultural regulatory inspectors by the Association of Official Agricultural Chemists (AOAC) in 1927.⁵³ The formula used was the square root (\sqrt{N}) of the lot size (N) + 1. The 1.4 multiplier aligns with the highest minimum sampling number under the IFOAM accreditation system and therefore provides a common minimum sampling number for all grower group operations around the world. All numbers must be rounded up to the next whole number (*e.g.*, 50 members = 10 inspections, 100 members = 14 inspections, 500 members = 32 inspections, and 1000 members = 45 inspections).

Risk-based inspections rely upon certifying agents having policies and procedures to determine the risk factors associated with grower group

operations. The certifying agent should apply the risk assessment procedures to determine and instruct the inspector on which grower group members to inspect. When assessing the risks of the grower group operation to determine which grower group members to inspect, the certifying agent should consider:

- Noncompliance history;
- The criteria used to designate a collection of grower group members as a single grower group production unit;
- Application of prohibited materials adjacent to member fields;
- Split or parallel operations (*i.e.*, they are also producing nonorganic crops and/or wild crops);
- Integrated crop-livestock systems;
- Grower group members with incomes greater than \$5000 USD per year;
- The procurement, availability and distribution of inputs and resources to members;
- The prevalence of nonorganic production of similar crops in the region;
- Geographic proximity of grower group members and grower group production units;
- Post-harvest handling practices designed to prevent comingling and contact with prohibited substances;
- New entrants to the grower group operation;
- Size of grower group member's production or gathering areas; and
- Significant expansion of a grower group member's production area.

As a best practice, the inspection of the ICS should also include: Document review; auditing of production and sales/distribution records; reconciliation of product inventory; review of procurement and distribution of inputs; review of the inspections conducted by the ICS; review of ICS personnel qualifications; witness audits to observe ICS inspectors; review of noncompliance actions for grower group members; examination of organic control points and high-risk areas; interviews with managers responsible for the OSP, governance of the ICS, and grower group members and individuals overseen by the ICS; and review of training provided to ICS staff and grower group members.

Request for Comment

AMS seeks public comment regarding the certification of grower group operations, including answers to the following questions:

1. Should there be limits on gross sales or field sizes of individual grower group members? If yes, please describe these limits.

⁵³ Blanck, F.C. (1927). "Report of the Committee on Sampling." J. Assoc. Official Agricultural Chemists, 10, 92–98. The square root sampling scheme was developed in the 1920s as a sampling scheme for agricultural regulatory inspectors.

2. Should there be a limit on the maximum number of members allowed in a grower group operation or in a grower group production unit? If yes, please describe these limits.

3. Should there be a limit to the geographical distribution of members? This includes limits to the maximum geographical proximity or distance between grower group members, grower

group production or gathering areas, or grower group production units within a single grower group operation. If yes, please describe these limits.

17—CALCULATING THE PERCENTAGE OF ORGANICALLY PRODUCED INGREDIENTS

Section	Action	Proposed text
205.302(a)(1)	Revise	Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of all ingredients.
205.302(a)(2)	Revise	Dividing the fluid volume of all organic ingredients (excluding water and salt) at formulation by the fluid volume of all ingredients (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made based on single-strength concentrations of the ingredients and all ingredients.
205.302(a)(3)	Revise	For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid organic ingredients and the weight of the liquid organic ingredients (excluding water and salt) at formulation by the total weight (excluding water and salt) of all ingredients.

While most of this proposed rule focuses on certification and compliance provisions, clarification of standards is also a critical element of organic integrity. To ensure cross-industry consistency in the certification of multi-ingredient processed products, AMS proposes revising § 205.302, which describes how to calculate the organic content of multi-ingredient products. This calculation is performed by certifying agents to classify products as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” The proposed revisions would streamline calculations and ensure consistent enforcement of the USDA organic regulations.

The USDA organic regulations (§ 205.302(a)) describe how to measure or quantify the organic content in a multi-ingredient product. To calculate organic content, the weight or volume of the organic ingredients is divided by the total weight or volume of the product. Water and salt added as ingredients are excluded from the calculation.

Section 205.302(a) currently refers to “finished product” and includes the phrase “total weight of the finished product.” This terminology has created confusion, unnecessary paperwork burden, and enforcement challenges for certifying agents and organic handlers, as it is not clear if “finished product” is meant to specifically describe the product after processing or if it simply means the sum of all ingredients at the time of formulation. The proposed changes would clarify that the calculation of organic content is to be made at the time of formulation, regardless of whether processing (currently defined at § 205.2) occurs after formulation.

When ingredients are combined and subsequently processed (e.g., cooked, baked, dehydrated, freeze dried), the post-processing weight of all ingredients can be less than the weight of all ingredients at the time of formulation due to loss of water from ingredients (i.e., not added water). Calculating organic content based on the weight of ingredients at formulation divided by

the weight of the finished product (after processing) could result in a calculation of organic content in excess of 100 percent, which is not possible. The same can be true of calculations based on fluid volume, as allowed at § 205.302(a)(2). AMS is proposing these changes to ensure accurate and consistent calculation of organic content by requiring calculation at the time of formulation.

In December 2016, AMS published draft guidance⁵⁴ on the topic of calculating organic content to respond to an April 2013 NOSB recommendation,⁵⁵ inform the public of AMS’ current thinking, and to invite public comment.⁵⁶ The calculation of organic content described in this proposed rule is consistent with NOP 5037. AMS received no objections via public comments to calculating organic content based on the weight of ingredients at the time of formulation. The proposed changes are consistent with the NOSB recommendation to amend § 205.302(a)(1)–(3).

18—SUPPLY CHAIN TRACEABILITY AND ORGANIC FRAUD PREVENTION

Section	Action	Proposed text
205.2	Add new term	<i>Organic fraud.</i> Intentional deception for illicit economic gain, where nonorganic products are labeled, sold, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”
205.103(b)(2)	Revise	Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited, including identification in records of products as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” as applicable;
205.103(b)(3)	Redesignate	Redesignate as paragraph (b)(4).

⁵⁴ The draft guidance and comments can be viewed at <https://www.regulations.gov/document?D=AMS-NOP-16-0085-0001> and in the NOP Program Handbook: <https://www.ams.usda.gov/sites/default/files/media/NOP5037DraftGuidancePercentCalculations.pdf>.

⁵⁵ NOSB Recommendation, Calculating Percentage Organic in Multi-Ingredient Products, April 11, 2013: <https://www.ams.usda.gov/sites/default/files/media/NOP%20CACC%20Final%20Rec%20Calculating%20Percentage.pdf>.

⁵⁶ Notice of Draft Guidance for Calculating the Percentage of Organic Ingredients in Multi-

Ingredient Products, December 6, 2016: <https://www.federalregister.gov/documents/2016/12/06/2016-29173/national-organic-program-notice-of-draft-guidance-for-calculating-the-percentage-of-organic>.

18—SUPPLY CHAIN TRACEABILITY AND ORGANIC FRAUD PREVENTION—Continued

Section	Action	Proposed text
205.103(b)(4)	Redesignate	Redesignate as paragraph (b)(5).
205.103(b)(3)	Add	Include audit trail documentation for product handled or produced by the certified operation;
205.201(a)(3)	Revise	A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented. This must include a description of the monitoring practices and procedures to verify suppliers in the supply chain and organic status of products received, and to prevent organic fraud, as appropriate to the certified operation's activities;
205.501(a)(10)	Revise	Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (except for the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except:
205.501(a)(10)(i)	Add	For information that must be made available to any member of the public, as provided for in §205.504(b)(5);
205.501(a)(10)(ii)	Add	For enforcement purposes, certifying agents must exchange any compliance-related information that is credibly needed to certify, decertify, or investigate an operation, including for the purpose of verifying supply chain traceability and audit trail documentation; and
205.501(a)(10)(iii)	Add	If a certified operation's proprietary business information is compliance-related and thus credibly needed to certify, decertify, or investigate that operation, certifying agents may exchange that information for the purposes of enforcing the Act, but the information in question still retains its proprietary character even after it is exchanged and all of the certifying agents that are involved in the exchange still have a duty to preserve the confidentiality of that information after the exchange.
205.501(a)(13)	Revise	Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500. Certifying agents must provide information to other certifying agents to ensure organic integrity or to enforce organic regulations, including to verify supply chain integrity, authenticate the organic status of certified products, and conduct investigations;
205.501(a)(21)	Redesignate	Redesignate as paragraph (a)(23).
205.501(a)(21)	Add	Annually, conduct risk-based supply chain audits to verify organic status of a product(s) of a certified operation(s) it certifies, back to the source(s).
205.504(b)(4)	Revise	A copy of the procedures to be used for sharing information with other certifying agents and for maintaining the confidentiality of any business-related information as set forth in §205.501(a)(10);
205.504(b)(7)	Add	A copy of the criteria to identify high-risk operations and products; and procedures to conduct risk-based supply chain audits, as required in §205.501(a)(21); and procedures to report credible evidence of organic fraud to the Administrator.

This proposed rule addresses many different sections of the USDA organic regulations to enhance oversight, protect the integrity of the organic label, and assure consumers that organic products meet a consistent standard (see 7 U.S.C. 6501). Perhaps the most critical component, and one which affects all aspects of this proposed rule, is supply chain traceability from source to consumer (*i.e.*, “farm to table”).

Because organic products are credence goods, the organic system relies upon on trust between entities in organic supply chains.⁵⁷ Therefore, traceability and verification are essential to the function of a healthy organic market. This is especially true today, with organic supply chains growing longer and more complex. Organic products and ingredients are often handled by dozens of operations, including many uncertified entities, on their way to the consumer. This may expose organic products to greater

risk—including opportunities for mishandling and fraud.

Underlying the value of the USDA organic label is an assumption that organic products are not compromised at any step in the supply chain. To verify the source at any step in the supply chain would require complete visibility of the entire supply chain. However, certified operations and certifying agents do not generally have access to this information. Organic certification is typically verified back to the last certified organic operation in the supply chain. In complex supply chains, where products and ingredients are often handled multiple times, information about a product's source may be difficult to verify, especially where source information/origin is intentionally obscured by some parties in the supply chain to protect confidential business information.

Many parts of this proposed rule have already discussed ways to address and improve supply chain traceability, largely through indirect methods. These include:

- Clarifying who needs to be certified, including previously excluded operations (§ 205.101);
- NOP Import Certificates (§ 205.273);
- Clear identification of organic status and lot numbers on nonretail containers (§ 205.307);
- Trace-back audits and mass-balance audits during on-site inspections (§ 205.403);
- Specific qualification and training standards for organic inspectors and certification review personnel (§ 205.501); and
- Additional reporting of information about certified organic operations in the Organic INTEGRITY Database (§ 205.501).

These proposed amendments will improve the industry's ability to perform trace-back audits (and therefore ensure organic integrity). However, AMS also proposes several additional amendments to more directly address traceability. AMS expects both certified operations and accredited certifying agents to share responsibility for product traceability. The following proposed amendments will clarify

⁵⁷ A credence good is something with value or qualities that cannot be easily determined by the consumer before, or even after, purchase.

expectations for trace-back audits and product verification:

- Organic operations must maintain audit trail documentation to facilitate supply chain traceability, including identification of products as organic on documents (§ 205.103);
- Organic operations must describe in their organic system plan the monitoring practices and procedures used to prevent organic fraud and verify suppliers and organic product status (§ 205.201);
- Certifying agents must share information with other certifying agents to verify supply chains and conduct investigations (§ 205.501 and § 205.504); and
- Certifying agents must have procedures for (1) identifying high-risk operations and agricultural products to conduct risk-based supply chain audits and for (2) reporting credible evidence of organic fraud to the USDA (§ 205.504).

All successful systems of traceability include three common elements: (1) Traceability within a single operation; (2) traceability one step forward and one step back from an operation in a supply chain; and (3) bidirectional traceability along an entire supply chain, source to consumer, by a third party. The proposed rule supports traceability by clarifying who is responsible for each element: Certified organic operations are responsible for traceability within their operation, back to their suppliers, and forward to their customers; certifying agents are responsible for tracing products along a supply chain back to their origin, and assessing the traceability efforts of operations.

This proposed rule would also add the new term *organic fraud*, defined as intentional deception for illicit economic gain, where nonorganic products are labeled, sold, or represented as organic. AMS is including *organic fraud* to clarify actions this proposed rule is intended to reduce.

Certified Operations

This proposed rule would require certified operations to maintain an audit trail for products that they produce, receive, and/or handle. In addition, certified operations would be required to describe and implement a plan to: (1) Detect and prevent organic fraud in any organic product that they produce, receive and/or handle; and (2) identify, verify, and document their suppliers. These changes are proposed to ensure that certified operations keep documentation that is sufficient to verify the source, ownership history, and movement of organic products (see

audit trail definition in § 205.2) and to take measures to verify that the organic product they receive is legitimately represented as organic. These proposed amendments are intended to support AMS' goal of full supply chain traceability.

Although all entities in a supply chain are responsible for organic integrity, these proposed amendments do not intend to shift liability from one operation to another. An operation that encounters fraud committed by a supplier may not be liable for that fraud, provided that the operation, while following adequate detection and prevention procedures, did not detect the fraud or deliberately continue to represent a fraudulent product as organic.

AMS proposes amending the recordkeeping requirements at § 205.103(b)(2) to clarify that records maintained by certified operations must identify agricultural products as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s)), as applicable. This proposed amendment is needed to ensure that a product's organic status is clear throughout the audit trail. AMS anticipates that most organic operations already maintain records that meet this requirement, because product-specific records are generally a good business practice and are necessary to ensure that records are auditable. This proposed action is not intended to limit an operation's flexibility to use alternative abbreviations or indicators of a product's organic status on nonretail labels or other recordkeeping. This may include use of abbreviations such as “MWO” (*i.e.*, “made with organic”), ORG (*i.e.*, “organic”), color designations, or other tracking systems that are used internally within a certified organic operation to denote a product's organic status. Retail labels must continue to comply with the requirements at Subpart D—Labels, Labeling, and Market Information.

The USDA organic regulations currently require certified operations to maintain records that fully disclose all activities and transactions in sufficient detail to be readily understood and audited (§ 205.103(b)(2)). The regulations also define the term *audit trail* but do not use this term within the regulations. By inserting *audit trail* into the recordkeeping requirements, this proposed rule clarifies the type and extent of records that a certified operation needs to maintain.

Lastly, AMS proposes that certified operations must describe and implement practices to verify the organic status of suppliers and products

in their supply chain and to prevent organic fraud. Such procedures and practices are often referred to as “fraud prevention plans.” Under the current organic regulations, certified operations are already required to describe in their organic system plan (OSP) “monitoring practices and procedures” to “verify that the [OSP] is effectively implemented” (7 CFR 205.201(a)(3)). This proposed rule would explicitly state that an OSP must describe how existing monitoring and verification practices are used to verify suppliers and products and detect and prevent fraud. This will ensure that certified operations use appropriate and effective means to prevent organic fraud, help maintain organic integrity as products travel along a supply chain, and help certifying agents to assess the effectiveness of certified operations' anti-fraud efforts.

Traceability is a shared responsibility across all entities in a supply chain, but the use of effective procedures at the operation level is especially critical. Certified operations have first-hand knowledge of their supply chains and are therefore better able to detect and prevent fraud than a third party. Operation-level traceability is also key to full supply chain trace backs; a gap or deficiency of information at any step may prevent a full trace-back. As part of a larger integrated system of traceability, fraud prevention plans and procedures allow certified operations to verify that the products in their supply chains are compliant with the USDA organic regulations, and have been handled only by certified organic operations (see 7 U.S.C. 6506(a)(1)).

The scope and complexity of a fraud prevention plan will depend on the type of operation. For example, AMS does not expect a producer who does not handle products produced by another operation to develop supplier verification practices, beyond verifying that any purchased inputs meet organic requirements. In contrast, a processor that receives many organic ingredients from numerous suppliers would need to augment their organic system plan to describe practices to minimize organic fraud risks in lengthy supply chains.

In general, AMS expects that a robust plan for supply chain oversight and organic fraud prevention would include:

- A map or inventory of the operation's supply chain which identifies suppliers;
- Identification of critical control points in the supply chain where organic fraud or loss of organic status are most likely to occur;

- A vulnerability assessment to identify weaknesses in the operation's practices and supply chain;
- Practices for verifying the organic status of any product they use;
- A process to verify suppliers and minimize supplier risk to organic integrity;
- Mitigation measures to correct vulnerabilities and minimize risks;
- Monitoring practices and verification tools to assess the effectiveness of mitigation measures; and
- A process for reporting suspected organic fraud to certifying agents and the NOP.

AMS is aware of private initiatives in the organic sector to develop best practices for organic operations to detect and prevent organic fraud.⁵⁸ We predict that these best practices will provide organic operations with practical tools to assess, monitor, and mitigate organic fraud risks within their organic supply chains.

Certifying Agents

To facilitate trace-back audits, investigations, and verification, AMS proposes amending the organic regulations to clarify that certifying agents must share information with one another for the purposes of certification and enforcement. This change would not affect the existing requirement that certifying agents maintain strict confidentiality with respect to its clients and not disclose business-related information to third parties that are not involved in the regulation or certification of operations, as required by the OFPA (7 U.S.C. 6515(f)). For enforcement purposes, certifying agents must exchange any compliance-related information that is credibly needed to investigate an operation to determine compliance with the USDA organic regulations. Certifying agents must share information during any investigation to make a compliance determination, including assessment of applications for certification, noncompliance investigations, and suspension/revocation of certification.

If a certified operation's proprietary business information is compliance-related and thus credibly needed to certify, decertify, and/or investigate that operation, certifying agents are to exchange that information for the purposes of enforcing the Act; however, the information in question still retains its proprietary character even after it is

exchanged, and all certifying agents involved in the exchange still have a duty to preserve the confidentiality of that information after the exchange. AMS expects that this change will support verification of the organic integrity of product as it moves through the supply chain while maintaining confidentiality of information outside of the required parties.

Finally, AMS is proposing a requirement that certifying agents develop and maintain procedures and criteria for identifying which operations and products among those it certifies are at high risk for organic fraud. Identifying organic fraud is a key role of certifying agents, and the OFPA requires that certifying agents fully implement organic law and regulations (7 U.S.C. 6515(a)) and that appropriate and adequate enforcement procedures be employed (7 U.S.C. 6506(a)(7)). The proposed rule would require that certifying agents conduct supply chain audits on a sample of operations and products which it determines to be high-risk.

AMS expects that certifying agents would need to develop risk-assessment criteria by identifying the characteristics of operations, agricultural products, and supply chains which are vulnerable to organic fraud or unintentional mishandling. These could include: Products for which there is a relatively high demand, low supply, and high organic premium; products which may be subject to treatment with prohibited substances after production; unpackaged products which are not enclosed in final retail containers; products with multiple handlers in the supply chain; products from a supplier that lacks a record of compliance; a sudden increase in the available supply of an organic product or commodity; operations which change certifying agents frequently; and operations which are certified by more than one certifying agent. A certifying agent could rank or weight these vulnerabilities and determine that the presence of a certain number of these factors equates to high risk, while also considering the total volume of product produced or handled by the operation. The vulnerability criteria would change based on market trends, enforcement actions, and changing practices within the organic industry; certifying agents would need to ensure that the procedures and criteria remain applicable and accurate. Because a product or operation's level of risk may change over time, it is important that certifying agents conduct supply chain audits of lower-risk products (in addition to supply chain audits of high-risk products) to support

proactive fraud prevention and detection.

The proposed rule does not establish a specific metric for the number of annual supply chain audits that a certifying agent needs to conduct, because the quantity and types of high-risk operations will vary by certifying agent. The supply chain audits should adequately assess high-risk areas. AMS recognizes that certifying agents' ability to conduct supply chain audits depends on the implementation of other requirements in this proposed rule, for example, certification of previously excluded operations (e.g., brokers, traders, importers, and other trade facilitators) and the mandatory use of NOP Import Certificates. Therefore, we expect that certifying agents will increase the number of supply chain audits they conduct annually as this rule is fully implemented and use of technology for supply chain traceability is more widely adopted among certified operations. By requiring written procedures, AMS expects that certifying agents will make better use of information sharing with other certifying agents to assess organic integrity. As a requirement of accreditation, certifying agents' processes and procedures would be reviewed during regular accreditation audits.

A final proposed change requires that certifying agents report credible evidence of organic fraud to AMS. This requirement is expected to help AMS take action against bad actors more quickly and is required by the OFPA at 7 U.S.C. 6519(c)(4). Certifying agents will need to develop procedures for evaluating evidence to determine if evidence is credible and develop procedures for reporting suspected organic fraud. USDA will review these procedures and examine specific cases during regular accreditation audits.

Electronic Supply Chain Traceability Systems

In addition to the amendments proposed above, AMS will continue to work toward its goal of full supply chain traceability and fully verifiable organic products to support and enforce the OFPA requirements (see 7 U.S.C. 6506(a)(1)). Looking forward, AMS expects electronic tracking systems, including digital ledger technology (DLT), will play an essential role in supply chain traceability. DLT can provide secure, verifiable, transparent, and near-instantaneous tracking at the item level in complex supply chains. Critically, DLT can also protect confidential business information and trade secret information by

⁵⁸ A good example is the Organic Trade Association's "Organic Fraud Prevention Solutions" project: <https://ota.com/OrganicFraudPrevention>.

automatically restricting sensitive information to authorized entities. The utility of electronic tracking in food systems has been demonstrated by several successful, high-profile pilot programs.⁵⁹ AMS expects interest within the community to grow as stakeholders realize the potential of this technology.

Electronic supply chain tracking systems have the potential to address many of the issues discussed in this proposed rule. However, they are often based on emergent technology; additional time and development is required before a universal electronic system could feasibly be implemented

across the organic industry. Barriers to widespread adoption of an electronic tracking system include inadequate access to technology and connectivity in rural areas, acceptance of universal electronic standards (interoperability), and distribution of costs. Despite these barriers, AMS encourages the development and use of electronic tracking systems. We anticipate that electronic tracking technologies will allow AMS to achieve its goal of full supply chain traceability, and foresee incorporation of electronic tracking systems into future enforcement strategies.

Request for Comment

AMS seeks comment from the public and organic stakeholders regarding the proposed amendments to address supply chain traceability and organic fraud, including answers to the following questions:

1. Does the proposed definition of *organic fraud* encompass the types of fraudulent activities you witness in the organic supply chain?
2. Should certifying agents be required to perform a minimum number of trace-back audits each year?
3. Should more specific fraud prevention criteria be included in the regulation?

19—TECHNICAL CORRECTIONS

Section	Current text	Action	Proposed text
205.301(f)(2)	Be produced using ionizing radiation, pursuant to §205.105(f);	Revise	Be processed using ionizing radiation, pursuant to §205.105(f);
205.301(f)(3)	Be processed using sewage sludge, pursuant to §205.105(g);	Revise	Be produced using sewage sludge, pursuant to §205.105(g);
205.400(b)	Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200;	Revise	Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.201;
205.401(a)	An organic production or handling system plan, as required in §205.200;	Revise	An organic production or handling system plan, as required in §205.201;

AMS proposes amending § 205.301 to correct a technical error in the description of the prohibition of ionizing radiation and sewage sludge. A previous technical correction (80 FR 6429) contained an error in the language used to describe the prohibition on ionizing radiation and sewage sludge. The terms “produced” and “processed” are erroneously used to describe the use of ionizing radiation and sewage sludge, respectively, in the current regulatory text. This proposed action would correct the language at paragraphs (f)(2) and (f)(3) to clarify that all products labeled as “100% organic” or “organic” and all ingredients identified as organic in the ingredient statement of any product must not be processed using ionizing radiation or produced using sewage sludge.

AMS also proposes amending §§ 205.400(b) and 205.401(a), to correct the reference to organic system plans (§ 205.201), which is incorrectly cited in the current organic regulation.

20. *Additional Amendments Considered but not Included in This Proposed Rule*
Packaged Product Labeling

If implemented, the proposed amendments to §§ 205.2 and 205.100–101 would require the certification of operations that sell or represent organic products. This would include operations in “private-label” relationships; both the operation that produced/processed the organic product (the “contract manufacturer”), and the operation that sells the product under its own label (the “brand name” or “distributor”), would require certification under this proposed rule. However, the current regulations, at §§ 205.303–304, do not clearly specify which certified operation and certifying agent must be listed on the label of a private-label organic product. This causes inconsistent interpretation of the regulation and variable labeling practices. Part of the challenge is variation in the terms used to describe the operations involved in the manufacturing, labeling, and distribution of packaged products. AMS considered amending the labeling requirements for packaged products to

better align with the proposed updates to §§ 205.100–101 and clarify who is responsible for the compliance of private-labeled organic products. Amending the labeling requirements of §§ 205.303–304 may also improve traceability and transparency, and ease verification of organic status. Although AMS has chosen not to include packaged product labeling amendments in this proposed rule, we seek public comment on the following questions regarding private-labeled organic products. Please explain how your answers could improve organic integrity and transparency, and facilitate the verification and traceability of organic products.

1. For private-label packaged products, which certified operation(s) should be listed on the retail label (brand name/distributor, contract manufacturer, or both)?
2. Which certifying agent(s) should be listed?
3. Should the certifying agent listed on a label always be the certifying agent of the certified operation listed on the label (*i.e.*, should the certifying agent match the operation)?

⁵⁹ Walmart partnered with IBM to create blockchain traceability systems for mangos and pork: <https://jbaa.scholasticahq.com/article/3712-food-traceability-on-blockchain-walmart-s-pork>

and-mango-pilots-with-ibm. Nestle is testing a public blockchain for milk supply chains: <https://www.forbes.com/sites/benjaminpirus/2019/07/09/nestle-tests-public-blockchain-for-dairy-supply>

chain/#7a89053b5f0f. Bumble Bee Foods partnered with SAP to trace yellowfin tuna with blockchain technology: <https://news.sap.com/2019/03/bumble-bee-foods-sap-create-blockchain-track-fish/>.

4. Should listing contract manufacturers on labels be mandatory? Should it be optional?

5. What terminology should be used to describe private-labeled organic products?

6. What terminology should be used to describe the operations involved in packaged product or private labeling (e.g., brand name manufacturer, contract manufacturer, and distributor)?

Expiration of Certification

In this proposed rule, AMS proposes requiring expiration dates on organic certificates (without the expiration date affecting the status of an operation's certification). AMS also considered proposing expiration of certification, in which an operation's certification would expire on an annual basis if the operation did not submit fees and update its certificate of organic operation. Expiration of certification would fundamentally shift the current process of certification, which allows organic certification to continue until certification is surrendered, suspended, or revoked. Although AMS has decided not to include annual expiration of certification in this proposed rule, AMS seeks comment on the following questions:

1. How might annual expiration of certification improve organic integrity?
2. What are the limitations of requiring expiration of certification?
3. What minimum requirements must be met before renewing certification?
4. Could an operation with unresolved adverse actions renew certification?
5. Would a grace period be appropriate for operations that failed to renew by the expiration date? If so, what length grace period would be appropriate?
6. What process should exist for an operation to regain organic certification should it allow its certification to expire?
7. Should certifying agents notify certified operations of their upcoming expiration of certification?

Fees to AMS and Oversight of Certifying Agents' Fees

Since the final rule establishing the National Organic Program (NOP) was first published in the **Federal Register** in 2000, the production, marketing, and sale of organic foods has undergone tremendous growth. The proposed rule is intended to strengthen enforcement of the USDA organic regulations through many actions, including strengthened certification processes and coverage of importers, brokers, and traders of organic products. Section 2107 (a)(10) of

the Act allows the NOP to include fees from producers, certifying agents and handlers. AMS periodically reviews the fees for accreditation and accreditation services to ensure that they are in compliance with Circular A-25.⁶⁰ AMS also oversees the NOP fees that certifying agents and others charge for their services. AMS is seeking public comments in this proposed rule on how fees in the NOP could strengthen testing and enforcement across all stakeholders to ensure that the NOP keeps pace with the rapid growth and better serves the industry.

IV. Statutory and Regulatory Authority

A. Summary of Economic Analyses

This rule is regulatory meets the definition of a significant regulatory action under Executive Order 12866, therefore triggering the requirements set forth in Executive Order 13771. The Executive Order 13771 value is \$7.3 million, discounted at 7 percent, annualized over a 15-year time horizon. The impact of benefits are likely to result in a rule that would have an annual effect of \$100 million or more on the economy. *See* Office of Management and Budget's (OMB) Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).⁶¹

Executive Orders 12866, 13563, and 13771 control regulatory review.^{62 63} Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

promoting flexibility.⁶⁴ Executive Order 13771 directs Agencies to identify at least two existing regulations to be repealed for every new regulation unless prohibited by law. The total incremental cost of all regulations issued in a given fiscal year must have costs within the amount of incremental costs allowed by the Director of OMB, unless otherwise required by law or approved in writing by the Director of OMB.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

AMS proposes amending several portions of the USDA organic regulations (7 CFR part 205) to strengthen oversight and enforcement of the production, handling, sale, and marketing of organic agricultural products in the United States. Parts of the current regulations lack requirements for traceability and oversight throughout the organic supply chain. This creates vulnerabilities for fraud in the organic market and inconsistent certification practices to mitigate that risk. The proposed amendments would reduce the types of operations exempt from organic certification (e.g., brokers, traders, importers, and exporters); require the mandatory use of NOP Import Certificates for all shipments of organic products imported to the United States; and clarify recordkeeping and fraud prevention procedures. Additional amendments would further clarify organic labeling, accreditation, and certification requirements. Collectively, these proposed amendments would address gaps in the organic standards to deter organic fraud and create a level playing field for farms and businesses. This will assure consumers and stakeholders that organic products meet a robust, consistent standard, and reinforce the value of the organic label.

The new and modified organic standards in this proposed rule would affect: Certifying agents; certified operations (farms, processors, and handlers); and operations that are currently excluded or exempt from organic certification (e.g., brokers, traders, importers, exporters).

The costs associated with this proposed rule are primarily due to new or additional reporting and recordkeeping (paperwork) activities. In

⁶⁰ <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf>.

⁶¹ Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled "Reducing Regulation and Controlling Regulatory Costs": https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/eo_interim_guidance_reducing_regulations_controlling_regulatory_costs.pdf.

⁶² Executive Order 12866, Regulatory Planning and Review, September 30, 1993: https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.

⁶³ Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, January 30, 2017: <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-reducing-regulation-controlling-regulatory-costs/>.

⁶⁴ <https://www.federalregister.gov/executive-order/13563>.

addition, there is some cost associated with currently excluded and exempt operations becoming certified to handle organic products. AMS estimated the benefits of this proposed rule by quantifying the organic fraud that will be prevented by implementation of the proposed rule; the potential benefits are expected to outweigh the estimated costs. Total costs and benefits of the proposed rule are summarized in Table 1 in the Executive Summary of this document.

AMS also performed additional analysis to determine the proposed rule's impact to small businesses. This analysis revealed that small businesses producing, selling, handling, and marketing organic products would not be adversely affected by the amendments proposed in this rule. AMS expects that most of the entities affected by this proposed rule are small businesses as defined by Small Business Administration criteria. For each category of affected entity (certifying agents, certified operations, and exempt or excluded operations that need to become certified), AMS estimates that the costs of the proposed rule for each business type would be less than 1 percent of the annual revenue.

A full economic analysis of this proposed rule is available at <https://www.regulations.gov/>. AMS invites the public to comment on the economic analysis. You may submit comments on this proposed rule and economic analysis to the Federal eRulemaking Portal at <https://www.regulations.gov/>. You can access this proposed rule, economic analysis, and instructions for submitting public comments by searching for document number AMS-NOP-17-0065.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect. To prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under §§ 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been

submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to § 6519(c)(6) of the OFPA, this final rule does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), AMS is requesting OMB approval for a new information collection totaling 275,417 hours for the reporting and recordkeeping requirements contained in this proposed rule. OMB previously approved information collection requirements associated with the NOP and assigned OMB control number 0581–0191. AMS intends to merge this new information collection, upon OMB approval, into the approved 0581–0191 collection. Below, AMS has described and estimated the annual burden, *i.e.*, the amount of time and cost of labor, for entities to prepare and maintain information to participate in this proposed voluntary labeling program. The Organic Foods Production Act of 1990 (OFPA), as amended, provides authority for this action.⁶⁵

⁶⁵ The Organic Foods Production Act of 1990, 7 U.S.C. 6501–6524, is the statute from which the Agricultural Marketing Service derives authority to administer the NOP, and authority to amend the regulations as described in this proposed rule. This document is available at: <https://uscode.house.gov/>

Title: National Organic Program.
OMB Control Number: 0581–NEW.
Expiration Date of Approval: 3 years from OMB date of approval.
Type of Request: New collection.

Abstract

Information collection and recordkeeping are necessary to implement reporting and recordkeeping necessitated by amendments to §§ 205.2, 205.100, 205.101, 205.103, 205.201, 205.273, 205.300–205.302, 205.307, 205.310, 205.400, 205.403–205.404, 205.406, 205.500–501, 205.504, 205.511, 205.660–205.663, 205.665, 205.680, and 205.681 of the USDA organic regulations to protect organic product integrity and build consumer and industry trust in the USDA organic label. The proposed rule would strengthen organic control systems, improve organic import oversight, clarify organic certification standards, and enhance farm to market traceability, using a risk-based approach to oversight to assure consumers that organically produced products meet a consistent standard.

This proposed rule would amend several sections of the USDA organic regulations, 7 CFR part 205, to strengthen the NOP's ability to oversee and enforce the production, handling, marketing, and sale of organic agricultural products as established by the OFPA. This proposed rule would improve organic integrity throughout the organic supply chain and benefit stakeholders at all levels of the organic industry. The proposed amendments would close gaps in the current regulations to build consistent certification practices, deter organic fraud, and improve transparency and product traceability. The NOP identified the need for many of the proposed amendments as part of its direct experience in administering this program, particularly via complaint investigation and audits of certifying agents. Other proposed amendments are based on recent amendments to the OFPA included in the Agriculture Improvement Act of 2018;⁶⁶ the recommendations of a 2017 Office of Inspector General audit;⁶⁷ the

[view.xhtml?path=/prelim@title7/chapter94&edition=prelim.](#)

⁶⁶ The Agriculture Improvement Act of 2018 (Public Law No: 115–334), commonly known as the “2018 farm bill,” is available at <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>. Organic certification is discussed in Title X, Section 10104.

⁶⁷ The National Organic Program International Trade Arrangements and Agreements Audit Report 01601–0001–21, September 2017: <https://www.usda.gov/oig/webdocs/01601-0001-21.pdf>.

recommendations of the federal advisory committee to the NOP, the National Organic Standards Board (NOSB); and industry stakeholder feedback.

This proposed rule will strengthen enforcement with amendments to the USDA organic regulations and will modify the reporting and recordkeeping burdens as summarized below.

1. Reduces the types of uncertified handling operations in the organic supply chain that operate without USDA oversight.⁶⁸ The proposed amendments would require certification of operations that facilitate the sale or trade of organic products, including but not limited to, brokers, importers, and traders. These handlers would be required to obtain organic certification by developing an organic system plan (OSP) to describe the practices and procedures used in their operations. Certifying agents customize the format of the OSP to cover standards applicable to the operations seeking certification. Because traders and brokers do not farm or manufacture organic products, the OSPs for traders and brokers would address fewer sections of the current rule than OSPs for operations that farm or manufacture organic products. Therefore, reporting impacts for traders and brokers are estimated at 40 hours for each uncertified handling operation to prepare its initial OSP. AMS estimates a recordkeeping burden of 10 hours annually. The estimated annual reporting burden for each entity to update its OSP in future years is 20 hours (§§ 205.2, 205.100, 205.101, and 205.103).

2. Requires all currently certified organic operations and new applicants to describe their procedures for monitoring, verifying, and demonstrating the organic status of their suppliers and the products received to prevent organic fraud. This information would be part of the OSP. AMS estimates that each currently certified operation and applicant seeking certification would need 30 minutes to describe the supply chain verification procedures and monitoring practices proposed by this regulation (§§ 205.103 and 205.201).

3. Requires that each shipment of organic products imported into the United States through U.S. Ports of Entry must be declared as organic to U.S. Customs and Border Protection (CBP) and associated with an NOP Import Certificate (NOP 2110–1)⁶⁹ or an

equivalent data source.⁷⁰ The NOP Import Certificate contains specific information about the quantity and source of a specific physical shipment of imported organic products. NOP Import Certificates are currently used for organic products imported from countries with which the NOP holds equivalency arrangements. This proposed rule would expand and make compulsory the use of NOP Import Certificates, regardless of an imported product's country of origin. AMS estimates that exporters and certifying agents would need 30 minutes to report mandatory data, and prepare and review the NOP Import Certificate, respectively. AMS estimates that importers would need an average of one-tenth (0.1) of an hour, or 6 minutes, to compare the shipping manifest with the NOP Import Certificate to verify the accuracy and organic compliance of each shipment (§§ 205.273 and 205.300).

4. Clarifies that previously optional information must now be provided on nonretail container labels used to ship or store organic products. Along with the production lot number that is already required, nonretail labels would need: (1) The word “organic” to identify the product as organic; and (2) the name of the certifying agent that certified the product. These changes would help maintain the integrity of organic products by reducing misidentification and mishandling, facilitating traceability through the supply chain, reducing organic fraud, and allowing accurate identification of organic product by customs officials and transportation agents. AMS estimates that producers and/or processors would need one-tenth (0.1) of an hour, or 6 minutes, to add the word “organic” and the name of the certifying agent to the labels that are displayed on nonretail containers (§ 205.307).

5. Codifies current practices for the certification of groups of crop producers as a single operation.⁷¹ The proposed rule describes the criteria to qualify as a grower group, how grower group operations can comply with the existing USDA organic regulations, and how certifying agents should inspect these operations. It also sets a risk-based benchmark to determine how many grower group members in an operation need to be inspected annually. AMS expects that these requirements would

not add to current paperwork impacts for grower group operations to prepare an OSP and maintain their certification, or for certifying agents and inspectors auditing and inspecting these operations for compliance with organic standards (§§ 204.400 and 204.403).

6. Requires certifying agents to create fraud prevention procedures to: (1) Identify high-risk operations, supply chains, and agricultural products, (2) conduct risk-based unannounced inspections and supply chain trace-back and mass-balance audits, (3) share information with other certifying agents to verify supply chains and conduct investigations, and (4) report credible evidence of organic fraud to the USDA. AMS estimates each certifying agent would spend one hour documenting these procedures (§§ 205.403, 205.501 and 205.504).

7. Requires that certifying agents conduct unannounced inspections on at least 5% of the operations they certify, which is the current recommended practice in NOP Instruction 2609.⁷² For the purposes of estimating paperwork impacts, AMS expects that half of the unannounced inspections (2.5% of total inspections) would meet the requirement for a full annual inspection and would not impact current paperwork burden. The remaining half of the unannounced inspections (2.5% of total inspections) would target high-risk operations and supply chains and would not count as a full annual inspection. Examples of targeted, limited-scope unannounced inspections include, but are not limited to, verifying livestock on pasture or performing targeted mass-balance and trace-back audits. AMS estimates that the paperwork impacts associated with these unannounced inspections would average inspectors 5 hours per inspection; half of the estimated 10 hours for a full annual inspection (§ 205.403).

8. Requires certifying agents to issue standardized certificates of organic operation generated from the USDA's publicly available Organic Integrity Database (INTEGRITY).⁷³ This would require an initial upload of mandatory data for each operation and maintenance, at least annually, to ensure that data in INTEGRITY are current and accurate. Currently, all certifying agents have voluntarily uploaded and maintain 50% or more

⁶⁸ Mandated by the Agriculture Improvement Act of 2018. See section 10104(a).

⁶⁹ Office of Management and Budget (OMB)-approved form NOP 2110–1 NOP Import Certificate: <https://www.ams.usda.gov/resources/nop-2110-1>.

⁷⁰ Mandated by The Organic Foods Production Act of 1990 (OFPA), as amended by the Agriculture Improvement Act of 2018. See sections 10104(b)–(c).

⁷¹ NOP Policy Memo 11–10, Grower Group Certification, October 31, 2011: <https://www.ams.usda.gov/sites/default/files/media/NOP-11-10-GroupGrowerCert.pdf>.

⁷² NOP 2609, Instruction, Unannounced Inspections. September 12, 2012. Available in the NOP Program Handbook: <https://www.ams.usda.gov/sites/default/files/media/2609.pdf>.

⁷³ Organic Integrity Database: <https://organic.ams.usda.gov/integrity/>.

data on all certified operations per the recommendations found in the NOP's Data Quality Best Practices.⁷⁴ The proposed amendments would require a new, one-time burden of reporting hours for certifying agents to upload remaining data pertaining to currently certified operations into INTEGRITY for the first time. It is estimated that uploading these data into INTEGRITY would require 30 minutes for each operation and would be performed by administrative support personnel who have a lower wage rate than review and compliance staff.

The proposed amendments would simultaneously eliminate the requirement to physically mail the Administrator or State Organic Program paper copies of: (1) The list of operations certified annually; (2) notifications of proposed adverse actions, approvals, or denials of corrective actions; and (3) notifications of executions of adverse actions regarding certified operations or operations applying for certification (§§ 205.404 and 205.501). AMS is not seeking to modify the estimate of paperwork burden associated with these changes in requirements because any change would be trivial and these activities and tasks are still occurring electronically as a part of maintaining the data on all operations over time.

9. Requires certifying agents to submit their decision criteria for acceptance of mediation, and a process for identifying personnel conducting mediation and setting up mediation sessions with its administrative policies and procedures provided in § 205.504(b). AMS estimates each certifying agent would spend one hour documenting these procedures that they are already implementing.

10. Clarifies how certified operations may submit annual updates to their OSP. This includes practices or procedures that have changed since their last approved OSP, rather than submitting an OSP in its entirety. This would reduce unnecessary paperwork without compromising oversight because operations would continue to maintain an OSP that accurately reflects current practices and procedures of the operation. This codifies current policy and does not modify the paperwork burden (§ 205.406).

11. Requires certifying agents to establish inspection oversight procedures and demonstrate that they are sufficiently staffed with qualified personnel and that all inspectors, certification reviewers, and in-field

evaluators meet knowledge, skills, and experience qualifications. AMS estimates that each certifying agent would spend 60 minutes to draft policies and procedures for conducting inspector field evaluations. Further, certifying agents must observe an inspector performing an on-site inspection at least once every three years. AMS estimates each certifying agent would conduct an average of four inspector field evaluations per year and that this activity would require 7.5 hours per evaluation (§§ 205.2 and 205.501).

12. Requires inspectors and certification review staff to complete an additional 10 hours of training annually.⁷⁵ Through two audits every 5 years, AMS estimates that inspectors and certification review staff currently receive at least 10 hours of training per year from certifying agents on topics related to the USDA organic regulations. Inspectors and certification review personnel play a crucial role in determining whether an operation is granted organic certification initially and whether certified operations are compliant with the USDA organic regulations. Certification review personnel may also serve as inspectors. AMS is proposing an additional 10 hours of training annually, calculated as two (2) five-hour trainings. Training offered by the NOP through its new online Organic Integrity Learning Center (OILC) and training provided by the certifying agents or other providers may qualify towards the total of 20 hours of required training (§§ 205.2 and 205.501).

13. Clarifies AMS responsibilities for equivalent organic conformity with foreign governments.⁷⁶ The OFPA at § 6505(b), and the current USDA organic regulations at § 205.500(c), provide the authority to establish organic equivalency. The proposed regulations describe the criteria, scope, and other parameters for ongoing peer review audits of foreign organic conformity systems to determine whether the USDA should continue, revise, or terminate such trade arrangements. These peer review audits of trade arrangements would occur twice within a five-year

period and would result in new periodic paperwork impacts for foreign governments. AMS estimates the paperwork impacts for foreign governments when USDA reviews the applicable trade arrangement to be 60 hours per year, which is comparable to the estimated paperwork impacts for AMS audits of certifying agents (§ 205.511).

Respondents

AMS has identified four primary types of entities (respondents) that would need to submit and maintain information as a result of this proposed rule: Certified organic operations; accredited certifying agents; organic inspectors; and foreign governments. Three respondent types—certified operations (producers and handlers), certifying agents, and inspectors—have been identified in a currently approved information collection (0581–0191). To implement a 2018 Farm Bill mandate, AMS is requiring certification of additional types of operations in the organic supply chain and regular audits of trade arrangements with foreign governments.⁷⁷ This adds new types of handlers as a subcategory of certified operations and foreign governments as a new type of respondent.

To more precisely understand the paperwork impacts of this proposed rule, AMS has divided the categories of respondents into domestic and foreign, as appropriate, to show the potential impacts on domestic-based versus foreign-based USDA-accredited certifying agents, inspectors, and certified operations, along with foreign-accredited certifying agents, and foreign-governments serving as accrediting bodies. For each type of respondent, we describe the general paperwork submission and recordkeeping activities and estimate: (1) The number of respondents; (2) the hours they spend, annually, creating and storing records to meet the paperwork requirements of the organic labeling program; and (3) the costs of those activities based on prevailing domestic and foreign wages and benefits.

1. *Certifying agents.* Certifying agents are State, private, or foreign entities accredited by the USDA, or by accreditation bodies of foreign governments with whom USDA has equivalency, to certify domestic and foreign producers and handlers as organic in accordance with the OFPA

⁷⁵ Ten hours of training are accounted for in the 2020 Information Collections Renewal for the NOP (AMS–NOP–19–0090; OMB Control Number: 0581–0191). Our internal onsite accreditation audit checklist used by our accreditation audit team includes a question on training. With the implementation of this rule, the specific hours of training offered by our 78 certifying agents will be documented.

⁷⁶ Currently, the United States has established organic trade arrangements with Canada, the European Union, the United Kingdom (effective January 2021), India, Israel, Japan, New Zealand, South Korea, Taiwan, and Switzerland.

⁷⁷ See Section 10104(a) of the Agriculture Improvement Act of 2018, Public Law No: 115–334, available at: <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.

⁷⁴ Data Quality Best Practices: <https://www.ams.usda.gov/sites/default/files/media/INTEGRITY%20Data%20Quality.pdf>.

and the USDA organic regulations. Certifying agents determine whether a producer or handler meets the organic requirements, using detailed information from the operation about its specific practices and on-site inspection reports from organic inspectors. Currently, there are 78 USDA-accredited certifying agents (46 are based in the United States and 32 are headquartered in foreign countries). Both domestic- and foreign-based USDA-accredited certifying agents certify operations based in the United States and abroad. AMS assumes all currently accredited certifying agents evaluate all types of production and handling operations for compliance with the USDA organic regulations and would be subject to the reporting and recordkeeping burdens of the proposed amendments. In addition, AMS assumes there are 32 foreign government-accredited foreign-based certifying agents that certify handlers to the USDA organic regulations and that would issue NOP Import Certificates, or their equivalent, for organic product shipments to the United States.⁷⁸

Certifying agents of operations that export to the United States would need to issue import certificates for all shipments of imported organic products. The USDA Foreign Agricultural Service (FAS) Global Agricultural Trade System (GATS) showed 67,023 shipments of organic product coming into the U.S. in 2017.⁷⁹ Thirty-two (32) USDA-accredited certifying agents based in foreign countries certify 92% of the foreign operations certified under USDA organic standards. Of the 46 domestic-based USDA accredited certifying agents, 16 certifying agents certify 8% of the foreign operations certified under USDA.⁸⁰ This means that 30 domestic-based USDA-accredited certify agents only certify domestic-based operations that do not import foreign organic products or ingredients. AMS estimates 32 foreign-accredited certifying agents that certify foreign operations under trade agreements.⁸¹ AMS would review

⁷⁸ An estimate based on the number of foreign-based USDA accredited certifying agents.

⁷⁹ Data source: USDA Foreign Agricultural Service (FAS) Global Agricultural Trade System (GATS). Select: Partners, World Total, Product Type, Imports—General, Products: All Aggregates; Product Groups: Organic—Selected: <https://apps.fas.usda.gov/gats/default.aspx>.

⁸⁰ Organic Integrity Database: <https://organic.ams.usda.gov/integrity/>.

⁸¹ An estimate based on the number of foreign-based USDA-accredited certifying agents.

documents regarding imports during the accreditation audits of USDA-accredited certifying agents. AMS estimates 30 minutes for: (1) USDA-accredited domestic-based certifying agents to work with their foreign-based operations to prepare the NOP Import Certificate (Form NOP 2110–1) for 8% of 67,023 annual shipments; (2) USDA-accredited foreign-based certifying agents to work with their foreign-based operations to prepare the NOP Import Certificate for 46% of 67,023 annual shipments; and (3) foreign-accredited certifying agents to work with their foreign-based operations to prepare the NOP Import Certificate for 46% of 67,023 annual shipments.

AMS is proposing amendments that would reduce the current paperwork burden of accredited certifying agents by eliminating the need to provide notices of approval or denial of certification to the Administrator following the issuance of a notice of noncompliance or adverse action to an applicant for certification. Also, the proposed rule removes the annual requirement for certifying agents to submit by January 2 an annual list of operations certified. Certifying agents would instead be required to update data in INTEGRITY for each operation they certify. AMS is not seeking to modify the estimate of paperwork burden with these changes in requirements because any change would be trivial. These activities and tasks are still occurring electronically as a part of maintaining the data on all operations over time. In addition, all USDA-accredited certifying agents would need to write procedures to identify high-risk operations and products they certify and procedures to conduct supply-chain audits of those high-risk products. Certifying agents would also be required to issue organic certificates generated by INTEGRITY. Certifying agents would be required to write procedures to demonstrate how they are sufficiently staffed and that all persons who perform certification review activities and on-site inspections (inspectors) are qualified and complying with annual training requirements increased from 10 hours to 20 hours per year. Certifying agents would also be required to write mediation procedures as per § 205.504(b).

AMS projects that the proposed changes would increase the overall reporting and recordkeeping burden for certifying agents (See Summary Table 1:

Certifying Agents). AMS estimates the annual collection cost per domestic-based USDA-accredited certifying agents would be \$12,788.95.⁸² This cost is based on an estimated 123.36 labor hours per certifying agent per year for staff with certification review responsibilities at \$45.91 per labor hour, including 31.7% benefits, for a total salary component of \$5,663.55 per year.⁸³ The estimated cost for domestic certifying agents also includes 300.24 labor hours per certifying agent per year for administrative support staff to upload data about certified operations to INTEGRITY at \$23.73 per labor hour, including 31.7% benefits, for a total salary component of \$7,125.40 per year.⁸⁴

In addition, AMS estimates the annual collection cost for all domestic-based USDA-accredited certifying agents would be \$589,458.85. This cost is based on a total of 5,720.60 hours for all staff with certification review responsibilities at \$45.91 per labor hour, including 31.1% benefits, for a total salary component of \$262,636.29 for all staff with certification review and procedure writing responsibilities of all domestic-based USDA-accredited certifying agents. The estimated cost for all domestic-based certifying agents also includes 13,771.19 hours total hours for administrative support staff uploading data about certified operations to INTEGRITY at \$23.73 per labor hour, including 31.7% benefits for a total salary component of \$326,822.56.

⁸² In this assessment, all domestic labor rates are sourced from the U.S. Bureau of Labor Statistics National Compensation Survey, Occupational Employment and Wages, May 2018: https://www.bls.gov/oes/current/oes_nat.htm. Domestic benefits are based on a Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, which states that benefits account for 31.7% of total average employer compensation costs. December 14, 2018: <https://www.bls.gov/news.release/eccec.nr0.htm>.

⁸³ The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers*. Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere.

⁸⁴ The labor rate for administrative support staff is based on Occupational Employment Statistics group 43–9199, *Office and Administrative Support Workers*, who support general office work and data entry functions.

SUMMARY TABLE 1—CERTIFYING AGENTS

Respondent categories	Number of respondents	Wages + benefits	Hours per respondent	Cost/ respondent type	Total all hours	Total all costs
U.S.-Based USDA Certifying Agents	46	\$45.91	124.36	\$5,709.37	5,720.60	\$262,636.29
U.S.-Based USDA Certifying Agents—data entry	46	23.73	300.24	7,124.70	13,771.19	326,822.56
<i>Subtotal U.S.-Based USDA Certifying Agents</i>	46	.....	.....	12,834.06	19,491.79	589,458.85
Foreign-Based USDA Certifying Agents ..	32	24.59	547.74	13,468.93	17,527.63	430,181.78
Foreign-Based USDA Certifying Agents—data entry	32	12.71	300.24	3,816.05	9,569.81	121,633.35
<i>Subtotal Foreign-Based USDA Certifying Agents</i>	32	.....	.....	17,286.98	27,097.44	551,815.13
Total USDA-Accredited Certifying Agents	78	.....	.....	30,119.04	46,589.23	1,141,273.98
Foreign-Accredited Certifying Agents	32	24.59	481.73	11,844.69	15,415.29	379,030.04
Total All Certifying Agents	110	.....	.....	.....	62,004.52	1,520,304.02

For foreign-based USDA-accredited certifying agents, AMS estimates the annual cost per certifying agent would be \$17,527.63 per year. This cost is based on an estimated 547.74 labor hours for staff with certification review and procedure writing responsibilities at \$24.59 per labor hour, including 35.92% benefits, for a total salary component of \$13,468.93 per foreign-based USDA-accredited certifying agent per year. These estimated costs primarily pertain to the issuance and review of NOP Import Certificates. The estimated cost for foreign-based USDA-accredited certifying agents also includes 300.24 labor hours per certifying agent per year for administrative support staff to upload data about certified operations to INTEGRITY at \$12.71 per labor hour, including 35.92% benefits, for a total salary component of \$3,816.08 per year.⁸⁵

AMS estimates the annual collection cost for all foreign-based USDA accredited certifying agents would total \$551,815.13. This cost is based on a total of 17,527.63 hours for all staff with certification review responsibilities at \$24.59 per labor hour, including 35.92% benefits, for a total salary component of \$430,181.78 for staff with certification review and procedure writing responsibilities of all foreign-based USDA-accredited certifying agents. The estimated cost for all foreign-based USDA-accredited certifying agents also includes 9,569.81 hours total hours for

administrative support staff uploading data about certified operations to INTEGRITY at \$12.71 per labor hour, including 35.92% benefits, for a total salary component of \$121,633.35.

For foreign-accredited certifying agents, AMS estimates the annual cost will be \$11,844.69 per certifying agent. This cost is based on an estimated 481.73 labor hours per year for staff to issue and review NOP Import Certificates, or an equivalent data source, at \$24.59 per labor hour plus 35.92% benefits. The total for all foreign-accredited certifying agents is estimated to be \$379,030.04. The cost is based on an estimated 15,415.29 total hours for all staff involved in the issuance and review of NOP Import Certificates, or an equivalent data source, at \$24.59 per labor hour plus 35.92% benefits.

The total cost for all certifying agents as a whole includes all costs for all 78 USDA-accredited certifying agents, domestic- and foreign-based, and all costs for the 32 foreign-accredited certifying agents who certify operations that export products to the U.S. The total costs for all certifying agents is \$1,520,304.02. This cost is based on 62,004.52 total hours at their respective wage rates and benefits to comply with the proposed requirements.

2. *Organic Inspectors.* Inspectors conduct on-site inspections of certified operations and operations applying for certification and report the findings to the certifying agent. Inspectors may be

independent contractors or employees of certifying agents. Certified operations must be inspected annually, and a certifying agent may call for additional inspections or unannounced inspections on an as-needed basis (§ 205.403(a)). Any individuals who apply to conduct inspections of operations would need to submit information documenting their qualifications to the certifying agent (§ 205.504(a)(3)). Inspectors must also complete 20 hours of standardized organic training every year. AMS estimates that 10 hours per year for each inspector is a new paperwork burden associated with the proposed rule.

Inspectors provide an inspection report to the certifying agent for each operation inspected (§ 205.403(e)) but are not expected to store the record. Currently, AMS estimates that inspectors spend 10 hours on average to complete an inspection report for a full annual inspection of an organic operation. The additional unannounced inspections that would be newly required by this proposed rule are likely to be more limited in scope (such as pasture or dairy surveillance, or mass-balance and trace-back audits). AMS projects, on average, that inspectors would spend 5 hours to complete an inspection report for the unannounced targeted scope inspection. AMS Inspectors do not have recordkeeping obligations; certifying agents maintain the records of inspection reports (see Summary Table 2: *Inspectors*).

⁸⁵ In this assessment, all foreign labor rates are based on a review of World Bank data, which indicates that labor rates in foreign countries with USDA-accredited certifying agents are approximately 52% of equivalent U.S. labor rates:

<https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>. Benefits are based on a review of data from the Organisation for Economic Co-Operation and Development (OECD), which indicates that benefits account for 35.92% of total

compensation in foreign countries with USDA-accredited certifying agents: <https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP>.

SUMMARY TABLE 2—INSPECTORS

Respondent categories	Number of respondents	Wages + benefits	Hours per respondent	Cost per respondent type	Total all hours	Total all costs
USDA U.S.-based Inspectors	148	\$28.45	33.34	\$948.43	4917.80	\$139,897.57
USDA Foreign-based inspectors	102	15.27	33.34	508.99	3417.45	52,172.66
All USDA Inspectors	250	.....	.....	.....	8335.25	192,070.23

According to the International Organic Inspectors Association (IOIA), there are approximately 250 inspectors currently inspecting crop, livestock, handling, and/or wild crop operations that are certified or have applied for certification. AMS estimates that 148 inspectors are working for USDA-accredited certifying agents in the U.S. For the additional training and unannounced targeted-scope inspections, AMS estimates the annual paperwork impact cost per domestic-based inspector to be \$948.43. This is based on an estimated 33.34 labor hours per year at \$28.45 per labor hour, including 31.7% benefits. The total annual cost for all domestic-based inspectors is \$139,897.57. This cost is based on 3,417 total hours for all domestic based inspectors at \$28.45 per labor hour, including 31.7% benefits.⁸⁶

AMS estimates that 102 inspectors are working for USDA-accredited certifying agents in foreign countries. AMS estimates the annual paperwork impact cost per foreign-based inspector to be \$508.99. This estimate is based on an estimated 33.34 labor hours per year at \$15.27 labor hour, including 35.92% benefits for attending 10 hours of training and conducting 4.67 unannounced targeted scope inspections. There are no recordkeeping

costs for inspectors. The total annual cost for all foreign-based inspectors is \$52,172.66 at \$15.27 per labor hour, including 35.92% benefits. The total annual cost for all inspectors working for USDA-accredited certifying agents is \$192,070.23, at their respective wage rates and benefits.

3. *Producers and handlers.* Domestic and foreign producers and handlers seeking organic certification must submit an OSP that details the practices and activities specific to their operation. Once certified, operations are required to update any changes in their operation or practices to their certifying agent at least annually.

(a) *Uncertified Handlers.* This proposed rule would require that operations that facilitate the sale or trade of organic products—including, but not limited to, brokers, importers, and traders—obtain certification and submit and maintain an OSP. AMS estimates that 961 domestic,⁸⁷ and an equal number of foreign-based, operations would need to become certified as a result of this rule. As stated previously, the OSPs for these handling operations would address fewer sections of the current rule than OSPs for operations that farm or manufacture organic products. Traders and brokers do not farm or manufacture

organic products so the OSPs for traders and brokers would address fewer sections of the current rule than OSPs for operations that produce or manufacture organic products. Certifying agents customize the format of the OSP to cover standards applicable to the operations seeking certification. Therefore, AMS estimates that preparation of an initial OSP would require 40 reporting hours, plus 10 hours of annual recordkeeping. The estimated annual reporting burden for each entity to update its OSP in future years is 20 hours (See Summary Table 3a: *Uncertified Handlers*).

All operations that export organic products to the United States would need to request an NOP Import Certificate, or its equivalent, from their certifying agent for each organic shipment imported to the United States. Further, operations that import organic products would need to verify that each shipment is associated with and matches the data on an NOP Import Certificate, and that organic integrity was maintained throughout the import process. In addition, domestic and foreign handlers that would be required to obtain organic certification as a result of this proposed rule may also need to comply with the proposed requirements for labeling nonretail containers.

SUMMARY TABLE 3a—UNCERTIFIED HANDLERS

Respondent categories	Number of respondents	Wages + benefits	Total hours per respondent	Total cost per respondent type	Total all hours	Total all costs
Formerly Excluded Handlers—Domestic	961	\$50.86	56.97	\$2,897.49	54,752.30	\$2,784,701.98
Formerly Excluded Handlers—Foreign ..	961	27.13	84.87	2,302.56	81,561.50	2,212,763.50
All Formerly Uncertified Handlers ...	1,922	.....	.....	.....	136,313.80	4,997,465.47

AMS estimates the annual paperwork impact for each domestic handler to prepare their initial organic system plan

and to verify that imported shipments match their respective NOP Import Certificates is \$2,897.71. This is based

on an estimated 56.97 labor hours at \$50.86 per labor hour, including 31.7% benefits. The total cost to all previously

⁸⁶ The labor rate for inspectors is based on Occupational Employment Statistics group 45–2011, *Agricultural Inspectors*. Agricultural inspectors inspect agricultural commodities, processing equipment, facilities, and fish and logging operations to ensure compliance with regulations and laws governing health, quality, and safety.

⁸⁷ These businesses are identified by NAICS Category 425: *Wholesale Electronic Markets and Agents and Brokers*. These businesses arrange for the sale of goods owned by others, generally on a fee or commission basis. They act on behalf of the buyers and sellers of goods. This subsector contains agents and brokers as well as business-to-business electronic markets that facilitate wholesale trade.

Please refer to the “Applicability and Exemptions from Certification (§§ 205.100–101)” chapter in the Regulatory Impact Analysis (RIA) for an explanation of how previously excluded domestic handlers were estimated.

uncertified domestic handlers is \$2,784,701.98. This cost is based on 55,752.30 total labor hours at \$50.86 per labor hour, including 31.7% benefits.⁸⁸

AMS estimates the annual paperwork impact for each foreign-based handler to prepare their initial organic system plan and to work with their certifying agent to prepare their NOP Import Certificates for the products they export is \$2,302.56. This is based on an estimated 84.87 labor hours per year at \$27.13 per labor hour, which includes 35.92% for benefits. The total cost to all previously uncertified foreign handlers is \$2,784,701.98. This cost is based on 55,752.30 total labor hours at \$27.13 per labor hour, which includes 35.92% for benefits. Total costs to the 1922 previously uncertified handlers,

domestic and foreign, is \$4,997,465.47, based on 136,313.80 total labor hours at their respective domestic and foreign wage rates and benefits to prepare and keep their initial OSP and related records, and to prepare and review NOP Import Certificates for compliance.

(b) *Certified Operations and New Applicants under Current Rules.* There currently are 42,259 organic operations worldwide that are certified to the USDA organic standards. Over the next 12 months, AMS expects 2,501 operations will seek organic certification, based on the 5.9% rate of growth in number of operations observed in the last 12 months under current rules.⁸⁹ Therefore, AMS estimates that 26,408 operations based in the United States, and 18,352

operations based in foreign countries, including the respective applicants for certification, will be impacted by this proposed rule.

All currently certified organic operations and projected new applicants would need to describe their procedures for monitoring, verifying and demonstrating the organic status of their suppliers and products received to prevent organic fraud as part of their initial or updated OSP. All certified organic operations would need to comply with the proposed nonretail labeling requirements, and would be required to keep all records about their organic production and/or handling for five years (§ 205.103(b)(3)). See Summary Table 3b: *Certified Organic Operations and New Applicants.*

SUMMARY TABLE 3b—CERTIFIED ORGANIC OPERATIONS AND NEW APPLICANTS

Respondent categories	Number of respondents	Wages + benefits	Total hours/respondent	Total cost/respondent type	Total all hours	Total all costs
Certified Producers & Handlers—New and Existing Domestic	26,408	\$50.86	1.54	\$78.33	47,815.50	\$2,432,017.86
Certified Producers & Handlers—New and Existing Foreign	18,352	27.13	1.54	41.78	20,466.00	555,242.58
All New and Existing Producers & Handlers	44,760	.....	.....	.....	68,281.50	2,987,260.44

AMS estimates that the average annual paperwork impact for domestic certified organic producers and handlers to create a fraud prevention procedure and to comply with nonretail labeling requirements is \$78.33. This is based on an estimated 1.54 labor hours at \$50.86 per labor hour, including 31.7% benefits. The total cost for all domestic certified organic producers and handlers to comply with these new requirements is \$2,432,017.86. This cost is based on 47,815.50 labor hours at \$50.86 per labor hour, including 31.7% benefits.⁹⁰

AMS estimates the average annual paperwork impact for foreign-based USDA-certified organic producers and handlers to create a fraud prevention procedure and to comply with nonretail labeling requirements to be \$41.78. This is based on an estimated 1.54 labor hours per year at \$27.13 per labor hour, including 35.92% benefits. The total cost for all foreign producers and handlers certified to the USDA organic standards is \$555,242.58. This cost is

based on 20,446 labor hours year at \$27.13 per labor hour, including 35.92% benefits. The total cost for the 44,760 current certified organic and projected new producers and handlers under current rules, both domestic and foreign, is \$2,987,260. This cost is based on 68,281.50 labor hours at their respective domestic and foreign wages and benefits, to create their new fraud prevention procedures and comply with new nonretail label requirements.

4. *Foreign Governments.* The USDA has arrangements with 10 foreign governments to facilitate the international trade of organic products.⁹¹ The current regulations address this authority in general terms under § 205.500(c) but do not describe the criteria, scope, and other parameters to establish, oversee, or terminate such arrangements. The proposed rule describes equivalency determinations in more detail; this creates a new type of PRA respondent category. The proposed rule would allow a trade arrangement if

AMS determines that the technical requirements and conformity assessment system under which foreign products labeled as organic are produced and handled are at least equivalent to the requirements of the OFPA and the USDA organic regulations. The proposed rule would also require periodic assessment.

AMS expects these periodic peer review assessments would be similar in depth and frequency to the audits of accrediting certifying agents under USDA organic regulations and estimates a comparable level of reporting and recordkeeping burden by foreign governments with whom AMS has negotiated trade arrangements. AMS estimates the annual collection cost per foreign government would be \$1,721.15. This cost is based on an estimated 60 reporting labor hours and an estimated 10 hours of recordkeeping per foreign government per year at \$24.59 per labor hour, including 35.92% benefits, for a total salary component of \$1,721.15 per

⁸⁸ For uncertified handlers, AMS chose to use the same labor rate as certified producers and handlers: Occupational Employment Statistics group 11–9013, *Farmers, Ranchers, and Other Agricultural Managers.*

⁸⁹ Organic Integrity Database: <https://organic.ams.usda.gov/integrity/>. Calculated on April 3, 2019.

⁹⁰ The labor rate for producers and handlers is based on Occupational Employment Statistics group 11–9013, *Farmers, Ranchers, and Other Agricultural Managers*, who plan, direct, or coordinate the management or operation of farms, ranches, or other agricultural establishments.

⁹¹ Canada, the European Union, the United Kingdom (effective January 2021), India, Israel,

Japan, New Zealand, South Korea, Taiwan, and Switzerland. Taiwan is not included in this assessment because costs were calculated prior to May 2020, when the United States-Taiwan equivalency arrangement became effective.

year. The total cost for all foreign governments, with whom AMS has negotiated trade arrangements, to allow AMS to determine whether their foreign products labeled as organic are produced and handled are at least equivalent to the requirements of the OFPA and the USDA organic regulations is \$13,768.24. This cost is based on 560 total labor hours for all foreign governments at \$24.59 per labor hour, including 35.92% benefits.⁹²

Total (Domestic and Foreign) Information Collection Cost (Reporting and Recordkeeping) of Proposed Rule: \$9,711,656 (Also, see Summary Table 4: All Reporting and Recordkeeping Hours and Costs, and All Domestic Reporting and Recordkeeping Hours and Costs)

Total All Reporting Burden Cost: \$8,497,036

Estimate of Burden: Public reporting burden for the collection of information is estimated to average .38 hours per year per response.

Respondents: Certifying agents, certified operations, inspectors, and foreign governments.

Estimated Number of Reporting Respondents: 47,050.

Estimated Number of Reporting Responses: 644,269.

Estimated Total Annual Burden on Reporting Respondents: 244,927 hours.
Estimated Total Annual Reporting Responses per Reporting Respondents: 13.69 reporting responses per reporting respondents.

Total All Recordkeeping Burden Cost: \$1,214,620

Estimate of Burden: Public recordkeeping burden is estimated to be an annual total of 0.65 hours per year per respondent.

Respondents: Certifying agents, certified operations, and foreign governments.

Estimated Number of Recordkeeping Respondents: 46,768.

Estimated Total Recordkeeping Burden on Respondents: 30,568 hours.

Estimated Total Recordkeeping Responses per Recordkeeping Respondents: 1 recordkeeping response per recordkeeping respondents.

Total Domestic Only Information Collection Cost (Reporting and Recordkeeping) of Proposed Rule: \$5,946,076

Total Domestic Only Reporting Burden Cost: \$5,119,399

Estimate of Burden: Public domestic only reporting burden is estimated to be an annual total .29 hours per year per domestic respondent.

Respondents: Certifying agents, certified operations, and inspectors.

Estimated Number of Domestic Reporting Respondents: 27,563.

Estimated Number of Domestic Reporting Responses: 380,119.

Estimated Total Annual Reporting Burden on Domestic Respondents: 110,719 hours.

Estimated Total Domestic Reporting Responses per Reporting Respondents: 13.79 reporting response per reporting respondents.

Total Domestic Only Recordkeeping Burden Cost: \$826,677

Estimate of Burden: Public domestic only recordkeeping burden is estimated to be an annual total of 0.59 hours per year per respondent.

Respondents: Certifying agents and certified operations.

Estimated Number of Domestic Recordkeeping Respondents: 27,415.

Estimated Total Annual Recordkeeping Burden on Domestic Respondents: 16,288 hours.

Estimated Number of Domestic Recordkeeping Responses: 27,542.

Estimated Total Domestic Recordkeeping Responses per Recordkeeping Respondents: 1 recordkeeping response per recordkeeping respondents.

SUMMARY TABLE 4—ALL REPORTING AND RECORDKEEPING HOURS AND COSTS AND ALL DOMESTIC REPORTING AND RECORDKEEPING HOURS AND COSTS

	Hours	Costs	Number of respondents	Respondent types
Total Reporting & Recordkeeping.	275,495	\$9,711,656	47,050	Certifying agents, certified operations, inspectors, and foreign governments.
All Reporting	244,927	8,494,137	47,050	Certifying agents, certified operations, inspectors, and foreign governments.
All Recordkeeping	30,568	1,214,620	46,768	Certifying agents, certified operations, and foreign governments.
Reporting & Recordkeeping—Domestic.	126,977	5,946,076	27,563	Certifying agents, certified operations, and inspectors.
Domestic Reporting	110,719	5,119,399	27,563	Certifying agents, certified operations, and inspectors.
Domestic Recordkeeping	16,258	826,677	27,415	Certifying agents and certified operations.

Comments

AMS is inviting comments from all interested parties concerning the information collection and recordkeeping required as a result of the proposed amendments to 7 CFR part 205. AMS seeks comment on the following subjects:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information would 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. 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 those who are to respond, including the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

5. AMS estimates that the total number of certified organic operations will grow by 5.6% annually, based on the increase in operations recorded in INTEGRITY during the last 12 months. Is this a reasonable and accurate projection of future growth, given the

⁹² The labor rate for foreign governments is estimated at 52% of the labor rate for Occupational

Employment Statistics group 13-1041, *Compliance Officers*.

additional burdens imposed by this proposed rulemaking?⁹³

Comments that specifically pertain to the information collection and recordkeeping requirements of this proposed rule may be sent to the Federal eRulemaking Portal at <https://www.regulations.gov/>. You can access this proposed rule and instructions for submitting public comments by searching for document number, AMS–NOP–17–0065. Comments may also be sent to Valeria Frances, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, Room 2642–So., Ag Stop 0268, 1400 Independence Ave. SW, Washington, DC 20250–0268 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Room 725, Washington, DC 20503. Comments on the information collection and recordkeeping requirements should reference the date and page number of this issue of the **Federal Register**. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. The comment period for the information collection and recordkeeping requirements contained in this proposed rule is 60 days.

D. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule does not have tribal implications that require consultation at this time. If a tribe requests consultation AMS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and

modifications identified herein are not expressly mandated by Congress.

E. Civil Rights Impact Analysis

AMS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. AMS has determined that this proposed rule has no potential for affecting producers, handlers, certifying agents, or inspectors in protected groups differently than the general population of producers, handlers, certifying agents, or inspectors.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, the United States Department of Agriculture proposes to amend 7 CFR part 205 as follows:

7 CFR PART 205—NATIONAL ORGANIC PROGRAM

- 1. The authority citation for 7 CFR Part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

- 2. Amend § 205.2 by:
- a. Revising the definitions “*Handle*”, “*Handler*”, and “*Handling operation*”;
 - b. Removing the term “*Retail food establishment*”; and
 - c. Adding in alphabetical order the terms “*Adverse action*,” “*Certification activity*,” “*Certification office*,” “*Certification review*,” “*Conformity assessment system*,” “*Grower group member*,” “*Grower group operation*,” “*Grower group production unit*,” “*INTEGRITY*,” “*Internal control system*,” “*Organic exporter*,” “*Organic fraud*,” “*Organic importer of record*,” “*Retail operation*,” and “*Technical requirements*”.

The revisions and additions read as follows:

§ 205.2 Terms defined.

* * * * *

Adverse action. A noncompliance decision that adversely affects certification, accreditation, or a person subject to the Act, including a proposed suspension or revocation; a denial of certification, accreditation, or reinstatement; a cease and desist notice; or a civil penalty.

* * * * *

Certification activity. Any business conducted by a certifying agent, or by a person acting on behalf of a certifying agent, including but not limited to: Certification management; administration; application review; inspection planning; inspections; sampling; inspection report review; material review; label review; records retention; compliance review; investigating complaints and taking adverse actions; certification decisions; and issuing transaction certificates.

Certification office. Any site or facility where certification activities are conducted, except for certification activities that occur at certified operations or applicants for certification, such as inspections and sampling.

* * * * *

Certification review. The act of reviewing and evaluating a certified operation or applicant for certification and determining compliance with the USDA organic regulations. This does not include performing an inspection.

* * * * *

Conformity assessment system. All activities undertaken by a government to ensure that the applicable technical requirements for the production, handling, and processing of organic agricultural products are fully and consistently applied from product to product.

* * * * *

Grower group member. A person engaged in the activity of growing or gathering a crop and/or wild crop as a member of a grower group operation.

Grower group operation. A single producer consisting of grower group members in geographical proximity governed by an internal control system under an organic system plan certified as a single crop and/or wild crop production and handling operation.

Grower group production unit. A defined subgroup of grower group members in geographical proximity as a part of a single grower group operation that use similar practices and shared resources to grow or gather similar crops and/or wild crops.

Handle. To sell, process, or package agricultural products, including but not limited to trading, facilitating sale or trade, brokering, repackaging, labeling, combining, containerizing, storing, receiving, or loading.

Handler. Any person engaged in the business of handling agricultural products.

Handling operation. Any operation or portion of an operation that handles agricultural products, except for

⁹³ Organic Integrity Database: <https://organic.ams.usda.gov/integrity/>. Calculated on April 3, 2019.

operations that are exempt from certification.

* * * * *

INTEGRITY. The National Organic Program’s electronic, web-based reporting tool for the submission of data, completion of certificates of organic operation, and other information, or its successors.

Internal control system. An internal quality management system that establishes and governs the review, monitoring, training, and inspection of the grower group operation and the procurement and distribution of shared production and handling inputs and resources, to maintain compliance with the USDA organic regulations as a single producer.

* * * * *

Organic exporter. The owner or final exporter of the organic product who facilitates the trade of, consigns, or arranges for the transport/shipping of the organic product from a foreign country.

Organic fraud. Intentional deception for illicit economic gain, where nonorganic products are labeled, sold, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”

Organic importer of record. The operation responsible for accepting imported organic products within the United States.

* * * * *

Retail operation. An operation that sells agricultural products directly to final consumers through in-person and/or virtual transactions.

* * * * *

Technical requirements. A system of relevant laws, regulations, regulatory practices, and procedures that address the production, handling, and processing of organic agricultural products.

* * * * *

■ 3. Amend § 205.100 by revising paragraphs (a) and (c) introductory text to read as follows:

§ 205.100 What has to be certified.

(a) Except for the exempt operations described in § 205.101, each operation, or portion of an operation, that produces or handles agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

* * * * *

(c) Any person or responsibly connected person that:

* * * * *

■ 4. Revise § 205.101 to read as follows:

§ 205.101 Exemptions from certification.

The following operations in paragraphs (a) through (e) of this section are exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part, including the provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272, and the specific additional requirements stipulated in § 205.101(a) through (f).

(a) A production or handling operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals \$5,000 or less annually. The products from such operations must not be used as ingredients identified as organic in processed products produced by another handling operation. Such operations must comply with the labeling provisions of § 205.310.

(b) A retail operation or a portion of a retail operation that sells, but does not process, organically produced agricultural products.

(c) A retail operation or portion of a retail operation that processes agricultural products that were previously labeled for retail sale as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” provided that the products are processed onsite at the point of sale to the final consumer. Such operations must comply with the labeling provisions of § 205.310, and must maintain records sufficient to:

(1) Prove that agricultural products identified as organic were organically produced and handled; and

(2) Verify quantities produced or sold from such agricultural products.

(d) A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients (as described in § 205.301(d)), or that only identifies organic ingredients on the information panel. Such operations must comply with the labeling provisions of §§ 205.305 and 205.310 and must maintain records sufficient to:

(1) Prove that agricultural products identified as organic were organically produced and handled; and

(2) Verify quantities produced or sold from such agricultural products.

(e) An operation that only stores, receives, and/or loads agricultural products, but does not process or alter such agricultural products.

(f) Records described in subparagraphs (a)–(d) of this section must be maintained for no less than 3 years beyond their creation, and the operations must allow representatives of the Secretary and the applicable State organic programs’ governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

■ 5. Amend § 205.103 by:

■ a. Revising paragraph (b)(2);

■ b. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5); and

■ c. Adding new paragraph (b)(3).
The revision and addition read as follows:

§ 205.103 Recordkeeping by certified operations.

* * * * *

(b) * * *

(2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited, including identification in records of products as “100% organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” as applicable;

(3) Include audit trail documentation for product handled or produced by the certified operation;

* * * * *

■ 6. Amend § 205.201 by:

■ a. Removing “or excluded” in paragraph (a) introductory text;

■ b. Revising paragraph (a)(3); and

■ c. Adding paragraph (c).

The revision and addition read as follows:

§ 205.201 Organic production and handling system plan.

(a) * * *

(3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented. This must include a description of the monitoring practices and procedures to verify suppliers in the supply chain and organic status of products received, and to prevent organic fraud, as appropriate to the certified operation’s activities;

* * * * *

(c) In addition to paragraph (a) of this section, a grower group operation’s organic system plan must describe its internal control system. The description of the internal control system must:

(1) Define the organizational structure, roles, and responsibilities of all personnel;

(2) Identify grower group production units and locations;

(3) Define geographical proximity criteria for grower group members and grower group production units;

(4) Describe characteristics of high-risk grower group members and grower group production units;

(5) Describe shared production practices and inputs;

(6) Describe the internal monitoring, surveillance, and auditing methods used to assess the compliance of all grower group members;

(7) Describe the system of sanctions for noncompliant grower group members, including procedures to address noncompliances detected among grower group members, impose sanctions, and remove grower group members when warranted, and procedures for reporting noncompliances to the certifying agent;

(8) Describe measures to protect against potential conflicts of interest;

(9) Describe how training, production and handling inputs, and other resources are procured and provided to all grower group members and personnel;

(10) Have clear policies and procedures to verify the grower group operation's and grower group members' compliance with the USDA organic regulations; and

(11) Address any other terms or conditions determined by the Administrator to be necessary to enforce compliance with the USDA organic regulations and the Act.

■ 7. Add § 205.273 to subpart C to read as follows:

§ 205.273 Imports to the United States.

Each shipment of organic products imported into the United States through U.S. Ports of Entry must be certified pursuant to subpart E of this part, labeled pursuant to subpart D of this part, be declared as organic to U.S. Customs and Border Protection, and be associated with a valid NOP Import Certificate (Form NOP 2110–1) or equivalent data source.

(a) Persons exporting organic products to the United States must request an NOP Import Certificate, or provide data through an equivalent data source, from a certifying agent, for each physical shipment of certified organic products prior to their export. Only certifying agents accredited by the USDA or foreign certifying agents authorized under an organic trade arrangement may issue an NOP Import Certificate or approve a listing in an equivalent data

source (e.g., a third-party export system).

(b) The certifying agent must review an NOP Import Certificate request, determine whether the shipment complies with the USDA organic regulations, and issue the NOP Import Certificate or equivalent within 30 calendar days of receipt if the shipment complies with the USDA organic regulations.

(c) Each compliant organic shipment must be declared as organic to U.S. Customs and Border Protection through a U.S. Port of Entry by uploading the unique NOP Import Certificate, or equivalent electronic data entry, into the U.S. Customs and Border Protection's Automated Commercial Environment system.

(d) Upon receiving a shipment with organic products, the organic importer of record must ensure the shipment is accompanied by a verified NOP Import Certificate or equivalent; must verify that the shipment contains only the quantity and type of certified organic product specified on the NOP Import Certificate or equivalent; and must verify that the shipment has had no contact with prohibited substances pursuant to § 205.272 or exposure to ionizing radiation pursuant to § 205.105, since export.

(e) The use of the term equivalent in this section refers to electronic data, documents, identification numbers, databases, or other systems verified as an equivalent data source to the NOP Import Certificate.

■ 8. Amend § 205.300 by revising paragraph (c) to read as follows:

§ 205.300 Use of the term, "organic."

* * * * *

(c) Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part, labeled pursuant to this subpart D, and must comply with the requirements in § 205.273, Imports to the United States.

* * * * *

■ 9. Amend § 205.301 by revising paragraphs (f)(2) and (f)(3) to read as follows:

§ 205.301 Product composition.

* * * * *

(f) * * *

(2) Be processed using ionizing radiation, pursuant to § 205.105(f);

(3) Be produced using sewage sludge, pursuant to § 205.105(g);

* * * * *

■ 10. Amend § 205.302 by revising paragraphs (a)(1), (2), and (3) to read as follows:

§ 205.302 Calculating the percentage of organically produced ingredients.

(a) * * *

(1) Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of all ingredients.

(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) at formulation by the fluid volume of all ingredients (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made based on single-strength concentrations of the ingredients and all ingredients.

(3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid organic ingredients and the weight of the liquid organic ingredients (excluding water and salt) at formulation by the total weight (excluding water and salt) of all ingredients.

* * * * *

■ 11. Amend § 205.307 by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a) and (b); and

■ c. Removing "and excluded" in paragraph (c)

The revisions read as follows:

§ 205.307 Labeling of nonretail containers.

(a) Nonretail containers used to ship or store certified organic product must display the following:

(1) The term, "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," as applicable, to identify the product;

(2) The statement, "Certified organic by (name of certifying agent)," or similar phrase, to identify the name of the certifying agent that certified the producer of the product, or, if processed, the certifying agent that certified the last handler that processed the product; and

(3) The production lot number of the product, shipping identification, or other information needed to ensure traceability.

(b) Nonretail containers used to ship or store certified organic product may display the following:

(1) Special handling instructions needed to maintain the organic integrity of the product;

(2) The USDA seal. Use of the USDA seal must comply with § 205.311;

(3) The name and contact information of the certified producer of the product, or if processed, the last certified handler that processed the product;

(4) The seal, logo, or other identifying mark of the certifying agent that certified the producer of the product, or if processed, the last handler that processed the product; and/or

(5) The business address, website, and/or contact information of the certifying agent.

(c) Shipping containers of domestically produced product labeled as organic intended for export to international markets may be labeled in accordance with any shipping container labeling requirements of the foreign country of destination or the container labeling specifications of a foreign contract buyer: *Provided*, That, the shipping containers and shipping documents accompanying such organic products are clearly marked "For Export Only" and: *Provided further*, That, proof of such container marking and export must be maintained by the handler in accordance with recordkeeping requirements for exempt operations under § 205.101.

§ 205.310 [Amended]

■ 12. Amend § 205.310 by removing "or excluded" wherever it appears.

■ 13. Amend § 205.400 by:
■ a. In paragraph (b), removing "§ 205.200" and adding in its place "§ 205.201"; and

■ b. Adding new paragraph (g).

The addition reads as follows:

§ 205.400 General requirements for certification.

* * * * *

(g) In addition to paragraphs (a) through (f) of this section, a grower group operation must:

- (1) Be a single producer organized as a person;
- (2) Sell, label, or represent only crops and/or wild crops as organic;
- (3) Use centralized processing, distribution, and marketing facilities and systems;
- (4) Be organized into grower group production units;
- (5) Ensure that all crops and/or wild crops sold, labeled, or represented as organic are from grower group members only;
- (6) Ensure that grower group members do not sell, label, or represent their crops and/or wild crops as organic outside of the grower group operation unless they are individually certified;
- (7) Report to the certifying agent on an annual basis the name and location of all grower group members and grower group production units, and the crops, wild crops, estimated yield, and size of production and harvesting areas of each grower group member and grower group production unit;

(8) Conduct internal inspections of each grower group member, at least annually, by internal inspectors, which must include mass-balance audits and reconciliation of each grower group member's and grower group production unit's production yield and group sales;

(9) Document and report to the certifying agent the use of sanctions to address noncompliant grower group members, at least annually; and

(10) Implement procedures to ensure all production and handling by the grower group operation is compliant with the USDA organic regulations and the Act, including recordkeeping requirements to ensure a complete audit trail from each grower group member and grower group production unit to sale and distribution.

§ 205.401 [Amended]

■ 14. Amend § 205.401(a) by removing "§ 205.200" and adding in its place "§ 205.201".

■ 15. Amend § 205.403 by:

- a. Redesignating paragraph (a)(2) as paragraph (a)(3);
- b. Adding new paragraph (a)(2);
- c. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f);
- d. Adding new paragraph (b);
- e. In newly redesignated (d)(2), remove "§ 205.200" and add in its place "§ 205.201"; and
- f. Adding new paragraphs (d)(4) and (5).

The additions read as follows:

§ 205.403 On-site inspections.

(a) * * *

(2) Initial and annual on-site inspections of a grower group operation as defined in § 205.2 must:

(i) Assess the compliance of the internal control system of the organic system plan, or its capability to comply, with the requirements of § 205.400(g)(8). This must include review of the internal inspections conducted by the internal control system.

(ii) Conduct witness audits of internal control system inspectors performing inspections of the grower group operation.

(iii) Individually inspect at least 1.4 times the square root of the total number of grower group members. This must include an inspection of all grower group members determined to be high risk according to criteria in 205.201(c)(4). At least one grower group member in each grower group production unit as defined in § 205.2 must be inspected.

(iv) Inspect each handling facility.

* * * * *

(b) *Unannounced inspections.* (1) A certifying agent must, on an annual

basis, conduct unannounced inspections of a minimum of five percent of the operations it certifies, rounded up to the nearest whole number.

(2) Certifying agents must be able to conduct unannounced inspections of any operation it certifies and must not accept applications or continue certification with operations located in areas where they are unable to conduct unannounced inspections.

(d) * * *

(4) That sufficient quantities of organic product and ingredients are produced or purchased to account for organic product sold or transported; and

(5) That organic products and ingredients are traceable by the operation from the time of production or purchase to sale or transport; and that certifying agents can verify traceability back to the source per § 205.501(a)(21).

■ 16. Amend § 205.404 by:

- a. Revising paragraph (b);
- b. Redesignating paragraph (c) as paragraph (d); and
- c. Adding new paragraph (c).

The revisions and additions read as follows:

§ 205.404 Granting certification.

* * * * *

(b) The certifying agent must issue a certificate of organic operation. The certificate of organic operation must be generated from INTEGRITY and may be provided to certified operations electronically.

(c) In addition to the certificate of organic operation provided for in § 205.404(b), a certifying agent may issue its own addenda to the certificate of organic operation. If issued, any addenda must include:

- (1) Name, address, and contact information for the certified operation;
- (2) The certified operation's unique ID number/code that corresponds to the certified operation's ID number/code in USDA Organic INTEGRITY;
- (3) A link to USDA Organic INTEGRITY or a link to the certified operation's profile in USDA Organic INTEGRITY, along with a statement, "You may verify the certification of this operation at USDA Organic INTEGRITY," or a similar statement;
- (4) Name, address, and contact information of the certifying agent;
- (5) "Addendum issue date;" and
- (6) "Addendum expiration date," which must not exceed the expiration date of the certificate of organic operation.

* * * * *

§ 205.405 [Amended]

■ 17. Amend § 205.405 by removing paragraph (c)(3).

- 18. Amend § 205.406 by revising paragraphs (a) and (b) to read as follows:

§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information to the certifying agent:

(1) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the organic system plan submitted during the previous year; and

(2) Any additions or deletions to the previous year's organic system plan, intended to be undertaken in the coming year, detailed pursuant to § 205.201;

(3) Any additions to or deletions from the information required pursuant to § 205.401(b); and

(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

(b) The certifying agent must arrange and conduct an on-site inspection, pursuant to § 205.403, of the certified operation at least once per calendar year.

* * * * *

§ 205.500 [Amended]

- 19. Amend § 205.500 by removing paragraph (c).

■ 20. Amend § 205.501 by:

■ a. Revising paragraphs (a)(4), (5), (6), (10), (13), and (15);

■ b. Redesignating paragraph (a)(21) as paragraph (a)(23); and

■ c. Adding new paragraphs (a)(21) and (a)(22).

The amendments read as follows:

§ 205.501 General requirements for accreditation.

(a) * * *

(4) Continuously use a sufficient number of qualified and adequately trained personnel, including inspectors and persons who conduct certification review, to comply with and implement the USDA organic standards;

(i) Certifying agents must demonstrate that all inspectors, including staff, volunteers, and contractors, have the required knowledge, skills, and experience to inspect operations of the scope and scale as assigned and to evaluate compliance with the applicable regulations of this part; and

(A) Certifying agents must demonstrate that inspectors continuously maintain adequate knowledge and skills about the current USDA organic standards, production and handling practices, certification and

inspection, import and/or export requirements, auditing practices and skills in written and oral communications, sample collection, investigation techniques, and preparation of technically accurate inspection documents; and

(B) Initially and every year thereafter, inspectors must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to inspection. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and

(C) Certifying agents must demonstrate that inspectors have a minimum of 1 year of field-based experience related to both the scope and scale of operations they will inspect before assigning inspection responsibilities;

(ii) Certifying agents must demonstrate that all persons who conduct certification review, including staff, volunteers, or contractors, have the knowledge, skills, and experience required to perform certification review of operations of the scope and scale assigned and to evaluate compliance with the applicable regulations of this part; and

(A) Certifying agents must demonstrate that all certification review personnel continuously maintain adequate knowledge and skills in the current USDA organic standards, certification and compliance processes, and practices applicable to the type, volume, and range of review activities assigned; and

(B) Initially and every year thereafter, all persons who conduct certification review activities must demonstrate successful completion of a minimum of 20 hours of training in topics that are relevant to certification review. Training may include material delivered via the NOP learning management system, certifying agents, or other relevant training provider; and

(iii) Certifying agents must maintain current training requirements, training procedures, and training records for all inspectors and persons who conduct certification review activities.

(5) Demonstrate that all persons with inspection or certification review responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned;

(i) Sufficient expertise must include knowledge of certification to USDA organic standards and evidence of formal education, training, or professional experience in the fields of agriculture, science, or organic

production and handling that directly relates to assigned duties.

(6) Conduct an annual performance evaluation of all persons who conduct inspections, certification review, or implement measures to correct any deficiencies in certification services;

(i) On-site evaluation of inspectors—Certifying agents must observe each inspector performing on-site inspections at least once every three years, or more frequently if warranted; and

(A) On-site inspector evaluations must be performed by certifying agent personnel who are qualified to evaluate inspectors;

(ii) Certifying agents must maintain documented policies, procedures, and records for annual performance evaluations and on-site inspector evaluations.

* * * * *

(10) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (except for the Secretary or the applicable State organic program's governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except:

(i) For information that must be made available to any member of the public, as provided for in § 205.504(b)(5);

(ii) For enforcement purposes, certifying agents must exchange any compliance-related information that is credibly needed to certify, decertify, or investigate an operation, including for the purpose of verifying supply chain traceability and audit trail documentation; and

(iii) If a certified operation's proprietary business information is compliance-related and thus credibly needed to certify, decertify, or investigate that operation, certifying agents may exchange that information for the purposes of enforcing the Act, but the information in question still retains its proprietary character even after it is exchanged and all of the certifying agents that are involved in the exchange still have a duty to preserve the confidentiality of that information after the exchange.

* * * * *

(13) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to § 205.500. Certifying agents must provide information to other certifying agents to ensure organic integrity or to enforce organic regulations, including to verify supply chain integrity, authenticate the organic

status of certified products, and conduct investigations;

* * * * *

(15) Maintain current and accurate data in INTEGRITY for each operation which it certifies;

* * * * *

(21) Annually, conduct risk-based supply chain audits to verify organic status of a product(s) of a certified operation(s) it certifies, back to the source(s).

(22) Notify AMS not later than 90 calendar days after certification activities begin in a new certification office. The notification must include the countries where the certification activities are being provided, the nature of the certification activities, and the qualifications of the personnel providing the certification activities.

* * * * *

■ 21. Amend § 205.504 by:

- (a) Revising paragraph (b)(4); and
■ (b) Adding paragraph (b)(7).

The revision and addition read as follows:

§ 205.504 Evidence of expertise and ability.

* * * * *

(b) * * *

(4) A copy of the procedures to be used for sharing information with other certifying agents and for maintaining the confidentiality of any business-related information as set forth in § 205.501(a)(10);

* * * * *

(7) A copy of the criteria to identify high-risk operations and products; and procedures to conduct risk-based supply chain audits, as required in § 205.501(a)(21); and procedures to report credible evidence of organic fraud to the Administrator.

* * * * *

■ 22. Adding § 205.511 to subpart F to read as follows:

§ 205.511 Accepting foreign conformity assessment systems.

(a) Foreign product may be certified under the USDA organic regulations by a USDA-accredited certifying agent and imported for sale in the United States. Foreign product that is produced and handled under another country's organic certification program may be sold, labeled, or represented as organically produced in the United States if AMS determines that such organic certification program provides technical requirements and a conformity assessment system governing the production and handling of such products that are at least equivalent to the requirements of the Act and the

regulations in this part ("equivalence determination").

(b) Countries desiring to establish eligibility of product certified under that country's organic certification program to be sold, labeled or represented as organically produced in the United States may request an equivalence determination from AMS. A foreign government must maintain compliance and enforcement mechanisms to ensure that its organic certification program is fully meeting the terms and conditions of any equivalence determination provided by AMS pursuant to this section. To request this determination, the requesting country must submit documentation that fully describes its technical requirements and conformity assessment system. If AMS determines it can proceed, AMS will conduct an assessment of the country's organic certification program to evaluate whether it is equivalent.

(c) AMS will describe the scope of an equivalence determination.

(d) AMS will conduct reviews on a two-year cycle, beginning at the close of the prior review, to assess the effectiveness of the foreign government's organic certification program. AMS will reassess a country's organic certification program that AMS has recognized as equivalent every five years to verify that the foreign government's technical requirements and conformity assessment program continue to be at least equivalent to the requirements of the Act and the regulations of this part, and will determine whether the equivalence determination should be continued.

(e) AMS may terminate an equivalence determination if the terms or conditions established under the determination are not met; if AMS determines that the country's technical requirements and/or conformity assessment program are no longer equivalent; if AMS determines that the foreign government's organic control system is inadequate to ensure that the country's organic certification program is fully meeting the terms and conditions under the determination; or for other good cause.

■ 23. Amend § 205.640 by revising the introductory paragraph to read as follows:

§ 205.640 Fees and other charges for accreditation.

Fees and other charges equal as nearly as may be to the cost of the services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be reviewed, assessed, and collected from applicants

in accordance with the following provisions:

* * * * *

■ 24. Amend § 205.660 by:

- a. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and
■ b. Adding new paragraph (c).

The addition read as follows:

§ 205.660 General.

* * * * *

(c) The Program Manager may initiate enforcement action against any person who sells, labels, or provides other market information concerning an agricultural product if such label or information implies, directly or indirectly, that such product is produced or handled using organic methods, if the product was produced or handled in violation of the Organic Foods Production Act or the regulations in this part.

■ 24. Amend § 205.661 by revising the section heading to read as follows:

§ 205.661 Investigation.

* * * * *

■ 26. Amend § 205.662 by:

- a. Adding new paragraph (e)(3);
■ b. Revising the first sentence of paragraph (f)(1); and
■ c. Revising paragraph (g)(1).

The amendments read as follows:

§ 205.662 Noncompliance procedure for certified operations.

* * * * *

(e) * * *

(3) Within 3 business days of issuing a notification of suspension or revocation, or the effective date of an operation's surrender, the certifying agent must update the operation's status in INTEGRITY.

(f) * * *

(1) A certified operation or a person responsibly connected with an operation whose certification has been suspended may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification, or submit a request for eligibility to be certified. * * *

* * * * *

(g) * * *

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in § 3.91(b)(1)(xxvii) of this title per violation.

* * * * *

■ 27. Revise § 205.663 to read as follows:

§ 205.663 Mediation.

(a) A certifying agent must submit with its administrative policies and procedures provided in § 205.504(b): decision criteria for acceptance of mediation, and a process for identifying personnel conducting mediation and setting up mediation sessions.

(b) A certified operation or applicant for certification may request mediation to resolve a denial of certification or proposed suspension or proposed revocation of certification issued by a certifying agent or State organic program.

(1) A certified operation or applicant for certification must submit any request for mediation in writing to the applicable certifying agent or State organic program within 30 calendar days of receipt of the notice of proposed suspension or proposed revocation of certification or denial of certification.

(2) A certifying agent or State organic program may accept or reject a request for mediation based on its own decision criteria.

(i) If a certifying agent rejects a mediation request, it must provide this rejection in writing to the applicant for certification or certified operation. The rejection must include the right to request an appeal, pursuant to § 205.681, within 30 calendar days of the date of the written notification of rejection of the request for mediation.

(c) Both parties must agree on the person conducting the mediation.

(d) If a State organic program is in effect, the parties must follow the mediation procedures established in the State organic program and approved by the Secretary.

(e) The parties to the mediation have a maximum of 30 calendar days to reach an agreement following a mediation session. Successful mediation results in a settlement agreement agreed to in writing by both the certifying agent and the certified operation. If mediation is unsuccessful, the applicant for certification or certified operation has 30 calendar days from termination of mediation to appeal the denial of certification or proposed suspension or revocation pursuant to § 205.681.

(f) Any settlement agreement reached through mediation must comply with the Act and the regulations in this part. The Secretary may review any mediated settlement agreement for conformity to the Act and the regulations in this part and may reject any agreement or provision not in conformance with the Act or the regulations in this part.

(g) The Program Manager may propose mediation and enter into a settlement agreement at any time to

resolve any adverse action notice that it has issued.

■ 28. Amend § 205.665 by revising paragraph (a) to read as follows:

§ 205.665 Noncompliance procedure for certifying agents.

(a) *Notification.* (1) A written notification of noncompliance will be sent to the certifying agent when:

(i) An inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any noncompliance with the Act or regulations in this part; or

(ii) The Program Manager determines that the certification activities of the certifying agent, or any person performing certification activities on behalf of the certifying agent, are not compliant with the Act or the regulations in this part; or

(iii) The Program Manager determines that the certification activities at a certification office, and/in specific countries, are not compliant with the Act or the regulations in this part.

(2) Such notification must provide:

(i) A description of each noncompliance;

(ii) The facts upon which the notification of noncompliance is based; and

(iii) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

* * * * *

■ 29. Revise § 205.680 to read as follows:

§ 205.680 General.

(a) Persons subject to the Act who believe they are adversely affected by an adverse action of the National Organic Program's Program Manager, may appeal such decision to the Administrator.

(b) Persons subject to the Act who believe they are adversely affected by an adverse action of a State organic program may appeal such decision to the State organic program's governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.

(c) Persons subject to the Act who believe they are adversely affected by an adverse action of a certifying agent may appeal such decision to the Administrator, Except, That when the person is subject to an approved State organic program, the appeal must be made to the State organic program.

(d) Persons subject to the Act who believe they are adversely affected by an adverse action of a certifying agent or a State organic program may request mediation as provided in § 205.663.

(e) All appeals must comply with the procedural requirements in § 205.681(c) and (d) of the USDA organic regulations.

(f) All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts.

(g) All appeals must be reviewed, heard, and decided by persons not involved with the adverse action being appealed.

■ 29. Amend § 205.681 by:

■ a. Revising paragraphs (a) introductory text and (a)(2);

■ b. Revising paragraphs (b) and (c)

■ c. Revising paragraph (d)(1); and

■ d. Revising paragraph (d)(3).

The amendments read as follows:

§ 205.681 Appeals.

(a) *Adverse actions by certifying agents.* An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or proposed revocation of certification to the Administrator, Except, That, when the applicant or certified operation is subject to an approved State organic program, the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.

* * * * *

(2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding may be initiated to deny, suspend, or revoke the certification. Such proceeding must be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice, 7 CFR part 1, subpart H, or the State organic program's rules of procedure.

(b) *Adverse actions by the NOP Program Manager.* A person affected by an adverse action, as defined by 205.2, issued by the NOP Program Manager, may appeal to the Administrator.

(1) If the Administrator sustains an appeal, an applicant will be issued accreditation, a certifying agent will continue its accreditation, or an operation will continue its certification, a civil penalty will be waived and a cease-and-desist notice will be withdrawn, as applicable to the operation.

(2) If the Administrator denies an appeal, a formal administrative proceeding may be initiated to deny, suspend, or revoke the accreditation or certification and/or levy civil penalties. Such proceeding must be conducted

pursuant to the U.S. Department of Agriculture’s Uniform Rules of Practice, 7 CFR part 1, subpart H.

(c) *Filing period.* An appeal must be filed in writing within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered “filed” on the date received by the Administrator or by the State organic program. An adverse action will become final and

nonappealable unless an appeal is timely filed.

(d) *Where and what to file.* (1) Appeals to the Administrator and Requests for Hearing must be filed in writing and addressed to: 1400 Independence Ave. SW, Room 2642, Stop 0268, Washington, DC 20250, or electronic transmission, *NOPEAppeals@ams.usda.gov*.

* * * * *

(3) All appeals must include a copy of the adverse action and a statement of the appellant’s reasons for believing that the action was not proper or made in accordance with applicable program regulations, policies, or procedures.

Bruce Summers,
Administrator, Agricultural Marketing Service.

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409 and 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Parts 409 and 413**

[CMS–1737–F]

RIN 0938–AU13

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Value-Based Purchasing Program for Federal Fiscal Year 2021**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2021. We are also making changes to the case-mix classification code mappings used under the SNF PPS and making two minor revisions in the regulation text. Additionally, we are adopting the recent revisions in Office of Management and Budget (OMB) statistical area delineations. This rule also updates the Skilled Nursing Facility Value-Based Purchasing (VBP) Program that affects Medicare payment to SNFs.

DATES: These regulations are effective on October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Penny Gershman, (410) 786–6643, for information related to SNF PPS clinical issues.

Anthony Hodge, (410) 786–6645, for information related to consolidated billing, and payment for SNF-level swing-bed services.

John Kane, (410) 786–0557, for information related to the development of the payment rates and case-mix indexes, and general information.

Kia Sidbury, (410) 786–7816, for information related to the wage index.

Lang Le, (410) 786–5693, for information related to the skilled nursing facility value-based purchasing program.

SUPPLEMENTARY INFORMATION:**Availability of Certain Tables Exclusively Through the Internet on the CMS Website**

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting

forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the internet on the CMS website. The wage index tables for this final rule can be accessed on the SNF PPS Wage Index home page, at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>.

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Sidbury at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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I. Executive Summary*A. Purpose*

This final rule updates the SNF prospective payment rates for fiscal year (FY) 2021 as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication of certain specified information relating to the payment update (see section II.C. of this final rule) in the **Federal Register**, before the August 1 that precedes the start of each FY. As discussed in section III.C.4. of this final rule, it also makes two minor revisions in the regulation text. In addition, we are making changes to the code mappings used under the SNF PPS for classifying patients into case-mix groups. Additionally, we are also updating the OMB delineations used to identify a facility's status as an urban or rural facility and to calculate the wage index. This final rule also updates the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP). There are no updates in this final rule related to the Skilled Nursing Facility Quality Reporting Program (SNF QRP).

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the federal rates in this final rule will reflect an update to the rates that we published in the SNF PPS final rule for FY 2020 (84 FR 38728). In this final rule, we adopt the most recent OMB delineations, which are used to identify a provider's status as either an urban or rural facility and to calculate the provider's wage index. This final rule also includes two revisions to the regulations text. This final rule also includes revisions to the International Classification of Diseases, Version 10 (ICD–10) code mappings used under Patient Driven Payment Model (PDPM) to classify patients into case-mix groups.

Additionally, we are finalizing a several updates to our SNF VBP regulations, including a 30-day Phase One Review and Correction deadline for the baseline period quality measure report that is typically issued in December.

C. Summary of Cost and Benefits

TABLE 1: Cost and Benefits

Provision Description	Total Transfers
FY 2021 SNF PPS payment rate update.	The overall economic impact of this final rule is an estimated increase of \$750 million in aggregate payments to SNFs during FY 2021.
FY 2021 SNF VBP changes.	The overall economic impact of the SNF VBP Program is an estimated reduction of \$199.54 million in aggregate payments to SNFs during FY 2021.

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their health information. The Office of the National Coordinator for Health Information Technology (ONC) and CMS work collaboratively to advance interoperability across settings of care, including post-acute care.

To further interoperability in post-acute care settings, CMS continues to explore opportunities to advance electronic exchange of patient information across payers, providers and with patients, including developing systems that use nationally recognized health IT standards such as the Logical Observation Identifiers Names and Codes (LOINC), the Systematized Nomenclature of Medicine (SNOMED), and the Fast Healthcare Interoperability Resources (FHIR). In addition, CMS and ONC established the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with industry stakeholders to develop FHIR standards that could support the exchange and reuse of patient assessment data derived from the minimum data set (MDS), inpatient rehabilitation facility patient assessment instrument (IRF-PAI), long term care hospital continuity assessment record and evaluation (LCDS), outcome and assessment information set (OASIS) and other sources.

The Data Element Library (DEL) continues to be updated and serves as the authoritative resource for PAC assessment data elements and their associated mappings to health IT standards. The DEL furthers CMS' goal of data standardization and interoperability. These interoperable data elements can reduce provider burden by allowing the use and exchange of healthcare data, support provider exchange of electronic health information for care coordination, person-centered care, and support real-

time, data driven, clinical decision making. Standards in the Data Element Library (<https://del.cms.gov/DELWeb/pubHome>) can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2020 ISA is available at <https://www.healthit.gov/isa>.

In the September 30, 2019 **Federal Register**, CMS published a final rule, "Medicare and Medicaid Programs; Revisions to Requirements for Discharge Planning" (84 FR 51836) ("Discharge Planning final rule"), that revises the discharge planning requirements that hospitals (including psychiatric hospitals, long-term care hospitals, and inpatient rehabilitation facilities), critical access hospitals (CAHs), and home health agencies, must meet to participate in Medicare and Medicaid programs. The rule supports CMS' interoperability efforts by promoting the exchange of patient information between health care settings, and by ensuring that a patient's necessary medical information is transferred with the patient after discharge from a hospital, CAH, or post-acute care services provider. For more information on the Discharge Planning requirements, please visit the final rule at <https://www.federalregister.gov/documents/2019/09/30/2019-20732/medicare-and-medicicaid-programs-revisions-to-requirements-for-discharge-planning-for-hospitals>.

The 21st Century Cures Act (Cures Act) (Pub. L. 114-255, enacted on December 13, 2016) requires HHS to take new steps to enable the electronic sharing of health information ensuring interoperability for providers and settings across the care continuum. On May 1 2020, ONC and CMS published the final rules, "21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program," (85 FR 25642) and "Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access" (85 FR 25510), respectively, to promote secure and more immediate access to health information for patients and healthcare providers through the use of standards-based application

programming interfaces (APIs) that enable easier access to electronic health information. The CMS Interoperability and Patient Access rule also finalizes a new regulation under the Conditions of Participation for hospitals (85 FR 25584), including CAHs and psychiatric hospitals, which will require these providers to send electronic patient event notifications of a patient's admission, discharge, and/or transfer to appropriate recipients, including applicable post-acute care providers and suppliers. These notifications can help alert post-acute care providers and suppliers when a patient has been seen in the ED or admitted to the hospital, supporting more effective care coordination across settings. We invite providers to learn more about these important developments and how they are likely to affect SNFs.

II. Background on SNF PPS

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105-33, enacted August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physicians' services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In

addition, a detailed discussion of the legislative history of the SNF PPS is available online at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPFS/Downloads/Legislative_History_2018-10-01.pdf.

Section 215(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted April 1, 2014) added section 1888(g) to the Act requiring the Secretary to specify an all-cause all-condition hospital readmission measure and an all-condition risk-adjusted potentially preventable hospital readmission measure for the SNF setting. Additionally, section 215(b) of PAMA added section 1888(h) to the Act requiring the Secretary to implement a VBP program for SNFs. Finally, section 2(c)(4) of the IMPACT Act amended section 1888(e)(6) of the Act, which requires the Secretary to implement a QRP for SNFs under which SNFs report data on measures and resident assessment data.

B. Initial Transition for the SNF PPS

Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the federal case-mix adjusted rate. The transition extended through the facility's first 3 cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2020 (84 FR 38728).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** the following:

- The unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.

- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this final rule provides the required annual updates to the per diem payment rates for SNFs for FY 2021.

III. Analysis of and Responses to Public Comments on the FY 2021 SNF PPS Proposed Rule

In response to the publication of the FY 2021 SNF PPS proposed rule (85 FR 20914), we received 47 public comments from individuals, providers, corporations, government agencies, private citizens, trade associations, and major organizations. The following are brief summaries of each proposed provision, a summary of the public comments that we received related to that proposal, and our responses to the comments.

A. General Comments on the FY 2021 SNF PPS Proposed Rule

In addition to the comments we received on specific proposals contained within the proposed rule (which we address later in this final rule), commenters also submitted the following, more general, observations on the SNF PPS and SNF QRP generally. A discussion of these comments, along with our responses, appears below.

Comment: We received a significant number of comments and recommendations that are outside the scope of the proposed rule addressing a number of different policies, including the Coronavirus disease 2019 (COVID–19) pandemic, the group and concurrent therapy limit under PDPM, and other suggested changes to the PDPM case-mix classification model and quality programs under the SNF PPS.

Response: We greatly appreciate these comments and suggestions for revisions to policies under the SNF PPS. However, because these comments are outside the scope of the current rulemaking, we are not addressing them in this final rule, but will take them under consideration.

Comment: We received several comments on the SNF QRP. The proposed rule contained no SNF QRP proposals. Several commenters thanked CMS for granting an exception to the SNF QRP reporting requirements for quarter 1 and quarter 2 of 2020. Several commenters requested that CMS modify the use of COVID–19 affected data in the SNF QRP, by excluding or delineating the data. One commenter requested that measure reliability analyses be performed and shared to ensure the accuracy of measure calculations in

light of truncated, incomplete, or COVID–19 affected data. One commenter requested CMS conduct stakeholder meetings to address the impacts of the truncated performance period on performance compliance. One commenter recommended that all SNFs be held harmless for non-compliance during the FY 2022 performance period. Several commenters provided recommendations for the addition of new SNF QRP measures. Finally, a commenter recommended measures be modified to protect specialty populations.

Response: These comments fall outside the scope of the current rulemaking. We refer providers to 85 FR 27596 through 27597 regarding the delay in the adoption of the MDS 3.0 v1.18.1. We also refer providers to our June 23, 2020 announcement at <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Skilled-Nursing-Facility-Quality-Reporting-Program/SNF-quality-Reporting-Program-Spotlights-and-Announcements> that effective July 1, 2020 providers must resume reporting their quality data.

B. SNF PPS Rate Setting Methodology and FY 2021 Update

1. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the federal rates also incorporated a Part B add-on, which is an estimate of the amounts that, prior to the SNF PPS, would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case mix. In compiling the database used to compute the federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA 1997 prescribed, we set the federal

rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the federal rate attributable to wage-related costs by a wage index to reflect geographic variations in wages.

2. SNF Market Basket Update

a. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we revised and rebased the market basket index, which included updating the base year from FY 2010 to 2014.

The SNF market basket index is used to compute the market basket percentage change that is used to update the SNF federal rates on an annual basis, as required by section 1888(e)(4)(E)(ii)(IV) of the Act. This market basket percentage update is adjusted by a forecast error correction, if applicable, and then further adjusted by the application of a productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act and described in section III.B.2.d. of this final rule. In the FY 2021 SNF PPS proposed rule (85 FR 20916), we proposed the FY 2021 SNF market basket update of 2.7 percent based on IHS Global Inc.'s (IGI's) first quarter 2020 forecast of the 2014-based SNF market basket with historical data through fourth quarter 2019. We also proposed that if more recent data subsequently became available (for example, a more recent estimate of the market basket and/or the MFP), we would use such data, if appropriate, to determine the FY 2021 SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, or MFP adjustment in the SNF PPS final rule (85 FR 20918).

For this final rule, based on IGI's second quarter 2020 forecast with historical data through the first quarter of 2020, the FY 2021 growth rate of the 2014-based SNF market basket is estimated to be 2.2 percent. We note

that the first quarter 2020 forecast used for the proposed market basket update was developed prior to the economic impacts of the COVID-19 pandemic. This lower update (2.2 percent) for FY 2021 relative to the proposed rule (2.7 percent) is primarily driven by slower than anticipated compensation growth for both health-related and other occupations as labor markets are expected to be significantly impacted during the recession that started in February 2020 and throughout the anticipated recovery.

In section III.B.2.e. of this final rule, we discuss the 2 percent reduction applied to the market basket update for those SNFs that fail to submit measures data as required by section 1888(e)(6)(A) of the Act.

b. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the federal rates set forth in this final rule, we use the percentage change in the SNF market basket index to compute the update factor for FY 2021. This factor is based on the FY 2021 percentage increase in the 2014-based SNF market basket index reflecting routine, ancillary, and capital-related expenses. As stated above, in the proposed rule, the SNF market basket percentage was estimated to be 2.7 percent for FY 2021 based on IGI's first quarter 2020 forecast (with historical data through fourth quarter 2019). In this final rule, the SNF market basket percentage is estimated to be 2.2 percent for FY 2021 based on IGI's second quarter 2020 forecast (with historical data through first quarter 2020).

c. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003 final rule (68 FR 46057 through 46059), 42 CFR 413.337(d)(2) provides for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and

actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent FYs. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058), the adjustment will reflect both upward and downward adjustments, as appropriate.

For FY 2019 (the most recently available FY for which there is final data), the forecasted or estimated increase in the market basket index was 2.8 percentage points, and the actual increase for FY 2019 is 2.3 percentage points, resulting in the difference between the estimated and actual increase to be 0.5 percentage point. In the FY 2014 final rule (78 FR 47946 through 47947), we finalized our proposal to report the forecast error to the second significant digit in only those instances where the forecast error rounds to 0.5 percentage point at one significant digit, so that we can determine whether the forecast error adjustment threshold has been exceeded. As we stated in the FY 2014 SNF PPS final rule, once we determine that a forecast error adjustment is warranted, we will continue to apply the adjustment itself at one significant digit (otherwise referred to as a tenth of a percentage point). When rounded to the second significant digit, the percent change in the estimated market basket is 2.75 percent and the actual FY 2019 market basket increase is 2.34 percent. Subtracted, this yields a forecast error of 0.41 percentage point (2.75 – 2.34). Accordingly, as the difference between the estimated and actual amount of change in the market basket index does not exceed the 0.5 percentage point threshold, we stated in the proposed rule (85 FR 20917) that under the policy previously described (comparing the forecasted and actual increase in the market basket), the FY 2021 market basket percentage change would not be adjusted to account for the forecast error correction.

However, as discussed in the FY 2019 SNF PPS final rule (83 FR 39166), the market basket increase for FY 2019 was set at 2.4 percent, as a result of section 53111 of the Bipartisan Budget Act of 2018 (BBA 2018) (Pub. L. 115–123, enacted on February 9, 2018), which amended section 1888(e) of the Act to add section 1888(e)(5)(B)(iv) of the Act. Given that the market basket adjustment for FY 2019 was set by law, meaning that the forecasted 2014-based market

basket percentage increase for FY 2019 was not used to calculate the SNF PPS per diem rates for FY 2019, and because the forecast error adjustment discussed in this section is intended to correct for

differences between the forecasted market basket increase for a given year and the actual market basket increase for that year, we stated in the proposed rule that we do not believe that it would

be appropriate to apply a forecast error correction for FY 2019.

Table 2 shows the forecasted and actual market basket amounts for FY 2019.

TABLE 2: Difference Between the Forecasted and Actual Market Basket Increases for FY 2019

Index	Forecasted FY 2019 Increase*	Actual FY 2019 Increase**	FY 2019 Difference
SNF	2.75	2.34	-0.41

*Published in **Federal Register**; based on second quarter 2018 IGI forecast (2014-based index).

**Based on the second quarter 2020 IGI forecast, with historical data through the first quarter 2020 (2014-based index).

d. Multifactor Productivity Adjustment

Section 1888(e)(5)(B)(ii) of the Act, as added by section 3401(b) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) requires that, in FY 2012 and in subsequent FYs, the market basket percentage under the SNF payment system (as described in section 1888(e)(5)(B)(i) of the Act) is to be reduced annually by the multifactor productivity (MFP) adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, in turn, defines the MFP adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost-reporting period, or other annual period). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. We refer readers to the BLS website at <http://www.bls.gov/mfp> for the BLS historical published MFP data.

MFP is derived by subtracting the contribution of labor and capital inputs growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market baskets and MFP. To generate a forecast of MFP, IGI replicates the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI’s U.S. macroeconomic models. For a discussion of the MFP projection methodology, we refer readers to the FY 2012 SNF PPS final rule (76 FR 48527 through 48529) and the FY 2016 SNF

PPS final rule (80 FR 46395). A complete description of the MFP projection methodology is available on our website at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html>.

(1) Incorporating the MFP Into the Market Basket Update

Per section 1888(e)(5)(A) of the Act, the Secretary shall establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act being less than such payment rates for the preceding fiscal year. Thus, if the application of the MFP adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in an MFP-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

In the FY 2021 SNF PPS proposed rule (85 FR 20917), we proposed a MFP adjustment of 0.4 percentage point based on IGI’s first quarter 2020 forecast. Based on the more recent data available for this FY 2021 SNF PPS final rule, the current estimate of the 10-year moving average growth of MFP for FY 2021 would be –0.1 percentage point. This MFP is based on the most recent macroeconomic outlook from IGI at the time of rulemaking (released June 2020) in order to reflect more current historical economic data. IGI produces monthly macroeconomic forecasts, which include projections of all of the economic series used to derive MFP. In contrast, IGI only produces forecasts of the more detailed price proxies used in the 2014-based SNF market basket on a quarterly basis. Therefore, IGI’s second quarter 2020 forecast is the most recent forecast of the 2014-based SNF market basket percentage.

We note that it has typically been our practice to base the projection of the market basket price proxies and MFP in the final rule on the second quarter IGI forecast. For this FY 2021 SNF final rule, we are using the IGI June 2020 macroeconomic forecast for MFP because it is a more recent forecast, and it is important to use more recent data during this period when economic trends, particularly employment and labor productivity, are notably uncertain because of the COVID–19 pandemic. Historically, the MFP adjustment based on the second quarter IGI forecast has been very similar to the MFP adjustment derived with IGI’s June macroeconomic forecast. Substantial changes in the macroeconomic indicators in between monthly forecasts are atypical.

Given the unprecedented economic uncertainty as a result of the COVID–19 pandemic, the changes in the IGI

macroeconomic series used to derive MFP between the IGI second quarter 2020 forecast and the IGI June 2020 macroeconomic forecast is significant. Therefore, we believe it is appropriate to use IGI's more recent June 2020 macroeconomic forecast to determine the MFP adjustment for the final rule as it reflects more recent historical data. For comparison purposes, the 10-year moving average growth of MFP for FY 2021 is projected to be -0.1 percentage point based on IGI's June 2020 macroeconomic forecast compared to a FY 2021 projected 10-year moving average growth of MFP of 0.7 percentage point based on IGI's second quarter 2020 forecast. Mechanically subtracting the negative 10-year moving average growth of MFP from the SNF market basket percentage using the data from the IGI June 2020 macroeconomic forecast would have resulted in a 0.1 percentage point increase in the FY 2021 SNF payment update percentage. However, under section 1888(e)(5)(B)(ii) of the Act, the Secretary is required to reduce (not increase) the SNF market basket percentage by changes in economy-wide productivity. Accordingly, we will be applying a 0.0 percentage point MFP adjustment to the SNF market basket percentage. Therefore, the SNF payment update percentage for FY 2021 is 2.2 percent.

Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2), the market basket percentage for FY 2021 for the SNF PPS is based on IGI's second quarter 2020 forecast of the SNF market basket percentage, which is estimated to be 2.2 percent. As discussed above, given that applying the 10-year moving average growth of MFP of -0.1 percentage point would have resulted in an increase in the market basket percentage, contrary to the provisions of section 1888(e)(5)(B)(ii) of the Act, we are applying a 0.0 percentage point MFP adjustment to the FY 2021 SNF market basket percentage. The FY 2021 SNF market basket update is, therefore, equal to 2.2 percent.

e. Market Basket Update Factor for FY 2021

Sections 1888(e)(4)(E)(ii)(IV) and (e)(5)(i) of the Act require that the update factor used to establish the FY 2021 unadjusted federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2019, through September 30, 2020 to the average market basket level for the period of October 1, 2020, through September 30,

2021. We stated in the proposed rule that this process yields a percentage change in the 2014-based SNF market basket of 2.7 percent. However, as stated above, based on a more recent forecast, in this final rule, this process yields a percentage change in the 2014-based SNF market basket of 2.2 percent.

As further explained in section III.B.2.c. of this final rule, as applicable, we adjust the market basket percentage change by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold. Since the difference between the forecasted FY 2019 SNF market basket percentage change and the actual FY 2019 SNF market basket percentage change (FY 2019 is the most recently available FY for which there is historical data) did not exceed the 0.5 percentage point threshold, in the proposed rule, the FY 2021 market basket percentage change was not adjusted by the forecast error correction. Moreover, given that the market basket for FY 2019 was set independent of these estimates, as discussed previously, we stated in the proposed rule that we do not believe a forecast error adjustment would be warranted even if the difference for FY 2019 exceeded 0.5 percentage point.

Section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage change by the 10-year moving average of changes in MFP for the period ending September 30, 2021 which, in the proposed rule, was estimated to be 0.4 percent, as described in section III.B.2.d. of this final rule. We stated that the resulting net SNF market basket update would equal 2.3 percent, or 2.7 percent less the projected 10-year moving average growth of MFP of 0.4 percentage point. Thus, as discussed in the FY 2021 SNF PPS proposed rule, we proposed to apply the SNF market basket update factor of 2.3 percent in our determination of the FY 2021 SNF PPS unadjusted federal per diem rates, which reflected a market basket increase factor of 2.7 percent, less the projected 0.4 percentage point MFP adjustment.

However, as discussed in the FY 2021 SNF PPS proposed rule, our policy is that if more recent data become available (for example, a more recent estimate of the SNF market basket and/or MFP), we would use such data, if appropriate, to determine the FY 2021 SNF market basket percentage change, labor-related share relative importance, forecast error adjustment, or MFP adjustment in the SNF PPS final rule.

As discussed previously in this section, based on IGI's second quarter 2020 forecast, the SNF market basket percentage is estimated to be 2.2 percent. Further, as discussed above, based on IGI's June 2020 macroeconomic forecast, the 10-year moving average growth of MFP is estimated to be -0.1 percent, which, absent the statutory directive to "reduce" the market basket, *see* section 1888(e)(5)(B)(ii) of the Act, would have resulted in an increase in the FY 2021 SNF payment update percentage. In keeping with § 1888, therefore, we are applying a 0.0 percentage point MFP adjustment for FY 2021.

We also note that section 1888(e)(6)(A)(i) of the Act provides that, beginning with FY 2018, SNFs that fail to submit data, as applicable, in accordance with sections 1888(e)(6)(B)(i)(II) and (III) of the Act for a fiscal year will receive a 2.0 percentage point reduction to their market basket update for the fiscal year involved, after application of section 1888(e)(5)(B)(ii) of the Act (the MFP adjustment) and section 1888(e)(5)(B)(iii) of the Act (the 1 percent market basket increase for FY 2018). In addition, section 1888(e)(6)(A)(ii) of the Act states that application of the 2.0 percentage point reduction (after application of section 1888(e)(5)(B)(ii) and (iii) of the Act) may result in the market basket index percentage change being less than zero for a fiscal year, and may result in payment rates for a fiscal year being less than such payment rates for the preceding fiscal year. Section 1888(e)(6)(A)(iii) of the Act further specifies that the 2.0 percentage point reduction is applied in a noncumulative manner, so that any reduction made under section 1888(e)(6)(A)(i) of the Act applies only to the fiscal year involved, and that the reduction cannot be taken into account in computing the payment amount for a subsequent fiscal year.

Commenters submitted the following comments related to the proposed market basket update factor for FY 2021. A discussion of these comments, along with our responses, appears below.

Comment: Many commenters supported the proposed market basket increase factor for FY 2021. A few commenters suggested that CMS consider reweighting the cost categories used in calculating the SNF market basket in relation to COVID-19.

Response: We appreciate the support for applying the market basket increase factor in calculating the FY 2021 SNF PPS per diem rates. With regard to the comment that we consider reweighting the cost categories based on changes in

SNF costs resulting from COVID–19, we do not believe that sufficient data exists to perform this type of analysis. We may consider this analysis in the future, when more data become available.

After considering the comments received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing the market basket update factor of 2.2 percent, utilizing the more recent forecast data. Based on more recent forecast data, as discussed previously in this section, the FY 2021 market basket update factor is 2.2 percent, which is based on an FY 2021 SNF market basket percentage increase of 2.2 percent.

f. Unadjusted Federal Per Diem Rates for FY 2021

As discussed in the FY 2019 SNF PPS final rule (83 FR 39162), in FY 2020 we

implemented a new case-mix classification system to classify SNF patients under the SNF PPS, the PDPM. As discussed in section V.B. of that final rule, under PDPM, the unadjusted federal per diem rates are divided into six components, five of which are case-mix adjusted components (Physical Therapy (PT), Occupational Therapy (OT), Speech-Language Pathology (SLP), Nursing, and Non-Therapy Ancillaries (NTA)), and one of which is a non-case-mix component, as exists under RUG–IV. In the proposed rule (85 FR 20918), we used the SNF market basket, adjusted as described previously, to adjust each per diem component of the federal rates forward to reflect the change in the average prices for FY 2021 from the average prices for FY 2020. We stated we would further adjust the rates by a wage index budget neutrality

factor, described later in this section. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos. 15–01 and 17–01, to identify a facility’s urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in the FY 2021 SNF PPS proposed rule and later in this final rule, we proposed to adopt the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) to identify a facility’s urban or rural status.

Tables 3 and 4 reflect the updated unadjusted federal rates for FY 2021, prior to adjustment for case-mix.

TABLE 3: FY 2021 Unadjusted Federal Rate Per Diem—URBAN

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	\$62.04	\$57.75	\$23.16	\$108.16	\$81.60	\$96.85

TABLE 4: FY 2021 Unadjusted Federal Rate Per Diem—RURAL

Rate Component	PT	OT	SLP	Nursing	NTA	Non-Case-Mix
Per Diem Amount	\$70.72	\$64.95	\$29.18	\$103.34	\$77.96	\$98.64

Commenters submitted the following comments related to the proposed unadjusted federal per diem rates for FY 2021. A discussion of these comments, along with our responses, appears below.

Comment: One commenter raised concerns with how the base rates used under the SNF PPS, which have been adjusted by the SNF market basket each year, are based on cost reports from 1995. The commenters requested that CMS update the cost reporting base year used in deriving the unadjusted federal rates.

Response: We appreciate the commenter’s suggestion regarding updating the cost reporting base year used for deriving the unadjusted federal per diem rates. However, section 1888(e)(4)(A) of the Act requires that we use the “allowable costs of extended care services (excluding exception payments) for the facility for cost reporting periods beginning in 1995.” As such, we do not have the statutory authority to update the cost reporting base year used to derive the SNF PPS federal per diem rates.

Accordingly, after considering the comments received, for the reasons

specified in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing the unadjusted federal per diem rates set forth in Tables 3 and 4, which we derived using the SNF market basket update factor of 2.2 percent and a budget neutrality factor of 0.9992 (as discussed later in this preamble).

3. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the FY 2019 final rule (83 FR 39162, August 8, 2018), we finalized a new case-mix classification model, the PDPM, which took effect beginning October 1, 2019. The previous RUG–IV model classified most patients into a therapy payment group and primarily used the volume of therapy services

provided to the patient as the basis for payment classification, thus inadvertently creating an incentive for SNFs to furnish therapy regardless of the individual patient’s unique characteristics, goals, or needs. PDPM eliminates this incentive and improves the overall accuracy and appropriateness of SNF payments by classifying patients into payment groups based on specific, data-driven patient characteristics, while simultaneously reducing the administrative burden on SNFs.

As we noted in the FY 2021 SNF PPS proposed rule, we would continue to monitor the impact of PDPM implementation on patient outcomes and program outlays, though we believe it would be premature to release any information related to these issues based on the amount of data currently available. We hope to release information in the future that relates to these issues. We will also continue to monitor the impact of PDPM implementation as it relates to our intention to ensure that PDPM is implemented in a budget neutral manner, as discussed in the FY 2020 SNF PPS final rule (84 FR 38734). In

future rulemaking, we may reconsider the adjustments made in the FY 2020 SNF PPS final rule to the case-mix weights used under PDPM to ensure budget neutrality and recalibrate these adjustments as appropriate, as we did after the implementation of RUG-IV in FY 2011.

The PDPM uses clinical data from the MDS to assign case-mix classifiers to each patient that are then used to calculate a per diem payment under the SNF PPS, consistent with the provisions of section 1888(e)(4)(G)(i) of the Act. As discussed in section III.C.1. of this final rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the timeframes for MDS completion in our Resident Assessment Instrument (RAI) Manual. As we have stated in prior rules, for an MDS to be considered valid for use in determining payment, the MDS assessment should be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS website at <http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html>.

Under section 1888(e)(4)(H) of the Act, each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The FY 2021 payment rates set forth in this final rule reflect the use of the PDPM case-mix classification system from October 1, 2020, through September 30, 2021. In the FY 2021 SNF PPS proposed rule (85

FR 20920 through 20921), we listed the proposed case-mix adjusted PDPM payment rates for FY 2021, provided separately for urban and rural SNFs, in Tables 5 and 6 with corresponding case-mix values.

We stated in the proposed rule that given the differences between the previous RUG-IV model and PDPM in terms of patient classification and billing, it was important that the format of Tables 5 and 6 reflect these differences. More specifically, under both RUG-IV and PDPM, providers use a Health Insurance Prospective Payment System (HIPPS) code on a claim to bill for covered SNF services. Under RUG-IV, the HIPPS code included the three-character RUG-IV group into which the patient classified as well as a two-character assessment indicator code that represented the assessment used to generate this code. Under PDPM, while providers would still use a HIPPS code, the characters in that code represent different things. For example, the first character represents the PT and OT group into which the patient classifies. If the patient is classified into the PT and OT group "TA", then the first character in the patient's HIPPS code would be an A. Similarly, if the patient is classified into the SLP group "SB", then the second character in the patient's HIPPS code would be a B. The third character represents the Nursing group into which the patient classifies. The fourth character represents the NTA group into which the patient classifies. Finally, the fifth character represents the assessment used to generate the HIPPS code.

Tables 5 and 6 reflect the PDPM's structure. Accordingly, Column 1 of Tables 5 and 6 represents the character in the HIPPS code associated with a given PDPM component. Columns 2 and 3 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant PT group. Columns 4 and 5 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant OT group. Columns 6

and 7 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant SLP group. Column 8 provides the nursing case-mix group (CMG) that is connected with a given PDPM HIPPS character. For example, if the patient qualified for the nursing group CBC1, then the third character in the patient's HIPPS code would be a "P." Columns 9 and 10 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant nursing group. Finally, columns 11 and 12 provide the case-mix index and associated case-mix adjusted component rate, respectively, for the relevant NTA group.

Tables 5 and 6 reflect the final PDPM case-mix adjusted rates and case-mix indexes for FY 2021. We would note that these numbers differ from those in the FY 2021 SNF PPS proposed rule, as we have used more recent data in calculating the final budget neutrality factor, that is used in calculating the FY 2021 SNF PPS unadjusted federal per diem rates, as discussed in section III.D.1.d. of this final rule. Tables 5 and 6 do not reflect adjustments which may be made to the SNF PPS rates as a result of the SNF VBP program, discussed in section III.D. of this final rule, or other adjustments, such as the variable per diem adjustment. Further, in the past, we used the revised OMB delineations adopted in the FY 2015 SNF PPS final rule (79 FR 45632, 45634), with updates as reflected in OMB Bulletin Nos. 15-01 and 17-01, to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. As discussed in this final rule and in the FY 2021 SNF PPS proposed rule (85 FR 20928), we proposed to adopt the revised OMB delineations identified in OMB Bulletin No. 18-04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) to identify a facility's urban or rural status.

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TABLE 5: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—URBAN

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.53	\$94.92	1.49	\$86.05	0.68	\$15.75	ES3	4.06	\$439.13	3.24	\$264.38
B	1.70	\$105.47	1.63	\$94.13	1.82	\$42.15	ES2	3.07	\$332.05	2.53	\$206.45
C	1.88	\$116.64	1.69	\$97.60	2.67	\$61.84	ES1	2.93	\$316.91	1.84	\$150.14
D	1.92	\$119.12	1.53	\$88.36	1.46	\$33.81	HDE2	2.40	\$259.58	1.33	\$108.53
E	1.42	\$88.10	1.41	\$81.43	2.34	\$54.19	HDE1	1.99	\$215.24	0.96	\$78.34
F	1.61	\$99.88	1.60	\$92.40	2.98	\$69.02	HBC2	2.24	\$242.28	0.72	\$58.75
G	1.67	\$103.61	1.64	\$94.71	2.04	\$47.25	HBC1	1.86	\$201.18	-	-
H	1.16	\$71.97	1.15	\$66.41	2.86	\$66.24	LDE2	2.08	\$224.97	-	-
I	1.13	\$70.11	1.18	\$68.15	3.53	\$81.75	LDE1	1.73	\$187.12	-	-
J	1.42	\$88.10	1.45	\$83.74	2.99	\$69.25	LBC2	1.72	\$186.04	-	-
K	1.52	\$94.30	1.54	\$88.94	3.7	\$85.69	LBC1	1.43	\$154.67	-	-
L	1.09	\$67.62	1.11	\$64.10	4.21	\$97.50	CDE2	1.87	\$202.26	-	-
M	1.27	\$78.79	1.30	\$75.08	-	-	CDE1	1.62	\$175.22	-	-
N	1.48	\$91.82	1.50	\$86.63	-	-	CBC2	1.55	\$167.65	-	-
O	1.55	\$96.16	1.55	\$89.51	-	-	CA2	1.09	\$117.89	-	-
P	1.08	\$67.00	1.09	\$62.95	-	-	CBC1	1.34	\$144.93	-	-
Q	-	-	-	-	-	-	CA1	0.94	\$101.67	-	-
R	-	-	-	-	-	-	BAB2	1.04	\$112.49	-	-
S	-	-	-	-	-	-	BAB1	0.99	\$107.08	-	-
T	-	-	-	-	-	-	PDE2	1.57	\$169.81	-	-
U	-	-	-	-	-	-	PDE1	1.47	\$159.00	-	-
V	-	-	-	-	-	-	PBC2	1.22	\$131.96	-	-
W	-	-	-	-	-	-	PA2	0.71	\$76.79	-	-
X	-	-	-	-	-	-	PBC1	1.13	\$122.22	-	-
Y	-	-	-	-	-	-	PA1	0.66	\$71.39	-	-

TABLE 6: PDPM Case-Mix Adjusted Federal Rates and Associated Indexes—RURAL

PDPM Group	PT CMI	PT Rate	OT CMI	OT Rate	SLP CMI	SLP Rate	Nursing CMG	Nursing CMI	Nursing Rate	NTA CMI	NTA Rate
A	1.53	\$108.20	1.49	\$96.78	0.68	\$19.84	ES3	4.06	\$419.56	3.24	\$252.59
B	1.70	\$120.22	1.63	\$105.87	1.82	\$53.11	ES2	3.07	\$317.25	2.53	\$197.24
C	1.88	\$132.95	1.69	\$109.77	2.67	\$77.91	ES1	2.93	\$302.79	1.84	\$143.45
D	1.92	\$135.78	1.53	\$99.37	1.46	\$42.60	HDE2	2.40	\$248.02	1.33	\$103.69
E	1.42	\$100.42	1.41	\$91.58	2.34	\$68.28	HDE1	1.99	\$205.65	0.96	\$74.84
F	1.61	\$113.86	1.60	\$103.92	2.98	\$86.96	HBC2	2.24	\$231.48	0.72	\$56.13
G	1.67	\$118.10	1.64	\$106.52	2.04	\$59.53	HBC1	1.86	\$192.21	-	-
H	1.16	\$82.04	1.15	\$74.69	2.86	\$83.45	LDE2	2.08	\$214.95	-	-
I	1.13	\$79.91	1.18	\$76.64	3.53	\$103.01	LDE1	1.73	\$178.78	-	-
J	1.42	\$100.42	1.45	\$94.18	2.99	\$87.25	LBC2	1.72	\$177.74	-	-
K	1.52	\$107.49	1.54	\$100.02	3.7	\$107.97	LBC1	1.43	\$147.78	-	-
L	1.09	\$77.08	1.11	\$72.09	4.21	\$122.85	CDE2	1.87	\$193.25	-	-
M	1.27	\$89.81	1.30	\$84.44	-	-	CDE1	1.62	\$167.41	-	-
N	1.48	\$104.67	1.50	\$97.43	-	-	CBC2	1.55	\$160.18	-	-
O	1.55	\$109.62	1.55	\$100.67	-	-	CA2	1.09	\$112.64	-	-
P	1.08	\$76.38	1.09	\$70.80	-	-	CBC1	1.34	\$138.48	-	-
Q	-	-	-	-	-	-	CA1	0.94	\$97.14	-	-
R	-	-	-	-	-	-	BAB2	1.04	\$107.47	-	-
S	-	-	-	-	-	-	BAB1	0.99	\$102.31	-	-
T	-	-	-	-	-	-	PDE2	1.57	\$162.24	-	-
U	-	-	-	-	-	-	PDE1	1.47	\$151.91	-	-
V	-	-	-	-	-	-	PBC2	1.22	\$126.07	-	-
W	-	-	-	-	-	-	PA2	0.71	\$73.37	-	-
X	-	-	-	-	-	-	PBC1	1.13	\$116.77	-	-
Y	-	-	-	-	-	-	PA1	0.66	\$68.20	-	-

BILLING CODE 4120-01-C**4. Wage Index Adjustment**

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. In the FY 2021 SNF PPS proposed rule (85 FR 20921), we proposed to continue this practice for FY 2021, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the inpatient prospective payment system (IPPS) also excludes any wage data related to SNFs. Therefore, we believe that using the

updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we stated in the proposed rule that we would continue to use the pre-reclassified IPPS hospital wage data, without applying the occupational mix, rural floor, or outmigration adjustment, as the basis for the SNF PPS wage index. For FY 2021, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2016 and before October 1, 2017 (FY 2017 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554, enacted December 21, 2000) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF PPS wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data. More specifically,

auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the IPPS wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. In addition, adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS given that there are nearly five times as many SNFs as there are inpatient hospitals. Therefore, we stated in the proposed rule that while we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not believe this undertaking is feasible at this time.

In addition, we proposed to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2020 SNF PPS wage index. For rural geographic areas

that do not have hospitals, and therefore, lack hospital wage data on which to base an area wage adjustment, we stated we would use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2021, there are no rural geographic areas that do not have hospitals, and thus, this methodology will not be applied. For rural Puerto Rico, we stated we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we stated we would continue to use the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we stated we would use the average wage indexes of all of the urban areas within the state to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2021, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

The wage index applicable to FY 2021 is set forth in Tables A and B available on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for MSAs and the creation of micropolitan statistical areas and combined statistical areas. In adopting the CBSA geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), after the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13-01, beginning in FY 2015, including a 1-year transition with a blended wage

index for FY 2015. OMB Bulletin No. 13-01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15-01, which provided minor updates to and superseded OMB Bulletin No. 13-01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15-01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15-01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. In addition, on August 15, 2017, OMB issued Bulletin No. 17-01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300). As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), we noted in the proposed rule (85 FR 20922) that this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. To this end, as discussed in this final rule and in the FY 2021 SNF PPS proposed rule (85 FR 20922), we proposed to adopt the revised OMB delineations identified in OMB Bulletin No. 18-04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we stated we would apply a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for the prior fiscal year (FY 2020). We stated that we believe these updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and that use of such delineations would allow us to more accurately determine the appropriate wage index and rate tables to apply under the SNF PPS. Thus, we stated that we believe it is appropriate to use these updated OMB delineations for these purposes, to enhance the accuracy of payments under the SNF PPS. These

changes are discussed further in section III.D.1.a. of this final rule. We solicited comments on this proposal. A discussion of these comments, along with our responses, appears in section III.D.1. of this final rule.

The final wage index applicable to FY 2021 is set forth in Tables A and B and are available on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>. Table A provides a crosswalk between the FY 2021 wage index for a provider using the current OMB delineations in effect in FY 2020 and the FY 2021 wage index using the revised OMB delineations, as well as the final transition wage index values that would be in effect in FY 2021.

We stated in the proposed rule, once calculated, we would apply the wage index adjustment to the labor-related portion of the federal rate. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are labor-intensive and vary with the local labor market) in the input price index. In the SNF PPS final rule for FY 2018 (82 FR 36548 through 36566), we finalized a proposal to revise the labor-related share to reflect the relative importance of the 2014-based SNF market basket cost weights for the following cost categories: Wages and Salaries; Employee Benefits; Professional Fees; Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair Services; All Other: Labor-Related Services; and a proportion of Capital-Related expenses.

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2021. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2021 than the base year weights from the SNF market basket. We calculate the labor-related relative importance for FY 2021 in four steps. First, we compute the FY 2021 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2021 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2021 relative importance for

each cost category by multiplying this ratio by the base year (2014) weight. Finally, we add the FY 2021 relative importance for each of the labor-related cost categories (Wages and Salaries; Employee Benefits; Professional Fees; Labor-Related; Administrative and

Facilities Support Services; Installation, Maintenance, and Repair Services; All Other: Labor-related services; and a portion of Capital-Related expenses) to produce the FY 2021 labor-related relative importance. Table 7 summarizes the final labor-related share for FY 2021,

based on IGI's second quarter 2020 forecast with historical data through first quarter 2020, compared to the labor-related share that was used for the FY 2020 SNF PPS final rule.

TABLE 7: Labor-Related Relative Importance, FY 2020 and FY 2021

	Relative importance, labor-related, FY 2020 19:2 forecast ¹	Relative importance, labor-related, FY 2021 20:2 forecast ²
Wages and salaries	50.6	51.1
Employee benefits	10.0	9.9
Professional Fees: Labor-Related	3.7	3.7
Administrative and facilities support services	0.5	0.5
Installation, Maintenance and Repair Services	0.6	0.6
All Other: Labor Related Services	2.6	2.6
Capital-related (.391)	2.9	2.9
Total	70.9	71.3

¹ Published in the **Federal Register (84 FR 38738)**; based on second quarter 2019 IGI forecast

² Based on second quarter 2020 IGI forecast, with historical data through first quarter 2020.

In the proposed rule, we stated that to calculate the labor portion of the case-mix adjusted per diem rate, we would multiply the total case-mix adjusted per diem rate, which is the sum of all five case-mix adjusted components into which a patient classifies, and the non-case-mix component rate, by the FY 2021 labor-related share percentage provided in Table 7. The remaining portion of the rate would be the non-labor portion. Under the previous RUG-IV model, we included tables which provided the case-mix adjusted RUG-IV rates, by RUG-IV group, broken out by total rate, labor portion and non-labor portion, such as Table 9 of the FY 2019 SNF PPS final rule (83 FR 39175). However, as we discussed in the FY 2020 final rule (84 FR 38738), under PDPM, as the total rate is calculated as a combination of six different component rates, five of which are case-mix adjusted, and given the sheer volume of possible combinations of these five case-mix adjusted components, it is not feasible to provide tables similar to those that existed in the prior rulemaking.

Therefore, to aid stakeholders in understanding the effect of the wage index on the calculation of the SNF per diem rate, we have included a hypothetical rate calculation in Table 8.

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage

index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than would otherwise be made if the wage adjustment had not been made. For FY 2021 (federal rates effective October 1, 2020), we would apply an adjustment to fulfill the budget neutrality requirement. We would meet this requirement by multiplying each of the components of the unadjusted federal rates by a budget neutrality factor. Our budget neutrality calculations are described in section III.D.1.d. of this final rule.

A discussion of the comments we received regarding the SNF PPS wage index, including the wage index budget neutrality calculation, along with our responses, appears in section III.D.1 of this final rule.

5. SNF Value-Based Purchasing Program

Beginning with payment for services furnished on October 1, 2018, section 1888(h) of the Act requires the Secretary to reduce the adjusted federal per diem rate determined under section 1888(e)(4)(G) of the Act otherwise applicable to a SNF for services furnished during a fiscal year by 2 percent, and to adjust the resulting rate for a SNF by the value-based incentive payment amount earned by the SNF based on the SNF's performance score for that fiscal year under the SNF VBP Program. To implement these

requirements, we finalized in the FY 2019 SNF PPS final rule the addition of § 413.337(f) to our regulations (83 FR 39178).

Please see section III.D.3. of this final rule for a further discussion of our policies for the SNF VBP Program.

6. Adjusted Rate Computation Example

Tables 8, 9, and 10 provide examples generally illustrating payment calculations during FY 2021 under PDPM for a hypothetical 30-day SNF stay, involving the hypothetical SNF XYZ, located in Frederick, MD (Urban CBSA 23224), for a hypothetical patient who is classified into such groups that the patient's HIPPS code is NHNC1. Table 8 shows the adjustments made to the federal per diem rates (prior to application of any adjustments under the SNF VBP program as discussed previously) to compute the provider's case-mix adjusted per diem rate for FY 2021, based on the patient's PDPM classification, as well as how the variable per diem (VPD) adjustment factor affects calculation of the per diem rate for a given day of the stay. Table 9 shows the adjustments made to the case-mix adjusted per diem rate from Table 8 to account for the provider's wage index. The wage index used in this example is based on the FY 2021 SNF PPS wage index that appears in Table A available on the CMS website at <http://>

www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPFS/WageIndex.html. Finally, Table 10 provides the case-mix and wage index adjusted per-diem rate for this patient

for each day of the 30-day stay, as well as the total payment for this stay. Table 10 also includes the VPD adjustment factors for each day of the patient’s stay, to clarify why the patient’s per diem

rate changes for certain days of the stay. As illustrated in Table 10, SNF XYZ’s total PPS payment for this particular patient’s stay would equal \$20,390.17.
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TABLE 8: PDPM Case-Mix Adjusted Rate Computation Example

Per Diem Rate Calculation				
Component	Component Group	Component Rate	VPD Adjustment Factor	VPD Adj. Rate
PT	N	\$91.82	1.00	\$91.82
OT	N	\$86.63	1.00	\$86.63
SLP	H	\$66.24	1.00	\$66.24
Nursing	N	\$167.65	1.00	\$167.65
NTA	C	\$150.14	3.00	\$450.42
Non-Case-Mix	-	\$96.85	-	\$96.85
Total PDPM Case-Mix Adj. Per Diem				\$959.61

TABLE 9: Wage Index Adjusted Rate Computation Example

PDPM Wage Index Adjustment Calculation						
HIPPS Code	PDPM Case-Mix Adjusted Per Diem	Labor Portion	Wage Index	Wage Index Adjusted Rate	Non-Labor Portion	Total Case Mix and Wage Index Adj. Rate
NHNC1	\$959.61	\$684.20	0.9834	\$672.84	\$275.41	\$948.25

TABLE 10: Adjusted Rate Computation Example

Day of Stay	NTA VPD Adjustment Factor	PT/OT VPD Adjustment Factor	Case Mix and Wage Index Adjusted Per Diem Rate
1	3.0	1.0	\$948.25
2	3.0	1.0	\$948.25
3	3.0	1.0	\$948.25
4	1.0	1.0	\$651.53
5	1.0	1.0	\$651.53
6	1.0	1.0	\$651.53
7	1.0	1.0	\$651.53
8	1.0	1.0	\$651.53
9	1.0	1.0	\$651.53
10	1.0	1.0	\$651.53
11	1.0	1.0	\$651.53
12	1.0	1.0	\$651.53
13	1.0	1.0	\$651.53
14	1.0	1.0	\$651.53
15	1.0	1.0	\$651.53
16	1.0	1.0	\$651.53
17	1.0	1.0	\$651.53
18	1.0	1.0	\$651.53
19	1.0	1.0	\$651.53
20	1.0	1.0	\$651.53
21	1.0	0.98	\$648.00
22	1.0	0.98	\$648.00
23	1.0	0.98	\$648.00
24	1.0	0.98	\$648.00
25	1.0	0.98	\$648.00
26	1.0	0.98	\$648.00
27	1.0	0.98	\$648.00
28	1.0	0.96	\$644.47
29	1.0	0.96	\$644.47
30	1.0	0.96	\$644.47
Total Payment			\$20,390.17

BILLING CODE 4120-01-C**C. Additional Aspects of the SNF PPS****1. SNF Level of Care—Administrative Presumption**

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing

resident assessment process and case-mix classification system discussed in section III.B.3. of this final rule. This approach includes an administrative presumption that utilizes a beneficiary's correct assignment, at the outset of the SNF stay, of one of the case-mix classifiers designated for this purpose to assist in making certain SNF level of care determinations.

In accordance with § 413.345, we include in each update of the federal payment rates in the **Federal Register** a discussion of the resident classification

system that provides the basis for case-mix adjustment. We also designate those specific classifiers under the case-mix classification system that represent the required SNF level of care, as provided in 42 CFR 409.30. This designation reflects an administrative presumption that those beneficiaries who are correctly assigned one of the designated case-mix classifiers on the initial Medicare assessment are automatically classified as meeting the SNF level of care definition up to and including the

assessment reference date (ARD) for that assessment.

A beneficiary who does not qualify for the presumption is not automatically classified as either meeting or not meeting the level of care definition, but instead receives an individual determination on this point using the existing administrative criteria. This presumption recognizes the strong likelihood that those beneficiaries who are assigned one of the designated case-mix classifiers during the immediate post-hospital period would require a covered level of care, which would be less likely for other beneficiaries.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. The FY 2018 final rule (82 FR 36544) further specified that we would henceforth disseminate the standard description of the administrative presumption's designated groups via the SNF PPS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html> (where such designations appear in the paragraph entitled "Case Mix Adjustment"), and would publish such designations in rulemaking only to the extent that we actually intend to propose changes in them. Under that approach, the set of case-mix classifiers designated for this purpose under PDPM was finalized in the FY 2019 SNF PPS final rule (83 FR 39253) and is posted on the SNF PPS website (<https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html>), in the paragraph entitled "Case Mix Adjustment."

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that any services prompting the assignment of one of the designated case-mix classifiers (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations where the sole classifier that

triggers the presumption is itself assigned through the receipt of services that are subsequently determined to be not reasonable and necessary. Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the ARD of the initial Medicare assessment.

We did not receive any comments regarding the proposed rule's discussion of the administrative level of care presumption. As previously stated in this final rule, the set of case mix classifiers designated for this purpose under PDPM is posted on the SNF PPS website (<https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html>).

2. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA 1997) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor (MAC) for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) of the Act places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS website at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_2018-10-01.pdf. In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113, enacted November 29, 1999) amended section 1888(e)(2)(A) of the Act by further excluding a number of individual high-cost, low probability services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise

remained subject to the provision. We discuss this BBRA amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at www.cms.gov/transmittals/downloads/ab001860.pdf.

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary the authority to designate additional, individual services for exclusion within each of these four specified service categories. In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment SNFs receive under the PPS. According to the conferees, section 103(a) of the BBRA is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. By contrast, the amendments enacted in section 103 of the BBRA do not designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as is consistent with our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: They must fall within one of the four service categories specified in the BBRA; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion as essentially affording the flexibility to revise the list of excluded codes in response to changes of major

significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice) (65 FR 46791).

In the proposed rule, we specifically invited public comments identifying HCPCS codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing. We stated in the proposed rule that we may consider excluding a particular service if it meets our criteria for exclusion as specified previously. We requested that commenters identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded.

We note that the original BBRA amendment (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (in that case, July 1, 1999). Identifying the excluded services in this manner made it possible for us to utilize program issuances as the vehicle for accomplishing routine updates of the excluded codes, to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, we stated in the proposed rule that, in the event that we identify through the current rulemaking cycle any new services that would actually represent a substantive change in the scope of the exclusions from SNF consolidated billing, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, October 1, 2020). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of program instructions.

A discussion of the comments we received regarding SNF consolidated billing, along with our responses, appears below.

Comment: Several commenters cited the COVID-19 Public Health Emergency (PHE) as justification for excluding services from consolidated billing that would not otherwise qualify for such exclusion.

Response: We appreciate these concerns and recognize the unique

circumstances of the COVID-19 PHE. However, excluding services from SNF consolidated billing that would not otherwise meet the statutory conditions for exclusion would require congressional action.

Comment: A commenter requested that CMS consider whether application of 42 CFR 411.8(b)(4), (Services paid for by a Government entity) “would enable payment for COVID-19 testing under Medicare Part B for patients currently covered in a Medicare Part A stay.”

Response: We are not sure we understand what the commenter is asking, however, we note that § 411.8(b)(4) does not address exceptions to the SNF consolidated billing requirement.

Comment: Some commenters suggested that CMS should consider removing antiviral, antibiotic, and other expensive non-chemotherapy medications from consolidated billing and allowing such services to be separately billable. A commenter stated these medications are oftentimes more expensive than the already excluded chemotherapy medications. Another commenter stated that the high cost of newer pharmaceutical agents is a barrier in allowing patients to access their Part A SNF benefits, suggesting that SNF facilities may be hesitant to accept eligible patients if these patients will require high cost medications. The commenter requested that CMS add these agents, including their administration costs, to the excluded list under Consolidated Billing. Examples of such medications include: Dalbavancin; Daptomycin; Ceftolozane-tazobactam; and Oritavancin.

Response: We have responded to similar recommendations in past rulemaking cycles. The issue of establishing a broader exclusion that would encompass expensive non-chemotherapy drugs was addressed in the SNF PPS final rule for FY 2017 (81 FR 51985, August 5, 2016), and again in the final rule for FY 2019 (83 FR 39180, August 8, 2018), which explained that existing law does not provide for such an expansion.

Comment: Some commenters reiterated recommendations made in previous rulemaking cycles for exclusions from consolidated billing of certain Part-D-only oral chemotherapy drugs.

Response: We note that such drugs have been recommended for exclusion during previous rulemaking cycles. For the reasons discussed previously in prior rulemaking, the particular drugs cited in these comments remain subject to consolidated billing. In the FY 2020 SNF PPS final rule (84 FR 38743

through 38744), we stated that because the particular drugs at issue here would not be covered under Part B, the applicable provisions at section 1888(e)(2)(A) of the Act do not provide a basis for excluding them from consolidated billing. Moreover, as noted in the FY 2006 SNF PPS final rule (70 FR 45049) and the FY 2020 SNF PPS final rule (84 FR 38744), expanding the existing statutory drug coverage available under Part B to include such drugs is not within our authority.

Comment: A commenter requested that CMS consider excluding the chemotherapy medications Alkeran (Melphalan) and Bicnu (Carmustine) from consolidated billing, due to the high cost of daily treatments.

Response: Both Melphalan and Carmustine already appear on the SNF PPS exclusion list in Major Category III.A (Chemotherapy), under codes J9245 and J9050, respectively.

Comment: A commenter suggested that CMS should “conduct a broad review of new chemotherapy drugs and their costs to determine whether any additions should be made to the exclusion list, as new drugs are being added regularly and do not always have their own HCPCS code.”

Response: We routinely review a list of upcoming HCPCS code revisions (additions, modifications, and deletions) for the coming calendar year to determine whether additions should be made in the consolidated billing exclusion list. As discussed in the FY 2015 SNF PPS final rule (79 FR 45642, August 5, 2014), the approach that Congress adopted to identify the individual chemotherapy drugs being designated for exclusion consisted of listing them by HCPCS code in the statute itself (section 1888(e)(2)(A)(iii)(II) of the Act). Thus, a chemotherapy drug’s assignment to its own specific code has always served as the mechanism of designating it for exclusion, as well as the means by which the claims processing system is able to recognize that exclusion. Accordingly, the assignment of a chemotherapy drug to its own code is a necessary prerequisite to consider that service for exclusion from consolidated billing under the SNF PPS.

Comment: A commenter suggested that CMS exclude portable X-ray services from Skilled Nursing Facility Consolidated Billing (SNF CB).

Response: As explained in the final rule for FY 2001 (65 FR 46790), we have the statutory authority to designate additional service codes for exclusion only when they fall within one of the four categories originally specified in the BBRA and set forth at section

1888(e)(2)(A)(iii) of the Act: That is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices. We do not have statutory authority to create a new category of excluded items, such as for diagnostic imaging services. Excluding portable x-ray services from SNF CB would require congressional action, as existing law does not provide for such an exclusion.

3. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, SNF-level services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in earlier sections of this final rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. As discussed in the FY 2019 SNF PPS final rule (83 FR 39235), revisions were made to the swing bed assessment to support implementation of PDPM, effective October 1, 2019. A discussion of the assessment schedule and the MDS effective beginning FY 2020 appears in the FY 2019 SNF PPS final rule (83 FR 39229 through 39237). The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPayment/index.html>.

A commenter submitted the following comment related to the proposed rule's discussion of payment for SNF-level swing-bed services. A discussion of that comment, along with our response, appears below.

Comment: One commenter suggested that exempting the swing-bed services of CAHs from the SNF PPS creates a discrepancy in payment for comparable services between the CAH and any area SNFs which are not so exempted, to the SNF's disadvantage. The commenter urged CMS to seek statutory authority either to pay for CAH swing-bed services under the SNF PPS, or to adjust Medicare payments for those rural SNFs located in the same geographic area as a swing-bed CAH.

Response: As we noted previously in the final rule for FY 2020 (84 FR 38745, August 7, 2019) in response to a similar comment, as originally enacted in section 4432 of the BBA 1997, the SNF PPS applied uniformly to *all* providers of extended care services under Part A, including SNFs themselves along with swing-bed CAHs as well as rural (non-CAH) swing-bed hospitals. However, the Congress subsequently enacted legislation in section 203 of the BIPA that specifically excluded swing-bed CAHs from the SNF PPS (see section 1888(e)(7)(C) of the Act), thus establishing that swing-bed CAHs are to be exempted from the SNF PPS while leaving this payment methodology in place for the other facilities, including rural SNFs. Accordingly, we cannot adjust Medicare payments for rural SNFs located in the same geographic area as a swing-bed CAH to provide for similar payments.

4. Revisions to the Regulation Text

We proposed to make certain revisions in the regulation text itself. Specifically, we proposed to update the example used in illustrating the application of the SNF level of care's "practical matter" criterion that appears at 42 CFR 409.35(a), as well as to correct an erroneous cross-reference that appears in the swing-bed payment regulations at 42 CFR 413.114(c)(2), as discussed further below.

The statutory SNF level of care definition set forth in section 1814(a)(2)(B) of the Act provides that the beneficiary must need and receive skilled services on a daily basis which, as a practical matter, can only be provided in a SNF on an inpatient basis.

Section 409.35(a) provides that in making a "practical matter" determination, consideration must be given to the patient's condition and to the availability and feasibility of using more economical alternative facilities and services. In this context, in evaluating whether a given non-inpatient alternative is more economical than inpatient SNF care, the regulation provides that the availability of

Medicare payment for those services may not be a factor.

In illustrating this point, the existing regulation text at § 409.35(a) uses as an example the previous annual caps on Part B payment for outpatient therapy services. It indicates that Medicare's nonpayment for services that exceed the cap would not, in itself, serve as a basis for determining that needed care can only be provided in a SNF. To reflect the recent repeal of the Part B therapy caps in section 50202 of the BBA 2018, we proposed to revise the regulation text by rewording the example used to illustrate this point in a manner that omits its reference to the repealed therapy cap provision. Specifically, we proposed to revise the regulation text on this point to provide as an example that the unavailability of Medicare payment for *outpatient* therapy due to the beneficiary's nonenrollment in Part B cannot serve as a basis for finding that the needed care can only be provided on an *inpatient* basis in a SNF.

In addition, we proposed to make a minor technical correction to the regulation text in § 413.114(c), which discusses historical swing-bed payment policies that were in effect for cost reporting periods beginning prior to July 1, 2002. Specifically, we proposed to revise § 413.114(c)(2) to remove an erroneous cross-reference to a non-existent § 413.55(a)(1), and to substitute in its place the correct cross-reference to the regulations on reasonable cost reimbursement at § 413.53(a)(1).

We received one comment supporting our proposed revisions to the regulation text. We appreciate this comment and after considering the comment received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing our proposed revisions to the regulation text without modification.

D. Other Issues

1. Changes to SNF PPS Wage Index

a. Core-Based Statistical Areas (CBSAs) for the FY 2021 SNF PPS Wage Index

(1) Background

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. We proposed to continue this practice for FY 2021, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate

and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data under the IPPS also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. As in previous years, we proposed to continue to use, as the basis for the SNF PPS wage index, the IPPS hospital wage data, unadjusted for occupational mix, without taking into account geographic reclassifications under section 1886(d)(8) and (d)(10) of the Act, and without applying the rural floor under section 4410 of the BBA 1997 and the outmigration adjustment under section 1886(d)(13) of the Act. For FY 2021, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2016 and before October 1, 2017 (FY 2017 cost report data).

The applicable SNF PPS wage index value is assigned to a SNF on the basis of the labor market area in which the SNF is geographically located. In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in OMB Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Area (MSA) and the creation of micropolitan statistical areas and combined statistical areas. In adopting the Core-Based Statistical Areas (CBSA) geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this 1-year transition on September 30, 2006, we have used the full CBSA-based wage index values.

In the FY 2015 SNF PPS final rule (79 FR 45644 through 45646), we finalized changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13-01, beginning in FY 2015, including a 1-year transition with a blended wage index for FY 2015. OMB Bulletin No. 13-01 established revised delineations for MSAs, Micropolitan Statistical

Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). Subsequently, on July 15, 2015, OMB issued OMB Bulletin No. 15-01, which provided minor updates to and superseded OMB Bulletin No. 13-01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15-01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15-01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. In addition, on August 15, 2017, OMB issued Bulletin No. 17-01 which announced a new urban CBSA, Twin Falls, Idaho (CBSA 46300). As we previously stated in the FY 2008 SNF PPS proposed and final rules (72 FR 25538 through 25539, and 72 FR 43423), and as we noted in the proposed rule, this and all subsequent SNF PPS rules and notices are considered to incorporate any updates and revisions set forth in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18-03 which superseded the August 15, 2017 OMB Bulletin No. 17-01. Subsequently, on September 14, 2018, OMB issued OMB Bulletin No. 18-04, which superseded the April 10, 2018 OMB Bulletin No. 18-03. These bulletins established revised delineations for MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18-04 may be obtained at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>. (We note that on March 6, 2020, OMB issued OMB Bulletin 20-01 (available on the web at <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>), which, as discussed later in this section, was not issued in time for development of the FY 2021 SNF PPS proposed rule.) As we discussed in the proposed rule (85 FR 20928), while OMB Bulletin No. 18-04 is not based on new census data, it includes some material changes to the OMB statistical area delineations, including some new CBSAs, urban counties that would become rural, rural

counties that would become urban, and existing CBSAs that would be split apart. In the FY 2021 SNF PPS proposed rule, we proposed to adopt the updates to the OMB delineations announced in OMB Bulletin No. 18-04 effective beginning in FY 2021 under the SNF PPS. As noted previously, the March 6, 2020 OMB Bulletin 20-01 was not issued in time for development of the FY 2021 SNF PPS proposed rule. We intend to propose any updates from this bulletin in the FY 2022 SNF PPS proposed rule.

As we stated in the proposed rule, to implement these changes for the SNF PPS beginning in FY 2021, it is necessary to identify the revised labor market area delineation for each affected county and provider in the country. We further stated that the revisions OMB published on September 14, 2018 contain a number of significant changes. For example, we stated that under the revised OMB delineations, there would be new CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would split apart. We discuss these changes in more detail later in this final rule.

b. Implementation of Revised Labor Market Area Delineations

We typically delay implementing revised OMB labor market area delineations to allow for sufficient time to assess the new changes. For example, as discussed in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), we delayed implementing the revised OMB statistical area delineations described in OMB Bulletin No. 13-01 to allow for sufficient time to assess the new changes. In the proposed rule (85 FR 20929), we stated that we believe it is important for the SNF PPS to use the latest labor market area delineations available as soon as is reasonably possible to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We also stated in the proposed rule that we further believe that using the delineations reflected in OMB Bulletin No. 18-04 will increase the integrity of the SNF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. As we stated in the proposed rule, we have reviewed our findings and impacts relating to the revised OMB delineations set forth in OMB Bulletin No. 18-04, and find no compelling reason to further delay implementation. As we explained in the proposed rule, because we believe we have broad authority under section

1888(e)(4)(G)(ii) of the Act to determine the labor market areas used for the SNF PPS wage index, and because we believe the delineations reflected in OMB Bulletin No. 18–04 better reflect the local economies and wage levels of the areas in which hospitals are currently located, we proposed to implement the revised OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04, for the SNF PPS wage index effective beginning in FY 2021. In addition, we proposed to implement a 1-year transition policy under which we would apply a 5 percent cap in FY 2021 on any decrease in a hospital’s wage index compared to its wage index for the prior fiscal year (FY 2020) to assist providers in adapting to the revised OMB delineations (if we were to finalize the implementation of such delineations for the SNF PPS wage index beginning in FY 2021). This transition is discussed in more detail later in this final rule.

(a) Micropolitan Statistical Areas

As discussed in the FY 2006 SNF PPS proposed rule (70 FR 29093 through 29094) and final rule (70 FR 45041), we considered how to use the Micropolitan Statistical Area definitions in the calculation of the wage index. OMB defines a “Micropolitan Statistical Area” as a CBSA “associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000” (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan

Areas as “rural” and include them in the calculation of each state’s SNF PPS rural wage index (see 70 FR 29094 and 70 FR 45040 through 45041).

Thus, the SNF PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-MSA areas, and the statewide rural wage index is assigned to SNFs located in those areas. Because Micropolitan Areas tend to encompass smaller population centers and contain fewer hospitals than MSAs, we determined that if Micropolitan Areas were to be treated as separate labor market areas, the SNF PPS wage index would have included significantly more single-provider labor market areas. As we explained in the FY 2006 SNF PPS proposed rule (70 FR 29094), recognizing Micropolitan Areas as independent labor markets would generally increase the potential for dramatic shifts in year-to-year wage index values because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of an area. Dramatic shifts in an area’s wage index from year-to-year are problematic and create instability in the payment levels from year-to-year, which could make fiscal planning for SNFs difficult if we adopted this approach. For these reasons, we adopted a policy to include Micropolitan Areas in the state’s rural wage area for purposes of the SNF PPS wage index, and have continued this policy through the present.

We stated in the proposed rule (85 FR 20929) that we believe the best course of action would be to continue the policy established in the FY 2006 SNF

PPS final rule and include Micropolitan Areas in each state’s rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). As discussed in the proposed rule, we do not believe it would be appropriate to calculate a separate wage index for areas that typically may include only a few hospitals for the reasons discussed in the FY 2006 SNF PPS proposed rule, and as discussed earlier in this final rule. Therefore, in conjunction with our proposal to implement the revised OMB labor market delineations beginning in FY 2021 and consistent with the treatment of Micropolitan Areas under the IPPS, we proposed to continue to treat Micropolitan Areas as “rural” and to include Micropolitan Areas in the calculation of the state’s rural wage index.

(b) Urban Counties That Will Become Rural Under the Revised OMB Delineations

As previously discussed, we proposed to implement the revised OMB statistical area delineations based upon OMB Bulletin No. 18–04 beginning in FY 2021. In the FY 2021 SNF PPS proposed rule (85 FR 20929), we indicated that a total of 34 counties (and county equivalents) that are currently considered part of an urban CBSA would be considered to be located in a rural area, beginning in FY 2021, if we adopted these revised OMB delineations. In the proposed rule, we listed the 34 urban counties, as set forth in Table 11, that would be rural if we finalized our proposal to implement the revised OMB delineations.

TABLE 11: Urban Counties That Would Become Rural

FIPS County Code	County/County Equivalent	State	Current CBSA	CBSA Name
01127	Walker	AL	13820	Birmingham-Hoover, AL
12045	Gulf	FL	37460	Panama City, FL
13007	Baker	GA	10500	Albany, GA
13235	Pulaski	GA	47580	Warner Robins, GA
15005	Kalawao	HI	27980	Kahului-Wailuku-Lahaina, HI
17039	De Witt	IL	14010	Bloomington, IL
17053	Ford	IL	16580	Champaign--Urbana, IL
18143	Scott	IN	31140	Louisville/Jefferson County, KY-IN
18179	Wells	IN	23060	Fort Wayne, IN
19149	Plymouth	IA	43580	Sioux City, IA-NE-SD
20095	Kingman	KS	48620	Wichita, KS
21223	Trimble	KY	31140	Louisville/Jefferson County, KY-IN
22119	Webster	LA	43340	Shreveport-Bossier City, LA
26015	Barry	MI	24340	Grand Rapids-Wyoming, MI
26159	Van Buren	MI	28020	Kalamazoo-Portage, MI
27143	Sibley	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
28009	Benton	MS	32820	Memphis, TN-MS-AR
29119	Mc Donald	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
30037	Golden Valley	MT	13740	Billings, MT
31081	Hamilton	NE	24260	Grand Island, NE
38085	Sioux	ND	13900	Bismarck, ND
40079	Le Flore	OK	22900	Fort Smith, AR-OK
45087	Union	SC	43900	Spartanburg, SC
46033	Custer	SD	39660	Rapid City, SD
47081	Hickman	TN	34980	Nashville-Davidson-Murfreesboro-Franklin, TN
48007	Aransas	TX	18580	Corpus Christi, TX
48221	Hood	TX	23104	Fort Worth-Arlington, TX
48351	Newton	TX	13140	Beaumont-Port Arthur, TX
48425	Somervell	TX	23104	Fort Worth-Arlington, TX
51029	Buckingham	VA	16820	Charlottesville, VA
51033	Caroline	VA	40060	Richmond, VA
51063	Floyd	VA	13980	Blacksburg-Christiansburg-Radford, VA
53013	Columbia	WA	47460	Walla Walla, WA
53051	Pend Oreille	WA	44060	Spokane-Spokane Valley, WA

We proposed that, for purposes of determining the wage index under the SNF PPS, the wage data for all hospitals located in the counties listed in Table 11 would be considered rural when calculating their respective state's rural wage index under the SNF PPS. We stated in the proposed rule that we recognize that rural areas typically have lower area wage index values than urban areas, and SNFs located in these counties may experience a negative impact in their SNF PPS payment due to the proposed adoption of the revised OMB delineations. A discussion of the proposed wage index transition policy appears later in this final rule.

Furthermore, we stated in the proposed rule that for SNF providers currently located in an urban county that would be considered rural should this proposal be finalized, we would utilize the rural unadjusted per diem rates, found in Table 4 of the proposed rule, as the basis for determining payment rates for these facilities beginning on October 1, 2020.

(c) Rural Counties That Will Become Urban Under the Revised OMB Delineations

As previously discussed, we proposed to implement the revised OMB statistical area delineations based upon

OMB Bulletin No. 18-04 beginning in FY 2021. In the proposed rule (85 FR 20931), we indicated that analysis of these OMB statistical area delineations shows that a total of 47 counties (and county equivalents) that are currently located in rural areas would be located in urban areas if we finalize our proposal to implement the revised OMB delineations. In the proposed rule (85 FR 20932), we listed the 47 rural counties that would be urban, as set forth in Table 12, if we finalize our proposal to implement the revised OMB delineations.

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TABLE 12: Counties That Would Gain Urban Status

FIPS County Code	County/County Equivalent	State Name	New CBSA	New CBSA Name
01063	Greene	AL	46220	Tuscaloosa, AL
01129	Washington	AL	33660	Mobile, AL
05047	Franklin	AR	22900	Fort Smith, AR-OK
12075	Levy	FL	23540	Gainesville, FL
13259	Stewart	GA	17980	Columbus, GA-AL
13263	Talbot	GA	17980	Columbus, GA-AL
16077	Power	ID	38540	Pocatello, ID
17057	Fulton	IL	37900	Peoria, IL
17087	Johnson	IL	16060	Carbondale-Marion, IL
18047	Franklin	IN	17140	Cincinnati, OH-KY-IN
18121	Parke	IN	45460	Terre Haute, IN
18171	Warren	IN	29200	Lafayette-West Lafayette, IN
19015	Boone	IA	11180	Ames, IA
19099	Jasper	IA	19780	Des Moines-West Des Moines, IA
20061	Geary	KS	31740	Manhattan, KS
21043	Carter	KY	26580	Huntington-Ashland, WV-KY-OH
22007	Assumption	LA	12940	Baton Rouge, LA
22067	Morehouse	LA	33740	Monroe, LA
25011	Franklin	MA	44140	Springfield, MA
26067	Ionia	MI	24340	Grand Rapids-Kentwood, MI
26155	Shiawassee	MI	29620	Lansing-East Lansing, MI
27075	Lake	MN	20260	Duluth, MN-WI
28031	Covington	MS	25620	Hattiesburg, MS
28051	Holmes	MS	27140	Jackson, MS
28131	Stone	MS	25060	Gulfport-Biloxi, MS
29053	Cooper	MO	17860	Columbia, MO
29089	Howard	MO	17860	Columbia, MO
30095	Stillwater	MT	13740	Billings, MT
37007	Anson	NC	16740	Charlotte--Concord-Gastonia, NC-SC
37029	Camden	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
37077	Granville	NC	20500	Durham-Chapel Hill, NC
37085	Harnett	NC	22180	Fayetteville, NC
39123	Ottawa	OH	45780	Toledo, OH
45027	Clarendon	SC	44940	Sumter, SC
47053	Gibson	TN	27180	Jackson, TN
47161	Stewart	TN	17300	Clarksville, TN-KY
48203	Harrison	TX	30980	Longview, TX
48431	Sterling	TX	41660	San Angelo, TX
51097	King and Queen	VA	40060	Richmond, VA
51113	Madison	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	Southampton	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	Franklin City	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	Jackson	WV	16620	Charleston, WV
54065	Morgan	WV	25180	Hagerstown-Martinsburg, MD-WV
55069	Lincoln	WI	48140	Wausau-Weston, WI
72001	Adjuntas	PR	38660	Ponce, PR
72083	Las Marias	PR	32420	Mayagüez, PR

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We proposed that, for purposes of calculating the area wage index under the SNF PPS, the wage data for hospitals located in the counties listed in Table

12 would be included in their new respective urban CBSAs. As we explained in the proposed rule (85 FR 20933), typically, SNFs located in an urban area would receive a wage index

value higher than or equal to SNFs located in their state’s rural area. A discussion of the proposed wage index transition policy appears later in this final rule. Furthermore, we stated that

for SNFs currently located in a rural county that would be considered urban should this proposal be finalized, we would utilize the urban unadjusted per diem rates found in Table 3 of the proposed rule, as the basis for determining the payment rates for these facilities beginning October 1, 2020.

(d) Urban Counties That Will Move to a Different Urban CBSA Under the Revised OMB Delineations

As we stated in the FY 2021 SNF PPS proposed rule (85 FR 20933), in

addition to rural counties becoming urban and urban counties becoming rural, some urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the revised OMB delineations. Further, we stated that in other cases, adopting the revised OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, we noted that CBSA 19380 (Dayton, OH) would experience both a change to its

number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. We stated that we would consider these proposed changes (where only the CBSA name and/or number would change) to be inconsequential changes with respect to the SNF PPS wage index. In the proposed rule, we listed the CBSAs where there would be a change in CBSA name and/or number only, as set forth in Table 13, if we adopt the revised OMB delineations.

TABLE 13: Urban CBSAs With Change to Name and/or Number

Current CBSA Code	Current CBSA Title	New CBSA Code	New CBSA Title
10540	Albany, OR	10540	Albany-Lebanon, OR
11500	Anniston-Oxford-Jacksonville, AL	11500	Anniston-Oxford, AL
12060	Atlanta-Sandy Springs-Roswell, GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
12420	Austin-Round Rock, TX	12420	Austin-Round Rock-Georgetown, TX
13460	Bend-Redmond, OR	13460	Bend, OR
13980	Blacksburg-Christiansburg-Radford, VA	13980	Blacksburg-Christiansburg, VA
14740	Bremerton-Silverdale, WA	14740	Bremerton-Silverdale-Port Orchard, WA
15380	Buffalo-Cheektowaga-Niagara Falls, NY	15380	Buffalo-Cheektowaga, NY
19380	Dayton, OH	19430	Dayton-Kettering, OH
24340	Grand Rapids-Wyoming, MI	24340	Grand Rapids-Kentwood, MI
24860	Greenville-Anderson-Mauldin, SC	24860	Greenville-Anderson, SC
25060	Gulfport-Biloxi-Pascagoula, MS	25060	Gulfport-Biloxi, MS
25540	Hartford-West Hartford-East Hartford, CT	25540	Hartford-East Hartford-Middletown, CT
25940	Hilton Head Island-Bluffton-Beaufort, SC	25940	Hilton Head Island-Bluffton, SC
28700	Kingsport-Bristol-Bristol, TN-VA	28700	Kingsport-Bristol, TN-VA
31860	Mankato-North Mankato, MN	31860	Mankato, MN
33340	Milwaukee-Waukesha-West Allis, WI	33340	Milwaukee-Waukesha, WI
34940	Naples-Immokalee-Marco Island, FL	34940	Naples-Marco Island, FL
35660	Niles-Benton Harbor, MI	35660	Niles, MI
36084	Oakland-Hayward-Berkeley, CA	36084	Oakland-Berkeley-Livermore, CA
36500	Olympia-Tumwater, WA	36500	Olympia-Lacey-Tumwater, WA
38060	Phoenix-Mesa-Scottsdale, AZ	38060	Phoenix-Mesa-Chandler, AZ
39140	Prescott, AZ	39150	Prescott Valley-Prescott, AZ
43524	Silver Spring-Frederick-Rockville, MD	23224	Frederick-Gaithersburg-Rockville, MD
44420	Staunton-Waynesboro, VA	44420	Staunton, VA
44700	Stockton-Lodi, CA	44700	Stockton, CA
45940	Trenton, NJ	45940	Trenton-Princeton, NJ
46700	Vallejo-Fairfield, CA	46700	Vallejo, CA
47300	Visalia-Porterville, CA	47300	Visalia, CA
48140	Wausau, WI	48140	Wausau-Weston, WI
48424	West Palm Beach-Boca Raton-Delray Beach, FL	48424	West Palm Beach-Boca Raton-Boynton Beach, FL

However, we stated in the proposed rule (85 FR 20934) that in other cases, if we adopted the revised OMB delineations, counties would shift between existing and new urban CBSAs, changing the constituent makeup of the CBSAs. We explained that, in one type

of change, CBSAs would split into multiple new CBSAs. For example, we noted that CBSA 35614 (New York Jersey City White Plains, NY NJ) has counties splitting off into new CBSAs, such as CBSA 35154 (New Brunswick Lakewood, NJ). Further, we explained

that in other cases, a CBSA would lose one or more counties to another urban CBSA. For example, we noted that Kendall County, IL, that is currently in CBSA 16974 (Chicago Naperville Arlington Heights, IL) is moving to CBSA 20994 (Elgin, IL).

In the proposed rule (85 FR 20936), we listed the urban counties that would move from one urban CBSA to another newly proposed or modified CBSA, as set forth in Table 14, if we adopt the revised OMB delineations.

TABLE 14: Urban Counties That Would Move From One Urban CBSA to Another

FIPS County Code	County Name	State	Current CBSA	Curent CBSA Title	New CBSA Code	New CBSA Title
17031	Cook	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17043	Du Page	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17063	Grundy	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17093	Kendall	IL	16974	Chicago-Naperville-Arlington Heights, IL	20994	Elgin, IL
17111	Mc Henry	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17197	Will	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
34023	Middlesex	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34025	Monmouth	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34029	Ocean	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34035	Somerset	NJ	35084	Newark, NJ-PA	35154	New Brunswick-Lakewood, NJ
36027	Dutchess	NY	20524	Dutchess County-Putnam County, NY	39100	Poughkeepsie-Newburgh-Middletown, NY
36071	Orange	NY	35614	New York-Jersey City-White Plains, NY-NJ	39100	Poughkeepsie-Newburgh-Middletown, NY
36079	Putnam	NY	20524	Dutchess County-Putnam County, NY	35614	New York-Jersey City-White Plains, NY-NJ
47057	Grainger	TN	28940	Knoxville, TN	34100	Morristown, TN
54043	Lincoln	WV	26580	Huntington-Ashland, WV-KY-OH	16620	Charleston, WV
72055	Guanica	PR	38660	Ponce, PR	49500	Yauco, PR
72059	Guayanilla	PR	38660	Ponce, PR	49500	Yauco, PR
72111	Penuelas	PR	38660	Ponce, PR	49500	Yauco, PR
72153	Yauco	PR	38660	Ponce, PR	49500	Yauco, PR

We stated in the proposed rule that if SNFs located in these counties move from one CBSA to another under the revised OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values. A discussion of the wage index transition policy appears later in this final rule.

Commenters submitted the following comments related to the proposed changes discussed above that would result from adopting the revised OMB delineations. A discussion of these comments, along with our responses, appears below.

Comment: Most commenters concurred with adopting the revised OMB delineations. However, several commenters suggested that CMS delay adopting the revised OMB delineations until after the public health emergency related to COVID-19 has ended.

Response: We appreciate the comments concurring with the proposed adoption of the revised OMB delineations. As we stated in the proposed rule (85 FR 20929), we believe that the updated OMB delineations increase the integrity of the SNF PPS wage index by creating a more accurate representation of variations in area wage levels. As such, we believe that the

revised OMB delineations would help ensure more accurate and appropriate payments as compared to the current OMB delineations. With regard to the comments that would seek a delay in adopting the revised delineations until after the COVID-19 related public health emergency is over, given that the revised OMB delineations would help ensure more accurate payments than under the current OMB delineations, we believe it is important to adopt the revised delineations as soon as possible. Nothing about the COVID-19 related emergency would diminish the importance of ensuring that payments are as accurate as possible. Moreover,

for providers that would experience an increase in payment under the revised OMB delineations, this means that they are currently being underpaid relative to the reported wage data in their geographic area. Ensuring that providers are not underpaid may even be of greater importance during this type of emergency situation. Therefore, we do not believe that a delay in implementation would be appropriate.

Comment: One commenter suggested that the adoption of the New Brunswick-Lakewood, NJ CBSA would result in a reduction in reimbursement for the four New Jersey counties that would make up the new CBSA and recommended that CMS delay finalizing the proposal to implement the new OMB delineations.

Response: We appreciate the detailed concerns sent in by the commenter regarding the impact of implementing the New Brunswick-Lakewood, NJ CBSA designation on their specific counties. While, we understand the commenter's concern regarding the potential financial impact, we believe that implementing the revised OMB delineations will create more accurate representations of labor market areas and result in SNF wage index values being more representative of the actual costs of labor in a given area. Moreover, we believe that providers located in labor market areas that will experience a decline in wage index under the revised OMB delineations currently are being paid in excess of what the reported wage and labor data for their area would suggest is appropriate. We believe that the OMB standards for delineating Metropolitan and Micropolitan Statistical Areas are appropriate for determining area wage differences and that the values computed under the revised delineations will result in more appropriate payments to providers by more accurately accounting for and reflecting the differences in area wage levels. Furthermore, as explained in section III.D.1.c. of this final rule, we are implementing a wage index transition for FY 2021 under which we will apply a 5 percent cap on any decrease in a hospital's wage index compared to its wage index for FY 2020 to assist providers in adapting to the revised OMB delineations. For these reasons, we do not believe that a delay in implementation would be appropriate.

Comment: One commenter recommended that CMS take this time, during which we are already making and contemplating changes to the SNF PPS more broadly and to the wage index more specifically, to consider creating a SNF-specific wage index, as opposed to

continuing to rely on hospital data as the basis for the SNF wage index.

Response: We appreciate the commenter's suggestion as to the development of a SNF specific wage index. However, to date, the development of a SNF-specific wage index has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data. More specifically, auditing all SNF cost reports, similar to the process used to audit inpatient hospital cost reports for purposes of the IPPS wage index, would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. In addition, adopting such an approach would require a significant commitment of resources by CMS and the Medicare Administrative Contractors, potentially far in excess of those required under the IPPS given that there are nearly five times as many SNFs as there are inpatient hospitals. Therefore, while we continue to believe that the development of such an audit process could improve SNF cost reports in such a manner as to permit us to establish a SNF-specific wage index, we do not believe this undertaking is feasible at this time. While we continue to review all available data and contemplate potential methodological approaches for a SNF-specific wage index in the future, we continue to believe that in the absence of the appropriate SNF-specific wage data, using the pre-reclassified, pre-rural floor hospital inpatient mix data (without the occupational mix adjustment) is appropriate and reasonable for the SNF PPS.

After considering the comments received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing our proposal to adopt the revised OMB delineations contained in OMB Bulletin 18-04 as proposed, without modification.

c. Transition Policy for FY 2021 Wage Index Changes

As discussed in the FY 2021 SNF PPS proposed rule (85 FR 20936), we believe that adopting the revised OMB delineations would result in SNF PPS wage index values being more representative of the actual costs of labor in a given area. However, we stated that we also recognize that some SNFs (42 percent) would experience decreases in their area wage index values as a result of this proposal, though just over 2 percent of providers would experience a significant decrease (that is, greater than 5 percent) in their

area wage index value. We further stated that we also realize that many SNFs (54 percent) would have higher area wage index values after adopting the revised OMB delineations.

To mitigate the potential impacts, we have in the past provided for transition periods when adopting revised OMB delineations. For example, we proposed and finalized budget neutral transition policies to help mitigate negative impacts on SNFs following the adoption of the new CBSA delineations based on the 2010 decennial census data in the FY 2015 SNF PPS final rule (79 FR 45644 through 45646). Specifically, we implemented a 1-year 50/50 blended wage index for all SNFs due to our adoption of the revised delineations. This required calculating and comparing two wage indexes for each SNF since that blended wage index was computed as the sum of 50 percent of the FY 2015 SNF PPS wage index values under the FY 2014 CBSA delineations and 50 percent of the FY 2015 SNF PPS wage index values under the FY 2015 new OMB delineations. While we believed that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels, we also recognized that adopting such changes may cause some short-term instability in SNF PPS payments. In the FY 2021 SNF PPS proposed rule (85 FR 20937), we recognized that similar instability may result from the proposed adoption of the revised OMB delineations discussed in the proposed rule. For example, we noted that SNFs currently located in CBSA 35614 (New York-Jersey City-White Plains, NY-NJ) that would be located in new CBSA 35154 (New Brunswick-Lakewood, NJ) under the proposed changes to the CBSA-based labor market area delineations would experience a nearly 17 percent decrease in the wage index as a result of that the proposed change. Therefore, consistent with past practice, we proposed a transition policy to help mitigate any significant negative impacts that SNFs may experience if we were to adopt the revised OMB delineations for FY 2021. Specifically, for FY 2021, as a transition, we proposed to apply a 5-percent cap on any decrease in an SNF's wage index from the SNF's wage index from the prior fiscal year. We stated that this transition would allow the effects of adopting the revised OMB delineations to be phased in over 2 years, where the estimated reduction in an SNF's wage index would be capped at 5 percent in FY 2021 (that is, no cap would be applied to any reductions in the wage index for the second year (FY 2022)).

We considered using a 50/50 blend for the transition, similar to the transition we finalized in the FY 2015 SNF PPS final rule, as described previously in this final rule. However, we stated in the proposed rule (85 FR 20937) that, given that a majority of SNFs would experience an increase in their area wage index values as a result of the revised OMB delineations, and given that a blended option would affect all SNF providers, we believe it would be more appropriate to allow SNFs that would experience an increase in wage index values to receive the full benefit of their increased wage index value (which is intended to reflect accurately the higher labor costs in that area), while mitigating any significant negative wage index impacts that may be experienced by a minority of SNFs. We explained that by utilizing a cap on negative impacts, this restricts the transition to only those with negative impacts and allows providers who would experience positive impacts to receive the full amount of their wage index increase. Thus, we stated that we believe a 5 percent cap on the overall decrease in an SNF's wage index value would be an appropriate transition for FY 2021. We further stated that we believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in an SNF's wage index for FY 2021, while balancing the importance of ensuring that area wage index values accurately reflect relative differences in area wage levels. Additionally, we noted that a cap on significant wage index decreases provides a certain degree of predictability in payment changes for providers and allows providers time to adjust to any significant decreases they may face in FY 2022, after the transition period has ended.

Furthermore, consistent with the requirement at section 1888(e)(4)(G)(ii) of the Act that wage index adjustments must be made in a budget neutral manner, we proposed that this 5 percent cap on the decrease in an SNF's wage index would not result in any change in estimated aggregate SNF PPS payments by applying a budget neutrality factor to the unadjusted federal per diem rates. Our methodology for calculating the budget neutrality factor is discussed further in section III.D.1.d. of this final rule.

In the proposed rule, we stated that this transition policy would be for a 1-year period, going into effect October 1, 2020, and continuing through September 30, 2021. That is, we stated that no cap would be applied to any reductions in the wage index for FY 2022.

Commenters submitted the following comments related to the proposed transition methodology. A discussion of these comments, along with our responses, appears below.

Comment: Many commenters supported the proposed transition methodology. A few commenters including MedPAC suggested alternatives to the 5 percent cap transition policy. MedPAC suggested that the 5 percent cap limit should apply to both increases and decreases in the wage index so that no provider would have its wage index value increase or decrease by more than 5 percent for FY 2021. Finally, several commenters recommended that CMS consider implementing a 5 percent cap, similar to that which we proposed for FY 2021, for years beyond the implementation of the revised OMB delineations, either until no providers experience more than a 5 percent decline in any given year, or by permanently imposing a 5 percent cap on wage index declines.

Response: We appreciate the comments supporting this proposed transition methodology. Further, we appreciate MedPAC's suggestion that the 5 percent cap should also be applied to increases in the wage index. However, as we discussed in the proposed rule, the purpose of the proposed transition policy, as well as those we have implemented in the past, is to help mitigate the significant negative impacts of certain wage index changes, not to curtail the positive impacts of such changes, and thus we do not believe it would be appropriate to apply the 5 percent cap on wage index increases as well. To the extent that a provider's wage index would increase under the revised OMB delineations, this means that the provider is currently being paid less than their reported wage data suggests is appropriate. We believe the proposed transition would help ensure these providers do not receive a wage index adjustment that is lower than appropriate and that payments are as accurate as possible. Finally, with regard to the comments recommending that we consider implementing this type of transition in future years, either on a permanent basis or only until providers no longer experience more than a 5 percent decline in any given year, we believe that this would undermine the goal of the wage index, which is to improve the accuracy of SNF payments. Applying such a cap each year would only serve to further delay improving the accuracy of SNF payments by continuing to pay certain providers more than their wage data suggest is

appropriate. Therefore, while we believe that a transition is necessary to help mitigate some initial significant negative impacts from the revised OMB delineations, we also believe this mitigation must be balanced against the importance of ensuring accurate payments.

After considering the comments received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing, without modification, the proposed transition methodology, which places a 5 percent cap on any decrease in a SNF's FY 2021 wage index, from its FY 2020 wage index. The wage index applicable to FY 2021 is set forth in Table A available on the CMS website at <http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html>. Table A provides a crosswalk between the FY 2021 wage index for a provider using the current OMB delineations in effect in FY 2020 and the FY 2021 wage index using the revised OMB delineations, as well as the transition wage index values.

d. Budget Neutrality Adjustments for Changes to the SNF PPS Wage Index

Section 1888(e)(4)(G)(ii) of the Act requires that we apply the wage index adjustment in a budget neutral manner such that aggregate SNF PPS payments will be neither greater than nor less than aggregate SNF PPS payments without the wage index adjustment. Under this provision, we determine a wage index adjustment budget neutrality factor that is applied to the federal per diem rates to ensure that any changes to the area wage index values would not result in any change (increase or decrease) in estimated aggregate SNF PPS payments. Accordingly, we proposed to apply a wage index budget neutrality factor in determining the federal per diem rates, and we also proposed a methodology for calculating this budget neutrality factor.

For FY 2021, we proposed to adjust the SNF PPS unadjusted federal per diem rates to account for the estimated effect of the wage index adjustments discussed in the proposed rule on estimated aggregate SNF PPS payments. As we stated in the proposed rule (85 FR 20937), under our established methodology, we have historically applied a single budget neutrality factor to ensure that any changes to the wage index are budget neutral. We explained that, in general, annual changes to the wage index include updates to the wage index values based on updated hospital wage data, labor-related share, and geographic labor-market area (that is, CBSA) designations, as applicable. For FY 2021, as discussed in the proposed

rule, we proposed to adopt revised OMB delineations and proposed to apply a 5 percent cap on any decrease in a SNF's wage index. Therefore, for purposes of the wage index budget neutrality requirement under section 1888(e)(4)(G)(ii) of the Act, in determining the SNF PPS federal per diem rates, we proposed a budget neutrality factor for FY 2021, described later in this section of the preamble, that accounts for all of these proposed changes to the SNF PPS wage index. We discuss below the methodology we proposed for calculating and applying the wage index budget neutrality factor for determining the FY 2021 federal per diem rates.

In the FY 2021 SNF PPS proposed rule (85 FR 20937 through 29038), we proposed to apply a budget neutrality factor to adjust the FY 2021 SNF PPS federal per diem rates to account for the estimated effect of the proposed changes to the wage index values based on updated hospital wage data and the adoption of the revised OMB delineations, and accounting for the proposed 5 percent cap on any decreases in a provider's area wage index value, on estimated aggregate SNF PPS payments using a methodology that is consistent with the methodology we have used in prior years (most recently, in the FY 2020 SNF PPS final rule (84 FR 38738)).

Specifically, we proposed to determine a budget neutrality factor for all updates to the wage index that would be applied to the SNF PPS federal per diem rate for FY 2021 using the following methodology:

- *Step 1*—Simulate estimated aggregate SNF PPS payments using the FY 2020 wage index values and FY 2019 SNF PPS claims utilization data.

- *Step 2*—Simulate estimated aggregate SNF PPS payments using the FY 2019 SNF PPS claims utilization data and the proposed FY 2021 wage index values based on updated hospital wage data and the proposed revised OMB delineations, assuming a 5 percent cap on any decreases in an area wage index (that is, in cases where a provider's FY 2021 area wage index value would be less than 95 percent of the provider's FY 2020 wage index value, we set the provider's FY 2021 wage index value to equal 95 percent of the provider's FY 2020 wage index value.)

- *Step 3*—Calculate the ratio of these estimated aggregate SNF PPS payments by dividing the estimated aggregate SNF PPS payments using the FY 2020 wage index values (calculated in Step 1) by the estimated aggregate SNF PPS payments using the proposed FY 2021

wage index values (calculated in Step 2) to determine the proposed budget neutrality factor for updates to the wage index that would be applied to the unadjusted federal per diem rates for FY 2021.

For the proposed rule (85 FR 20938), using the steps in the methodology previously described, we determined a proposed FY 2021 SNF PPS budget neutrality factor of 0.9982.

Accordingly, in section III.B. of the proposed rule, to determine the proposed FY 2021 SNF PPS federal per diem payment rates, we applied the proposed budget neutrality factor of 0.9982.

Commenters submitted the following comments related to the proposed wage index budget neutrality calculation. A discussion of these comments, along with our responses, appears below.

Comment: Several commenters requested that CMS consider waiving the portion of the wage index budget neutrality adjustment calculation accounting for changes to the wage index resulting from the proposed adoption of the revised OMB delineations, citing the current public health emergency as the basis for this request.

Response: We appreciate this comment and its relation to the current public health emergency. However, section 1888(e)(4)(G)(ii) of the Act requires that the wage index adjustment be done in such a manner as to not result in a change in aggregate payments. As such, we believe it is necessary and appropriate to calculate a budget neutrality factor that accounts for all wage index changes.

After considering the comments received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing, without modification, our proposed policies related to the SNF PPS wage index, including the proposed budget neutrality adjustment methodology. However, we note that in the FY 2021 SNF PPS proposed rule, the budget neutrality factor calculation was based on the wage and cost data available at the time of the proposed rule. The proposed FY 2021 budget neutrality factor was 0.9982. Based on more recent hospital cost report data available for this FY 2021 SNF PPS Final Rule, the final FY 2021 budget neutrality factor, which was used in calculating the final unadjusted FY 2021 federal per diem rates, is 0.9992.

2. Technical Updates to PDPM ICD-10 Mappings

In the FY 2019 SNF PPS final rule (83 FR 39162), we finalized the

implementation of the Patient Driven Payment Model (PDPM), effective October 1, 2019. The PDPM utilizes International Classification of Diseases, Version 10 (ICD-10) codes in several ways, including to assign patients to clinical categories used for categorization under several PDPM components, specifically the PT, OT, SLP and NTA components. The ICD-10 code mappings and lists used under PDPM are available on the PDPM website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM>.

Each year, the ICD-10 Coordination and Maintenance Committee, a federal interdepartmental committee that is chaired by representatives from the National Center for Health Statistics (NCHS) and by representatives from CMS, meets biannually and publishes updates to the ICD-10 medical code data sets in June of each year. These changes become effective October 1 of the year in which these updates are issued by the committee. The ICD-10 Coordination and Maintenance Committee also has the ability to make changes to the ICD-10 medical code data sets effective on April 1.

In the FY 2020 SNF PPS final rule (84 FR 38750), we outlined the process by which we maintain and update the ICD-10 code mappings and lists associated with the PDPM, as well as the SNF GROUPE software and other such products related to patient classification and billing, so as to ensure that they reflect the most up to date codes possible. Beginning with the updates for FY 2020, we apply nonsubstantive changes to the ICD-10 codes included on the PDPM code mappings and lists through a subregulatory process consisting of posting updated code mappings and lists on the PDPM website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM>. Such nonsubstantive changes are limited to those specific changes that are necessary to maintain consistency with the most current ICD-10 medical code data set. On the other hand, substantive changes, or those that go beyond the intention of maintaining consistency with the most current ICD-10 medical code data set, will be proposed through notice and comment rulemaking. For instance, changes to the assignment of a code to a comorbidity list or other changes that amount to changes in policy are considered substantive changes that require notice and comment rulemaking.

We proposed several changes to the PDPM ICD-10 code mappings and lists. The proposed updated mappings and

lists were posted online at the SNF PDPM website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM>. Our proposed changes are as follows.

Under the PDPM, we classify patients in clinical categories based on the primary SNF diagnosis. The clinical classification may change based on whether the patient had a major procedure during the prior inpatient stay that impacts the plan of care as captured in items J2100 through J5000 on the MDS. In the current ICD-10 to clinical category mapping being used in FY 2020, ICD-10 codes associated with certain cancers that could require a major procedure (specifically, C15 through C26.9, C33 through C39.9, C40.01 through C40.02, C40.11 through C40.12, C40.21 through C40.22, C40.31 through C40.32, C40.81 through C40.82, C40.91 through C41.9, C45.0 through C45.9, C46.3 through C46.9, C47.0, C47.11 through C47.12, C47.21 through C47.22, C47.3 through C48.8, C49.0, C49.11 through C49.12, C49.21 through C49.A9, C50.011 through C50.012, C50.021 through C50.022, C50.111 through C50.112, C50.121 through C50.122, C50.211 through C50.212, C50.221 through C50.222, C50.311 through C50.312, C50.321 through C50.322, C50.411 through C50.412, C50.421 through C50.422, C50.511 through C50.512, C50.521 through C50.522, C50.611 through C50.612, C50.621 through C50.622, C50.811 through C50.812, C50.821 through C50.822, C50.911 through C50.912, C50.921 through C50.922, C51.0 through C61, C62.01 through C62.02, C62.11 through C62.12, C62.91 through C68.9, C70.0 through C76.3, C76.41 through C76.42, C76.51 through C80.1, D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, D49.0 through D49.7) do not include the option of a major procedure in the prior inpatient stay that may impact the plan of care. We proposed to add the surgical clinical category options of “May be Eligible for the Non-Orthopedic Surgery Category” or “May be Eligible for One of the Two Orthopedic Surgery Categories” to the clinical category mapping of the following diagnoses when a major procedure, as described previously, is identified on the MDS: C15 through C26.9, C33 through C39.9, C40.01 through C40.02, C40.11 through C40.12, C40.21 through C40.22, C40.31 through C40.32, C40.81 through C40.82, C40.91 through C41.9, C45.0 through C45.9, C46.3 through C46.9, C47.0, C47.11 through C47.12, C47.21 through C47.22, C47.3 through C48.8, C49.0,

C49.11 through C49.12, C49.21 through C49.A9, C50.011 through C50.012, C50.021 through C50.022, C50.111 through C50.112, C50.121 through C50.122, C50.211 through C50.212, C50.221 through C50.222, C50.311 through C50.312, C50.321 through C50.322, C50.411 through C50.412, C50.421 through C50.422, C50.511 through C50.512, C50.521 through C50.522, C50.611 through C50.612, C50.621 through C50.622, C50.811 through C50.812, C50.821 through C50.822, C50.911 through C50.912, C50.921 through C50.922, C51.0 through C61, C62.01 through C62.02, C62.11 through C62.12, C62.91 through C68.9, C70.0 through C76.3, C76.41 through C76.42, C76.51 through C80.1, D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, D49.0 through D49.7. We proposed to include one of the surgical clinical category options specified previously in this section for these codes because a major procedure for these codes in a prior inpatient stay could affect the plan of care. These proposed changes are outlined more specifically later in this section.

We proposed to include the surgical clinical category option “May be Eligible for the Non-Orthopedic Surgery Category” for cancer codes C15.3 through C26.9 which correspond to J2910 of the MDS and address cancers involving the gastrointestinal tract.

We proposed to include the surgical clinical category option “May be Eligible for the Non-Orthopedic Surgery Category” for cancer codes C33 through C39.9, which correspond to J2710 of the MDS and that address cancers involving the respiratory system.

We proposed to include the “May be Eligible for One of the Two Orthopedic Surgery Categories” option for codes C40.01 through C41.9 (with the exception of C410 Malignant neoplasm of bones of skull and face) for cancers involving the bones. We proposed to include the “May be Eligible for the Non-Orthopedic Surgery Category” option for code C410 Malignant neoplasm of bones of skull and face because this type of cancer is more likely to be treated by non-orthopedic than orthopedic surgery.

We proposed to include the “May be Eligible for the Non-Orthopedic Surgery Category” option for codes C46.3 through C46.9 for Kaposi’s sarcoma because the cancers associated with those codes could require a major surgical procedure.

We proposed to include the “May be Eligible for the Non-Orthopedic Surgery Category” option for certain codes

relating to neoplasms, specifically D37.09 through D39.9, D3A.00 through D3A.8, D40.0, D40.11 through D44.9, D48.3 through D48.4, D48.61 through D48.7, and D49.0 through D49.7, because these conditions sometimes require surgery.

In the FY 2020 ICD-10 to clinical category mapping, the ICD-10 code D75.A “Glucose-6-phosphate dehydrogenase (G6PD) deficiency without anemia” is assigned to the default clinical category of “Cardiovascular and Coagulations” to align with the other D75 codes. However, G6PD deficiency without anemia is generally asymptomatic and detected by testing. Compared to other blood diseases in the D75 code family, D75.A is very minor and likely asymptomatic. For this reason, we proposed to change the assignment of D75.A to “Medical Management”.

Stakeholders have pointed out that in the FY 2020 ICD-10 clinical category mappings, certain fracture codes map to the surgical default clinical categories such as “Orthopedic Surgery (Except Major Joint Replacement or Spinal Surgery)” or “Major Joint Replacement or Spinal Surgery” even if no surgery was performed. The specific codes mentioned were S32.031D, S32.19XD, S82.001D, and S82.002D through S82.002J. Given the concern raised by stakeholders, we proposed to change the default clinical category to “Non-Surgical Orthopedic”, with the surgical option of “May be Eligible for One of the Two Orthopedic Surgery Categories”, for the following codes mentioned by stakeholders: S32.031D, S32.19XD, S82.001D, and S82.002D through S82.002J. We will continue to address changes to the mapping of fracture codes on a case-by-case basis as they are raised by stakeholders. We further proposed to change the default clinical category of the following fracture codes to “Return to Provider” because these codes are unspecific and lack the level of detail provided by more specific codes as to whether the condition is on the right or left side of the body: S82.009A, S82.013A, S82.016A, S82.023A, S82.026A, S82.033A, S82.036A, and S82.099A.

A stakeholder pointed out that in the FY 2020 ICD-10 to clinical category mapping, the M48.00 through M48.08 spinal stenosis codes have a default clinical category mapping of “Non-Surgical Orthopedic/Musculoskeletal” and no surgical option, which does not allow for coding in cases where patients have spinal stenosis and spinal laminectomy surgery. For this reason, we proposed to add the surgical option of “May be Eligible for One of the Two

Orthopedic Surgery Categories” to M48.00 through M48.08 spinal stenosis codes.

In the FY 2020 ICD-10 to clinical category mapping, Z48 surgery aftercare codes map to the default clinical categories of “Return to Provider” or “Medical Management” even if a surgical procedure was indicated in J2100 of the MDS. Although Z48 codes are not very specific, we acknowledge that aftercare of some major non-orthopedic surgeries is coded through Z48 codes. Therefore, we proposed to add the surgical option of “May be Eligible for the Non-Orthopedic Surgery Category” to the following surgery aftercare codes: Z48.21, Z48.22, Z48.23, Z48.24, Z48.280, Z48.288, Z48.290, Z48.298, Z48.3, Z48.811, Z48.812, Z48.813, Z48.815, Z48.816, and Z48.29, to promote more accurate clinical category assignment.

With regard to the NTA comorbidity to ICD-10 code mappings, in the FY 2020 NTA comorbidity mapping, ICD-10 codes T82.310A through T85.89XA for initial encounter codes map to the NTA comorbidity CC176 “Complications of Specified Implanted Device or Graft”. This mapping is based on the Part C risk adjustment model condition category mapping, which only included ICD-10 codes for acute encounters for complications of internal devices. Stakeholder have requested that we add to the mappings the ICD-10 codes in this range with the seventh digit of D (subsequent encounter) or S (sequela) for subsequent care. We proposed to add codes in this range with the seventh digit of D (but not the seventh digit of S, because sequela can be coded years after the event and are likely not a reason for SNF treatment) for use in the ICD-10 code mapping to the NTA comorbidity CC176 “Complications of Specified Implanted Device or Graft” on the NTA conditions and extensive services list for the purpose of calculating the PDPM NTA score.

We invited comments on the proposed substantive changes to the ICD-10 code mappings discussed previously, as well as sought comments on additional substantive and non-substantive changes that stakeholders believe are necessary. A discussion of these comments, along with our responses, appears below.

Comment: A commenter requested an explanation as to how CMS plans to address new annual ICD-10-CM codes in the PDPM payment group mappings, stating that CMS described some changes to the mappings for 2020 ICD-10-CM codes, but did not describe how it plans to address 2021 codes or annual

changes to ICD-10-CM codes. The commenter requested that CMS explain the process for mapping new codes, and state whether these will be available for comment through annual rule making.

Response: We described in the proposed rule the process by which we maintain and update the ICD-10 code mappings and lists associated with the PDPM. Specifically, we apply nonsubstantive changes to the ICD-10 codes included on the PDPM code mappings and lists through a subregulatory process consisting of posting updated code mappings and lists on the PDPM website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/PDPM>. Such nonsubstantive changes are limited to those specific changes that are necessary to maintain consistency with the most current ICD-10 medical code data set. On the other hand, substantive changes, or those that go beyond the intention of maintaining consistency with the most current ICD-10 medical code data set, will be proposed through notice and comment rulemaking. For instance, changes to the assignment of a code to a comorbidity list or other changes that amount to changes in policy are considered substantive changes that require notice and comment rulemaking. This process is described in more detail in the portions of the FY 2020 SNF PPS final rule (84 FR 38750) pertaining to updates to the ICD-10 code mappings and lists.

Comment: A commenter noted that the list of Z48 surgery aftercare codes to which CMS proposes adding the surgical option of “May be Eligible for the Non-Orthopedic Surgery Category” in the proposed rule (Z48.21, Z48.22, Z48.23, Z48.24, Z48.280, Z48.288, Z48.290, Z48.298, Z48.3, Z48.811, Z48.812, Z48.813, Z48.815, Z48.816, and Z48.29), contains seemingly duplicative references to code “Z48.290” and “Z48.29”. The commenter inquired as to whether the duplicative “Z48.29” entry was erroneous and was supposed to be Z48.89, “encounter for other specified surgical aftercare”.

Response: We note that Z48.29 is not duplicative of Z48.290; Z48.290, “aftercare following bone marrow transplant” is in fact a separate code under the heading of Z48.29, “aftercare following other organ transplant.” However, in the proposed rule, we inadvertently included both Z48.29 and Z48.290, as well as Z48.3 for aftercare following surgery for neoplasm, on the list of Z48 surgery aftercare codes to which we proposed to add the surgical option of “May be Eligible for the Non-Orthopedic Surgery Category.” Z48.29 is

not a valid code because it requires a sixth character. According to ICD 10 coding guidance, “Diagnosis codes are to be used and reported at their highest number of characters available. ICD-10-CM diagnosis codes are composed of codes with 3, 4, 5, 6 or 7 characters. A code is invalid if it has not been coded to the full number of characters required for that code, including the 7th character, if applicable” (<https://www.cms.gov/Medicare/Coding/ICD10/Downloads/2020-Coding-Guidelines.pdf> pg. 14). The code Z48.29, “encounter for aftercare following other organ transplant,” is further subdivided into more specific codes. One of those codes is Z48.298, which is also aftercare following other organ transplant. Since the ICD-10 guidelines state that “codes are to be used and reported at their highest number of characters available” and the codes are duplicative in meaning, we are removing Z48.29 and keeping Z48.298. Code Z48.290 is for aftercare following a bone marrow transplant. Bone marrow transplants can be performed to treat patients with a variety of cancer and non-cancer indications. A bone marrow transplant is considered to be a medical procedure and therefore would not have the non-orthopedic surgery option. Bone marrow transplants involve injecting cells into a recipient rather than open surgery to replace an organ. Thus, bone marrow transplants differ from the other transplant codes involving open surgical procedures, so it would not be appropriate to include code Z48.290 in the category of non-orthopedic surgery which describes the provision of open surgical procedures and the care for patients after open surgical procedures. Finally, Z48.3 involves the aftercare of patients for neoplasm. There are specific codes for specific types of neoplasm. Z48.3 does not specify that the neoplasm is malignant. Furthermore, many of the most common neoplasms removed surgically are on the skin and do not require the same level of aftercare as open surgical procedures. Cancer aftercare can be coded more specifically using the C and D codes that we included in our proposal, which will ensure more appropriate payment. Thus, we are not including the Non-orthopedic surgery option for Z48.3. Therefore, the correct list of Z48 surgery aftercare codes to which we are adding the surgical option of “May be Eligible for the Non-Orthopedic Surgery Category” is as follows: Z48.21, Z48.22, Z48.23, Z48.24, Z48.280, Z48.288, Z48.298, Z48.811, Z48.812, Z48.813, Z48.815, and Z48.816. This is consistent with the proposed updated mappings

and lists that were posted online at the SNF PDPM website at [https://www.cms.gov/Medicare-Feefor-Service-Payment/SNFPFS/PDPM](https://www.cms.gov/Medicare/Feefor-Service-Payment/SNFPFS/PDPM) coincident with the release of the proposed rule. Finally, in response to the comment addressing code Z48.89 (the code that the commenter thought we might have meant instead of Z48.29), we note that we are not adding the surgical option of “May be Eligible for the Non-Orthopedic Surgery Category” to code Z48.89, which is “encounter for other specified surgical aftercare”. This code provides inadequate information about the type of surgery, the illness that required surgery, and the type of aftercare. There are other codes that describe why the surgical aftercare is needed, for example Z48.21, “aftercare following a heart transplant”. In order to obtain sufficient information to place a patient in the proper category, code Z48.89 is designated as Return to Provider, since other coding options exist to provide the needed information.

Comment: A commenter responded to CMS’s proposal for codes C33 through C39.9 to include the surgical clinical category option, “May be Eligible for the Non-Orthopedic Surgery Category” which corresponds to J2710 on the MDS for cancers involving the respiratory system. The commenter encouraged CMS to consider allowing ICD–10 codes C38.0–C38.8, cancers of the heart, to map from J2700, Cardiopulmonary surgery (involving the heart or major blood vessels), as these codes may have a surgical procedure that would only be coded under J2700. The commenter also suggested CMS allow ICD–10 C37 to map from either J2710 or J2920, stating that “C37 code should be allowed to map to the non-orthopedic surgery code when J2710 (Major surgery involving the respiratory system) has been correctly coded.” In addition, the commenter stated that C37 is coded for cancer of the thymus, which may also need to map to a non-orthopedic surgery category based on the MDS coding of J2920, surgeries involving the endocrine organs.

Response: We would like to clarify that “May be Eligible for the Non-Orthopedic Surgery Category” does not correspond to J2710 only. As stated in the MDS RAI Manual Chapter 6, J2600, J2610, J2620, J2700, J2710, J2800, J2810, J2900, J2910, J2920, J2930, and J2940 are all considered non-orthopedic surgery categories. Furthermore, the codes C37, C38.0–C38.8 have the option of being eligible for the non-orthopedic surgery category. Codes C38.0, C38.4 and C38.8 could map from J2700, cardiopulmonary surgery. C38.1, C38.2, C38.3 are too nonspecific as there are multiple

malignancies that could form in these spaces and there are usually more specific codes for those malignancies. For example, C38.1 malignant neoplasm of anterior mediastinum includes the thymus and there is a more specific code, C37, malignancy of the thymus. Code C37 malignancy of the thymus could map from J2920. On the rare instance where a more specific code did not exist, codes C38.1, C38.2, and C38.3 could still map from J5000.

Comment: A commenter disagreed with the exclusion of ICD–10 code C410, “Malignant neoplasm of the bones of skull and face,” from the orthopedic surgery mappings, stating that cancers of the skull and face may require orthopedic surgery and should map to one of the two orthopedic surgery categories when a corresponding surgery is coded.

Response: Upon clinical investigation, we agree with the commenter that it is appropriate to include the “May be Eligible for One of the Two Orthopedic Surgery Categories” option for code C410, “Malignant neoplasm of bones of skull and face,” consistent with similar codes concerning neoplasms of bones in the face, such as C41.1, “Malignant neoplasm of mandible.” Based on clinician feedback, both orthopedic and non-orthopedic surgeries are possible in cases involving neoplasms of bones in the face, and non-orthopedic surgery is more common. However, the current PDPM grouper design only allows a code to be either orthopedic or non-orthopedic, and classification in the orthopedic surgery group results in a higher per diem rate than the non-orthopedic group. We anticipate that the need for orthopedic surgery and therapy should be rare but acknowledge that it is possible in such cases, and will monitor the use of the surgical option. Therefore, we will map code C410 to “May be Eligible for One of the Two Orthopedic Surgery Categories” with the rest of the codes in the range of C40.01 through C41.9.

Comment: A commenter suggested that codes related to malignant secondary (metastatic) cancer sites should be included in the list of ICD–10 cancer codes to which CMS is adding surgical clinical category options. The commenter suggested CMS consider including the following malignant secondary codes to the list of codes to which CMS should add surgical clinical category options and as SLP-related comorbidities: C78.39, secondary malignant neoplasm of other respiratory organs, which is used to code cancers that have metastasized to the laryngeal area (C32.0, C32.1, C32.2, C32.3, C32.9); and C79.89, secondary malignant

neoplasm of other specified sites which is used to code cancers that have metastasized to oral cancers (C00.0, C00.1, C00.2, C00.3, C00.4, C00.5, C00.6, C00.9, C01, C02.0, C02.1, C02.2, C02.3, C02.4, C02.8, C02.9, C03.0, C03.1, C03.9, C04.0, C04.1, C04.9, C09.9, C09.0, C09.1, C10.0, C10.1, C10.2, C10.3, C10.4, C10.9, C14.0, C14.2, C06.0 C05.0, C05.1, C05.2, C05.9, C06.2, C06.9).

Response: We included “C76.51 through C80.1” in the list of clinical category to ICD–10 code mappings to which we proposed adding the surgical clinical category options of “May be Eligible for the Non-Orthopedic Surgery Category” or “May be Eligible for One of the Two Orthopedic Surgery Categories”; therefore, both C78.39, “secondary malignancy of other respiratory organs,” and C79.89, “secondary malignancy of other digestive organs,” are included in the proposed changes to the clinical category mappings. However, we decline to add these codes to the SLP comorbidities list. SLP treatment can help patients get used to the changes in their mouth after surgery, chemotherapy, or radiation. Codes C78.39 and C79.89 lack specificity and concern respiratory and digestive organs that do not generally indicate the need for SLP treatment. The oral cancer codes mentioned (for example, C00) are included instead, as they specify the location of the neoplasm (tonsil, gum, tongue, etc.) in organs that are closely associated with the need for SLP treatment.

Comment: Several commenters suggested additional changes to the ICD–10 code mappings and comorbidity lists that were outside the scope of this rulemaking. Multiple commenters suggested that CMS include the surgical option for several “subsequent encounter” ICD–10 codes that better describe the admission status of the SNF beneficiary than the currently permitted “initial encounter” ICD–10 codes; specifically, commenters identified several additional “D” seventh digit codes, as well as “G, K, and P” seventh digit codes that should include the surgical option. A commenter recommended that ICD–10 code G93.1, “Anoxic brain damage,” should map to the Neurologic category instead of Return to Provider. Another commenter stated that patients may need SNF care due to cytokine release syndrome related to chimeric antigen receptor T-cell therapy, which is receiving new codes in 2021 in the D89.831 to D89.839 range, and the commenter questioned how CMS proposes to map such codes. Finally, a commenter recommended that

CMS should add the H90.0 to H90.A32 hearing loss range of ICD–10 codes to the SLP comorbidities list; add the following neurodegenerative diagnoses to the SLP comorbidities list: Alzheimer’s disease, Friedrich’s ataxia, Huntington’s disease, Lewy body disease, Parkinson’s disease, spinal muscular atrophy; and add the following mild cognitive impairment code to the SLP comorbidities list: Mild cognitive impairment, so stated (mild neurocognitive disorder) G31.84.

Response: We note that such changes are outside the scope of this rulemaking, and will not be addressed in this rule. We will further consider the suggested changes to the ICD–10 code mappings and comorbidity lists and may implement them in the future as appropriate. To the extent that such changes are non-substantive, we may issue them in a future subregulatory update if appropriate; however, if such changes are substantive changes, in accordance with the update process established in the FY 2020 SNF PPS final rule, such changes must undergo full notice and comment rulemaking, and thus may be included in future rulemaking. See the discussion of the update process for the ICD–10 code mappings and lists in the FY 2020 SNF PPS final rule (84 FR 38750) for more information.

Comment: A commenter suggested that CMS implement an “increased payment modifier for ICD–10 diagnoses that can be attributed to COVID–19 and its symptomology through the use of PDPM groupings that reflect the extraordinary costs to provide care during the pandemic.” A commenter also encouraged CMS to add the COVID–19 diagnosis code, U07.01, to the NTA comorbidities mapping list, stating that while this code currently maps to the medical management clinical category when used as a primary reason for the SNF stay, it does not have reimbursement equivalent to the high associated costs for the care and management of this disease. Multiple commenters requested that CMS evaluate the cost of PPE, staff time, and resources associated with caring for COVID–19 residents and appropriately weigh the ICD–10 code in establishing “points” toward the cumulative patient totals under the NTA component of PDPM. One commenter recommended 5 points, citing the experience of their association members and expert panel members. Furthermore, to allow for adequate reimbursement in the future, commenters requested that CMS consider adding an NTA category for pandemic/epidemic type infection that would allow for timely reimbursement

and allow CMS to add new ICD–10–CM codes to the mapping as needed. Another commenter suggested that the use of ICD–10 code U07.2 should be permitted on the MDS as an alternative method to document a patient is being treated for COVID–19, to eliminate delays in treatment where testing is limited, and that this U07.2 code should be mapped the same as the COVID–19 diagnosis code U07.1, stating that this will allow for better tracking of resource utilization by patients that are being treated for COVID–19 but had a false-negative test or patients that have encountered other issues or limited testing. Finally, a commenter expressed concern that the new COVID–19 code cannot be applied to dates prior to April 1, 2020 and suggested that CMS allow a placeholder primary reason for SNF stay/comorbidity checkboxes on the MDS.

Response: We appreciate these concerns and recognize the unique circumstances of the coronavirus public health emergency. However, with regard to the use of the U07.2 code, this code has not yet been adopted by the CDC and is not allowed to be used per CDC guidance. With regard to the COVID–19 code, U07.1, being inapplicable to dates prior to April 1, the CDC has provided coding guidelines for COVID–19 cases before April 1, 2020. With regard to weighting the costs of COVID–19 in the NTA component, we note that we do not currently have enough post-April data at this time to estimate the cost, and may consider this in future rulemaking. Finally, we note that the commenters’ suggestions to create additional NTA categories, add code U7.01 to the NTA comorbidities mapping, and other substantive changes to the ICD–10 code mappings and lists, as well as suggestions for “an increased payment modifier” are outside the scope of this rulemaking. We will continue to consider these comments and may address them in future rulemaking. We refer readers to our previous discussion regarding our established process for considering changes to the ICD–10 code mappings and lists (see FY 2020 SNF PPS final rule (84 FR 38750)).

Comment: A commenter expressed concern that CMS had not yet taken action to expand the list of conditions on the NTA comorbidity list to include several additional conditions such as Parkinson’s disease and serious mental illness such as schizophrenia. The commenter suggested that CMS consider potential updates to the NTA comorbidity list on an annual basis.

Response: We will consider potential updates to the NTA comorbidity list on

an ongoing basis consistent with our established process for considering changes to the ICD–10 code mappings and lists (see FY 2020 SNF PPS final rule (84 FR 38750)). We note that Parkinson’s (MDS I5300) and schizophrenia (HCC 57) were both considered for inclusion in the NTA comorbidity list that has assigned points for each condition which would contribute to NTA score calculation, but were eventually excluded from the comorbidity list due to small coefficient estimates, meaning that they did not represent an apparent significant increase in relative resource utilization as compared to other conditions found on the NTA comorbidity list.

Comment: Multiple commenters noted support for the proposed changes to the ICD–10 code mappings in general. Specifically, commenters noted support for the CMS proposals to: Add certain ICD–10 codes with the subsequent encounter “D” seventh digit for use in the ICD-code mapping to the NTA comorbidity CC176; move certain ICD–10 fracture codes which do not identify whether the condition is on the right or left side to “Return to Provider”; and add the surgical option of “May be Eligible for One of the Two Orthopedic Surgery Categories” to ICD–10 codes M48.00 to M48.08. One commenter stated appreciation for CMS reviewing ICD–10 mapping in correlation with MDS Section J2100 to J5000 and “urge(d) the agency to correct prior total joint and surgery mapping to facilitate the appropriate assignment of the primary reason for SNF stay.”

Response: We thank commenters for their support of our proposed changes. Regarding the comment concerning correcting prior total joint and surgery mapping, we will consider this change in the future consistent with the established process for considering changes to the ICD–10 code mappings and lists (see FY 2020 SNF PPS final rule (84 FR 38750)).

After considering the comments received, for the reasons set forth in this final rule and in the FY 2021 SNF PPS proposed rule, we are finalizing our proposed changes to the ICD–10 code mappings and lists with the modifications discussed above. As we previously stated, any substantive and non-substantive changes requested by commenters that are outside the scope of this rulemaking will be taken under consideration for potential future implementation consistent with the update process for the ICD–10 code mappings and lists established in the FY 2020 SNF PPS final rule (84 FR 38750).

3. Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program

a. Background

Section 215(b) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) authorized the SNF VBP Program (the “Program”) by adding section 1888(h) to the Act. As a prerequisite to implementing the SNF VBP Program, in the FY 2016 SNF PPS final rule (80 FR 46409 through 46426), we adopted an all-cause, all-condition hospital readmission measure, as required by section 1888(g)(1) of the Act, and discussed other policies to implement the Program such as performance standards, the performance period and baseline period, and scoring. In the FY 2017 SNF PPS final rule (81 FR 51986 through 52009), we adopted an all-condition, risk-adjusted potentially preventable hospital readmission measure for SNFs, as required by section 1888(g)(2) of the Act, adopted policies on performance standards, performance scoring, and sought comment on an exchange function methodology to translate SNF performance scores into value-based incentive payments, among other topics. In the FY 2018 SNF PPS final rule (82 FR 36608 through 36623), we adopted additional policies for the Program, including an exchange function methodology for disbursing value-based incentive payments. Additionally, in the FY 2019 SNF PPS final rule (83 FR 39272 through 39282), we adopted more policies for the Program, including a scoring adjustment for low-volume facilities. In the FY 2020 SNF PPS final rule (84 FR 38820 through 38825), we also adopted additional policies for the Program, including a change to our public reporting policy and an update to the deadline for the Phase One Review and Correction process.

The SNF VBP Program applies to freestanding SNFs, SNFs affiliated with acute care facilities, and all non-CAH swing-bed rural hospitals. Section 1888(h)(1)(B) of the Act requires that the SNF VBP Program apply to payments for services furnished on or after October 1, 2018. We believe the implementation of the SNF VBP Program is an important step towards transforming how care is paid for, moving increasingly towards rewarding better value, outcomes, and innovations instead of merely rewarding volume.

For additional background information on the SNF VBP Program, including an overview of the SNF VBP Report to Congress and a summary of the Program’s statutory requirements, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46409 through

46426); the FY 2017 SNF PPS final rule (81 FR 51986 through 52009); the FY 2018 SNF PPS final rule (82 FR 36608 through 36623); the FY 2019 SNF PPS final rule (83 FR 39272 through 39282); and the FY 2020 SNF PPS final rule (84 FR 38820 through 38825).

b. Measures

(1) Background and Update of the the SNF VBP Program Measure Name in Our Regulations

For background on the measures we have adopted for the SNF VBP Program, we refer readers to the FY 2016 SNF PPS final rule (80 FR 46419), where we finalized the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) (NQF #2510) that we are currently using for the SNF VBP Program. We also refer readers to the FY 2017 SNF PPS final rule (81 FR 51987 through 51995), where we finalized the Skilled Nursing Facility 30-Day Potentially Preventable Readmission Measure (SNFPPR) that we will use for the SNF VBP Program instead of the SNFRM as soon as practicable, as required by statute. We intend to submit the measure for NQF endorsement review during the Fall 2021 cycle, and to assess transition timing of the SNFPPR measure to the SNF VBP Program after NQF endorsement review is complete.

In the FY 2020 SNF PPS final rule (84 FR 38821 through 38822), we adopted a policy changing the name of the SNFPPR to Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge. We adopted this change to differentiate the SNF VBP Program’s measure of potentially preventable hospital readmissions from a similar measure specified for use in the SNF QRP, which uses a 30-day post-SNF discharge readmission window. We did not propose any updates to this measure policy in the FY 2021 SNF PPS proposed rule.

However, consistent with this finalized policy, we proposed to amend the definition of “SNF Readmission Measure” under 42 CFR 413.338(a)(11) to reflect the updated Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure name.

We welcomed public comments on this proposal to amend the regulation text to reflect the updated measure name.

Comment: Several commenters supported the proposal to amend the regulation text to reflect the updated Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure name. One

commenter stated that this change will help the public differentiate this measure from a similar measure under the SNF QRP, which uses a 30-day post-SNF discharge readmission period.

Response: We thank the commenters for their support.

After consideration of the comments, we are finalizing our proposal to amend the definition of “SNF Readmission Measure” under 42 CFR 413.338(a)(11) to reflect the updated Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure name as proposed.

c. SNF VBP Performance Period and Baseline Period

We refer readers to the FY 2016 SNF PPS final rule (80 FR 46422) for a discussion of our considerations for determining performance periods under the SNF VBP Program. In the FY 2019 SNF PPS final rule (83 FR 39277 through 39278), we adopted a policy whereby we will automatically adopt the performance period and baseline period for a SNF VBP program year by advancing the performance period and baseline period by 1 year from the previous program year. Under this policy, the FY 2023 performance period will be FY 2021, and the baseline period will be FY 2019. We did not propose any changes to this policy in the FY 2021 SNF PPS proposed rule.

d. Performance Standards

(1) Background

We refer readers to the FY 2017 SNF PPS final rule (81 FR 51995 through 51998) for a summary of the statutory provisions governing performance standards under the SNF VBP Program and our finalized performance standards policy, as well as the numerical values for the achievement threshold and benchmark for the FY 2019 program year. We published the final numerical values for the performance standards for the FY 2020 SNF VBP Program year in the FY 2018 SNF PPS final rule (82 FR 36613) and published the final numerical values for the performance standards for the FY 2021 SNF VBP Program year in the FY 2019 SNF PPS final rule (83 FR 39276). We also adopted a policy allowing us to correct the numerical values of the performance standards in the FY 2019 SNF PPS final rule (83 FR 39276 through 39277). We did not propose any changes to these policies in the FY 2021 SNF PPS proposed rule.

(2) Codification of the SNF VBP Performance Standards Correction Policy

In the FY 2019 SNF PPS final rule (83 FR 39276 through 39277), we finalized a policy to correct numerical values of performance standards for a program year in cases of errors. We also finalized that we will only update the numerical values for a program year one time, even if we identify a second error, because we believe that a one-time correction will allow us to incorporate new information into the calculations without subjecting SNFs to multiple updates. We stated that any update we make to the numerical values based on a calculation error will be announced via the CMS website, listservs, and other available channels to ensure that SNFs are made fully aware of the update. We did not propose any changes to these policies in the FY 2021 SNF PPS proposed rule.

We proposed to amend the definition of “Performance standards” at § 413.338(a)(9) of our regulations, consistent with these policies finalized in the FY 2019 SNF PPS final rule, to reflect our ability to update the numerical values of performance standards if we determine there is an error that affects the achievement threshold or benchmark.

We welcomed public comments on this proposal to codify the performance standards correction policy finalized in the FY 2019 SNF PPS final rule (83 FR 39276 through 39277).

Comment: Several commenters supported the proposal to codify the amended definition of “Performance standards”, consistent with the policies finalized in the FY 2019 SNF PPS final rule, to reflect CMS’ ability to update the numerical values of performance standards if it determines there is an error that affects the achievement threshold or benchmark.

Response: We thank the commenters for their support.

After consideration of the comments, we are finalizing the amendment to the definition of “Performance standards” at § 413.338(a)(9) of our regulations as proposed.

(3) Performance Standards for the FY 2023 Program Year

Based on the baseline period of FY 2019 for the FY 2023 program year, we estimated in the proposed rule that the performance standards would have the numerical values noted in Table 15 (85 FR 20941). We stated that these values represented estimates based on the most recently-available data, and that we would update the numerical values in this final rule.

The final FY 2023 SNF VBP Program year performance standards have the numerical values noted in Table 15.

TABLE 15: Final FY 2023 SNF VBP Program Performance Standards

Measure ID	Measure Description	Achievement Threshold	Benchmark
SNFRM	SNF 30-Day All-Cause Readmission Measure (NQF #2510)	0.79270	0.83028

e. SNF VBP Performance Scoring

We refer readers to the FY 2017 SNF PPS final rule (81 FR 52000 through 52005) for a detailed discussion of the scoring methodology that we have finalized for the Program. We also refer readers to the FY 2018 SNF PPS final rule (82 FR 36614 through 36616) for discussion of the rounding policy we adopted. We also refer readers to the FY 2019 SNF PPS final rule (83 FR 39278 through 39281), where we adopted: (1) A scoring policy for SNFs without sufficient baseline period data, (2) a scoring adjustment for low-volume SNFs, and (3) an extraordinary circumstances exception policy.

We did not propose any updates to SNF VBP scoring policies in the FY 2021 SNF PPS proposed rule.

f. SNF Value-Based Incentive Payments

We refer readers to the FY 2018 SNF PPS final rule (82 FR 36616 through 36621) for discussion of the exchange function methodology that we have adopted for the Program, as well as the specific form of the exchange function (logistic, or S-shaped curve) that we finalized, and the payback percentage of 60 percent. We adopted these policies for FY 2019 and subsequent fiscal years.

We also discussed the process that we undertake for reducing SNFs’ adjusted

federal per diem rates under the Medicare SNF PPS and awarding value-based incentive payments in the FY 2019 SNF PPS final rule (83 FR 39281 through 39282).

For estimates of FY 2021 SNF VBP Program incentive payment multipliers, we encourage SNFs to refer to FY 2020 SNF VBP Program performance information, available at <https://data.medicare.gov/Nursing-HomeCompare/SNF-VBP-Facility-LevelDataset/284v-j9fz>. Our previous analysis of historical SNF VBP data shows that the Program’s incentive payment multipliers appear to be relatively consistent over time. As a result, we believe that the FY 2020 payment results represent our best estimate of FY 2021 performance at this time.

We did not propose any updates to SNF VBP payment policies in the FY 2021 SNF PPS proposed rule.

g. Public Reporting on the Nursing Home Compare Website or a Successor Website

(1) Background

Section 1888(g)(6) of the Act requires the Secretary to establish procedures to make SNFs’ performance information on SNF VBP Program measures available to the public on the Nursing Home

Compare website or a successor website, and to provide SNFs an opportunity to review and submit corrections to that information prior to its publication. We began publishing SNFs’ performance information on the SNFRM in accordance with this directive and the statutory deadline of October 1, 2017.

Additionally, section 1888(h)(9)(A) of the Act requires the Secretary to make available to the public certain information on SNFs’ performance under the SNF VBP Program, including SNF performance scores and their ranking. Section 1888(h)(9)(B) of the Act requires the Secretary to post aggregate information on the Program, including the range of SNF performance scores and the number of SNFs receiving value-based incentive payments, and the range and total amount of those payments.

In the FY 2017 SNF PPS final rule (81 FR 52009), we discussed the statutory requirements governing public reporting of SNFs’ performance information under the SNF VBP Program. In the FY 2018 SNF PPS final rule (82 FR 36622 through 36623), we finalized our policy to publish SNF measure performance information under the SNF VBP Program on Nursing Home Compare after SNFs have an opportunity to review and submit corrections to that

information under the two-phase Review and Correction process that we adopted in the FY 2017 SNF PPS final rule (81 FR 52007 through 52009) and for which we adopted additional requirements in the FY 2018 SNF PPS final rule. In the FY 2018 SNF PPS final rule, we also adopted requirements to rank SNFs and adopted data elements that we will include in the ranking to provide consumers and stakeholders with the necessary information to evaluate SNFs' performance under the Program (82 FR 36623).

(2) Codification of the Data Suppression Policy for Low-Volume SNFs

In the FY 2020 SNF PPS final rule (84 FR 38823 through 38824), we adopted a data suppression policy for low-volume SNF performance information. Specifically, we finalized our proposal to suppress the SNF information available to display as follows: (1) If a SNF has fewer than 25 eligible stays during the baseline period for a program year, we will not display the baseline risk-standardized readmission rate (RSRR) or improvement score, though we will still display the performance period RSRR, achievement score, and total performance score if the SNF had sufficient data during the performance period; (2) if a SNF has fewer than 25 eligible stays during the performance period for a program year and receives an assigned SNF performance score as a result, we will report the assigned SNF performance score and we will not display the performance period RSRR, the achievement score, or improvement score; and (3) if a SNF has zero eligible cases during the performance period for a program year, we will not display any information for that SNF. We did not propose any changes to this policy in the FY 2021 SNF PPS proposed rule.

However, to ensure that SNFs are fully aware of this public reporting policy, we proposed in the FY 2021 SNF PPS proposed rule (85 FR 20942) to codify it at § 413.338(e)(3)(i), (ii), and (iii) of our regulations.

We welcomed public comment on this proposal to codify the data suppression policy for low-volume SNFs policy finalized in the FY 2020 SNF PPS final rule (84 FR 38823 through 38824).

Comment: A commenter supported the proposal to codify language around the data suppression policy for low-volume SNFs, as finalized in the FY 2020 SNF PPS final rule (84 FR 38823 through 38824).

Response: We thank the commenter for its support.

After consideration of the comments, we are finalizing our proposal to codify

our data suppression policy at § 413.338(e)(3)(i), (ii), and (iii) of our regulations as proposed.

(3) Public Reporting of SNF VBP Performance Information on Nursing Home Compare or a Successor Website

Section 1888(h)(9)(A) of the Act requires that the Secretary make available to the public on the Nursing Home Compare website or a successor website information regarding the performance of individual SNFs for a FY, including the performance score for each SNF for the FY and each SNF's ranking, as determined under section 1888(h)(4)(B) of the Act. Additionally, section 1888(h)(9)(B) of the Act requires that the Secretary periodically post aggregate information on the SNF VBP Program on the Nursing Home Compare website or a successor website, including the range of SNF performance scores, and the number of SNFs receiving value-based incentive payments and the range and total amount of those payments. In the FY 2018 SNF PPS final rule (82 FR 36622 through 36623), we finalized our policy to publish SNF measure performance information under the SNF VBP Program on Nursing Home Compare.

Our SNF VBP Program regulations currently only refer to the Nursing Home Compare website and do not account for the situation where a successor website replaces the Nursing Home Compare website. Therefore, we proposed in the FY 2021 SNF PPS proposed rule (85 FR 20942) to amend § 413.338(e)(3) of our regulations to reflect that we will publicly report SNF performance information on the Nursing Home Compare website or a successor website. CMS announced our website transition on a public internet blog in January 2020 (<https://www.cms.gov/blog/making-it-easier-compare-providers-and-care-settings-medicaid.gov>). We intend to update SNFs and other stakeholders through the internet and other widely used communication modes at a later date closer to the targeted transition date.

We welcomed public comments on this proposal.

Comment: Several commenters supported the proposal to publicly report SNF VBP performance information on Nursing Home Compare or a successor website, as current regulations account for displaying information only on Nursing Home Compare. One commenter noted that public reporting and accessibility of data is critical for Program evaluation and understanding quality trends.

Response: We thank the commenters for their support and agree that public

reporting is important for the success of the Program.

After consideration of the comments, we are finalizing our proposal to amend § 413.338(e)(3) of our regulations to reflect that we will publicly report SNF performance information on the Nursing Home Compare website or a successor website as proposed.

h. Update and Codification of the Phase One Review and Correction Deadline

In the FY 2017 SNF PPS final rule (81 FR 52007 through 52009), we adopted a two-phase review and corrections process for SNFs' quality measure data that will be made public under section 1888(g)(6) of the Act and SNF performance information that will be made public under section 1888(h)(9) of the Act. We detailed the process for requesting Phase One corrections and finalized a policy whereby we would accept Phase One corrections to any quarterly report provided during a calendar year until the following March 31. In the FY 2020 SNF PPS final rule (84 FR 38824 through 38835), we updated this policy to reflect a 30-day Phase One Review and Correction deadline rather than through March 31st following receipt of the performance period quality measure quarterly report that we issue in June. In the FY 2021 SNF PPS proposed rule (85 FR 20942), we stated that we were now proposing to also apply this 30-day Phase One Review and Correction deadline to the baseline period quality measure report that we typically issue in December. We stated that this proposal would align the Phase One Review and Correction deadlines for the quarterly reports that contain the underlying claims and measure rate information for the baseline period or performance period. We stated that under this proposal, SNFs would have 30 days following issuance of those reports to review the underlying claims and measure rate information. We stated that should a SNF believe that any of the information is inaccurate, it may submit a correction request within 30 days following issuance of the reports. We also stated that although these reports are typically issued in December (baseline period information) and June (performance period information), the issuance dates could vary. We stated that if the issuance dates of these reports are significantly delayed or need to be shifted for any reason, we would notify SNFs through routine communication channels including, but not limited to memos, emails, and notices on the CMS SNF VBP website.

We also proposed to codify this policy in our regulations by amending the

“Confidential feedback reports and public reporting” paragraph at § 413.338(e)(1). We welcomed public comments on these proposals.

Comment: A few commenters supported the proposal to apply a 30-day Phase One Review and Correction deadline to the baseline period quality measure quarterly reports typically issued in December. One commenter stated that this proposal aligns this Review and Correction process with the 30-day deadline that was implemented for the June performance period quality measure quarterly reports in the FY 2020 SNF PPS final rule.

Response: We thank the commenters for their support and agree that this policy aligns with the 30-day Phase Two Review and Correction deadline under the Program. As stated above in the proposal, SNFs would have 30 days following issuance of the baseline period quality measure quarterly reports to review the underlying claims and measure rate information. Should a SNF believe that any of the information is inaccurate, it may submit a correction request within 30 days following issuance of the reports.

Comment: A commenter did not support the proposed 30-day Phase One Review and Correction deadline for baseline period quality measure quarterly reports and stated that the time for review and corrections of these data should be 60–90 days. The commenter was concerned that the 30-day timeframe is not a long enough time period for many facilities to review their data for accuracy and submit correction requests to CMS as necessary.

Response: Our intention with this proposal was to align all Review and Correction deadlines within the SNF VBP Program and specifically to set all Review and Correction deadlines to 30 days following the date we provide the applicable report. The deadline for Review and Correction submissions for baseline period quality measure quarterly reports currently differs from other Review and Correction deadlines within the SNF VBP Program; it currently extends to the March 31st following the date we provide these reports. All other Review and Correction deadlines for the SNF VBP Program are 30 days following the date we provide the applicable report. We believe aligning all Review and Correction deadlines within the Program would be clearer and easier for SNFs to track.

Our proposal would not preclude SNFs from submitting correction requests prior to receipt of their quarterly report if they believe that an error has occurred, after reviewing data from quarterly reports delivered prior to

the baseline period quality measure quarterly report. Under current program operations, a particular year of data is used first as a performance period and later as a baseline period, thus SNFs have the opportunity to familiarize themselves with the particular year of data when it is used for the performance period, prior to receiving baseline period quality measure quarterly reports that represent the same data collection period.

We also believe that SNFs have accumulated extensive experience with the SNF VBP Program’s quarterly report system, as well as the finalized Review and Corrections processes. We will continue to conduct outreach and education to ensure that SNFs are fully aware of the Program’s operational deadlines, and we will be as clear as possible about the respective Review and Correction deadlines when delivering each quarterly report to SNFs.

After consideration of the comments, we are finalizing our proposal to update the Phase One Review and Correction deadline and to codify that policy in our regulations by amending the “Confidential feedback reports and public reporting” at § 413.338(e)(1) as proposed.

IV. Collection of Information Requirements

This final rule does not impose any new or revised “collection of information” requirements or burden. For the purpose of this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of OMB’s Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) implementing regulations. Since this rule does not impose any new or revised collection of information requirements or burden, the rule is not subject to the requirements of the PRA.

V. Economic Analyses

A. Regulatory Impact Analysis

1. Statement of Need

This final rule updates the FY 2020 SNF prospective payment rates as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication in the **Federal Register** before the August 1 that precedes the start of each FY, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the

SNF PPS, we do not have the discretion to adopt an alternative approach on these issues.

2. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an economically significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by OMB.

3. Overall Impacts

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728). We estimate that the aggregate impact will be an increase of approximately \$750 million in payments to SNFs in FY 2021, resulting from the SNF market basket update to the payment rates. We note that these impact numbers do not incorporate the SNF VBP reductions that we estimate will total \$199.54 million in FY 2021. We would note that events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented, and thus, very susceptible to forecasting errors due to events that may occur within the assessed impact time period.

In accordance with sections 1888(e)(4)(E) and (e)(5) of the Act, we update the FY 2020 payment rates by a factor equal to the market basket index percentage change reduced by the MFP

adjustment to determine the payment rates for FY 2021. The impact to Medicare is included in the total column of Table 16. In finalizing the SNF PPS rates for FY 2021, we are finalizing a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used for adjusting the federal rates).

The annual update in this rule will apply to SNF PPS payments in FY 2021. Accordingly, the analysis of the impact of the annual update that follows only describes the impact of this single year. Furthermore, in accordance with the requirements of the Act, we will publish a rule or notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

4. Detailed Economic Analysis

The FY 2021 SNF PPS payment impacts appear in Table 16. Using the most recently available data, in this case FY 2019, we apply the current FY 2020 wage index and labor-related share value to the number of payment days to simulate FY 2020 payments. Then,

using the same FY 2019 data, we apply the FY 2021 wage index and labor-related share value to simulate FY 2021 payments. We tabulate the resulting payments according to the classifications in Table 16 (for example, facility type, geographic region, facility ownership), and compare the simulated FY 2020 payments to the simulated FY 2021 payments to determine the overall impact. The breakdown of the various categories of data Table 16 follows:

- The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.
- The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).
- The second column shows the number of facilities in the impact database.

- The third column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is 0.0 percent; however, there are distributional effects of the change.

- The fourth column shows the impact on the wage index of adopting the revised OMB delineations, discussed in section III.D.1.a. of this final rule. The total impact of this change is 0.0 percent; however, there are distributional effects of the change.

- The fifth column shows the effect of all of the changes on the FY 2021 payments. The update of 2.2 percent is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 2.2 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 16, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes in this final rule, rural providers will experience a 2.4 percent increase in FY 2021 total payments.

TABLE 16: Impact to the SNF PPS for FY 2021

Provider Characteristics	# Providers	Update Wage Data	Update OMB Delineation	Total Change
Group				
Total	15,078	0.0%	0.0%	2.2%
Urban	10,951	0.0%	0.0%	2.2%
Rural	4,127	0.1%	0.1%	2.4%
Hospital-based urban	380	0.3%	0.1%	2.6%
Freestanding urban	10,571	0.0%	0.0%	2.2%
Hospital-based rural	245	0.1%	0.1%	2.4%
Freestanding rural	3,882	0.1%	0.1%	2.4%
Urban by region				
New England	775	-1.1%	-0.1%	1.0%
Middle Atlantic	1,470	0.9%	0.1%	3.2%
South Atlantic	1,868	-0.1%	-0.1%	2.0%
East North Central	2,118	0.0%	-0.1%	2.1%
East South Central	536	-0.3%	-0.1%	1.8%
West North Central	921	-0.7%	-0.1%	1.3%
West South Central	1,323	-0.1%	0.0%	2.1%
Mountain	527	-0.7%	0.0%	1.5%
Pacific	1,407	0.0%	0.1%	2.2%
Outlying	6	0.0%	-0.1%	2.1%
Rural by region				
New England	126	0.1%	-0.1%	2.3%
Middle Atlantic	194	0.6%	-0.1%	2.8%
South Atlantic	462	-0.1%	0.2%	2.3%
East North Central	908	0.5%	0.1%	2.8%
East South Central	452	-0.2%	0.1%	2.1%
West North Central	1,020	-0.2%	0.1%	2.1%
West South Central	666	-0.1%	0.1%	2.2%
Mountain	207	-0.2%	-0.1%	1.9%
Pacific	92	1.0%	-0.1%	3.1%
Ownership				
For profit	10,729	0.0%	0.0%	2.2%
Non-profit	3,469	0.0%	0.0%	2.2%
Government	880	0.1%	0.1%	2.3%

Note: The Total column includes the FY 2021 2.2 percent market basket increase factor. Additionally, we found no SNFs in rural outlying areas.

5. Impacts for the SNF VBP Program

The estimated impacts of the FY 2021 SNF VBP Program are based on historical data and appear in Table 17. We modeled SNF performance in the Program using SNFRM data from FY 2016 as the baseline period and FY 2018 as the performance period. Additionally, we modeled a logistic exchange function with a payback percentage of 60 percent, as we finalized in the FY 2018 SNF PPS final rule (82 FR 36619 through 36621), though we note that the 60 percent payback percentage for FY 2021 will adjust to

account for the low-volume scoring adjustment that we adopted in the FY 2019 SNF PPS final rule (83 FR 39278 through 39280). We estimate that the low-volume scoring adjustment would increase the 60 percent payback percentage for FY 2021 by approximately 2.25 percentage points (or \$11.91 million), resulting in a payback percentage for FY 2021 that is 62.25 percent of the estimated \$528.63 million in withheld funds for that fiscal year. Based on the 60 percent payback percentage (as modified by the low-volume scoring adjustment), we estimate that we will redistribute

approximately \$329.09 million in value-based incentive payments to SNFs in FY 2021, which means that the SNF VBP Program is estimated to result in approximately \$199.54 million in savings to the Medicare Program in FY 2021. We refer readers to the FY 2019 SNF PPS final rule (83 FR 39278 through 39280) for additional information about payment adjustments for low-volume SNFs in the SNF VBP Program.

Our detailed analysis of the estimated impacts of the FY 2021 SNF VBP Program follows in Table 17.

TABLE 17: SNF VBP Program Estimated Impacts for FY 2021

Characteristic	Number of facilities	Mean SNFRM Risk-Standardized Readmission Rate (%)	Mean performance score	Mean incentive multiplier	Percent of total SNF Medicare Part A FFS payment after applying incentives
Group					
Total	15,201	19.67	27.7397	0.99251	100.00
Urban	10,893	19.72	26.6713	0.99205	84.98
Rural	4,308	19.55	30.4412	0.99367	15.02
Hospital-based urban*	307	19.30	34.4100	0.99645	1.88
Freestanding urban*	10,545	19.73	26.4063	0.99191	83.07
Hospital-based rural*	208	19.15	38.7270	0.99781	0.49
Freestanding rural*	3,888	19.56	29.9215	0.99346	14.36
Urban by region					
New England	752	19.76	25.4730	0.99151	5.48
Middle Atlantic	1,468	19.47	29.2070	0.99355	16.07
South Atlantic	1,864	19.84	25.2768	0.99150	17.29
East North Central	2,087	19.82	24.5481	0.99085	13.66
East South Central	542	19.85	25.2002	0.99120	3.56
West North Central	927	19.72	27.2973	0.99194	4.10
West South Central	1,324	20.05	23.3211	0.98996	7.49
Mountain	527	19.11	34.3344	0.99643	3.68
Pacific	1,396	19.50	30.1656	0.99406	13.65
Outlying	6	20.16	17.5878	0.98708	0.00
Rural by region					
New England	129	19.13	32.5091	0.99497	0.67
Middle Atlantic	210	19.24	31.5817	0.99419	0.91
South Atlantic	493	19.72	27.3343	0.99248	2.22
East North Central	909	19.45	29.3109	0.99361	3.44
East South Central	515	19.81	26.1659	0.99182	2.33
West North Central	1,040	19.41	34.5946	0.99503	1.98
West South Central	708	20.02	25.6838	0.99105	2.21
Mountain	208	18.97	40.1353	0.99883	0.66
Pacific	95	18.53	43.9844	1.00106	0.60
Outlying	1	18.78	30.7950	0.98659	0.00
Ownership					
Government	948	19.37	33.8732	0.99539	3.48
Profit	10,656	19.76	26.2134	0.99171	74.39
Non-Profit	3,597	19.48	30.6447	0.99414	22.13

* The group category which includes hospital-based/freestanding by urban/rural excludes 253 swing-bed SNFs.

6. Alternatives Considered

As described in this section, we estimated that the aggregate impact for FY 2021 under the SNF PPS will be an increase of approximately \$750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating base payment rates under

the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment

rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY; accordingly, we are not pursuing alternatives for this process.

With regard to the alternatives considered related to the other provisions contained in this final rule, such as the adoption of revised OMB delineations and cap on wage index decreases discussed in section III.D.1. of this final rule, we discuss any alternatives considered within those sections.

7. Accounting Statement

As required by OMB Circular A-4 (available online at https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/), in Tables 18 and 19, we have prepared an accounting

statement showing the classification of the expenditures associated with the provisions of this final rule for FY 2021. Tables 16 and 18 provide our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this final

rule, based on the data for 15,078 SNFs in our database. Tables 17 and 19 provide our best estimate of the possible changes in Medicare payments under the SNF VBP as a result of the policies we have adopted for this program.

TABLE 18: Accounting Statement: Classification of Estimated Expenditures, from the 2020 SNF PPS Fiscal Year to the 2021 SNF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	\$750 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

* The net increase of \$750 million in transfer payments is a result of the market basket increase of 2.2 percent.

TABLE 19: Accounting Statement: Classification of Estimated Expenditures for the FY 2021 SNF VBP Program

Category	Transfers
Annualized Monetized Transfers	\$329.09 million*
From Whom To Whom?	Federal Government to SNF Medicare Providers

*This estimate does not include the two percent reduction to SNFs' Medicare payments (estimated to be \$528.63 million) required by statute.

8. Conclusion

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728). Based on the above, we estimate that the overall payments for SNFs under the SNF PPS in FY 2021 are projected to increase by approximately \$750 million, or 2.2 percent, compared with those in FY 2020. We estimate that in FY 2021, SNFs in urban and rural areas will experience, on average, a 2.2 percent increase and 2.4 percent increase, respectively, in estimated payments compared with FY 2020. Providers in the urban Middle Atlantic region will experience the largest estimated increase in payments of approximately 3.2 percent. Providers in the urban New England region will experience the smallest estimated increase in payments of 1.0 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by reason of

their non-profit status or by having revenues of \$30 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, for the purposes of the RFA, we estimate that almost all SNFs are small entities as that term is used in the RFA, according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of \$30 million or less in any 1 year. (For details, see the Small Business Administration's website at <http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards>). In addition, approximately 20 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not included in the definition of a small entity.

This rule updates the SNF PPS rates contained in the SNF PPS final rule for FY 2020 (84 FR 38728). Based on the above, we estimate that the aggregate impact for FY 2021 will be an increase of \$750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates. While it is projected in Table 16 that all providers

will experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2021 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. In their March 2020 Report to Congress (available at http://www.medpac.gov/docs/default-source/reports/mar20_medpac_ch8_sec.pdf), MedPAC states that Medicare covers approximately 10 percent of total patient days in freestanding facilities and 18 percent of facility revenue (March 2020 MedPAC Report to Congress, 224). As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 16. As indicated in Table 16, the effect on facilities is projected to be an aggregate positive impact of 2.2 percent for FY 2021. As the overall impact on the industry as a whole, and thus on small entities

specifically, is less than the 3 to 5 percent threshold discussed previously, the Secretary has determined that this final rule will not have a significant impact on a substantial number of small entities for FY 2021.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an MSA and has fewer than 100 beds. This final rule will affect small rural hospitals that: (1) Furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals will be a positive impact. Moreover, as noted in previous SNF PPS final rules (most recently, the one for FY 2020 (84 FR 38728)), the category of small rural hospitals is included within the analysis of the impact of this final rule on small entities in general. As indicated in Table 16, the effect on facilities for FY 2021 is projected to be an aggregate positive impact of 2.2 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this final rule will not have a significant impact on a substantial number of small rural hospitals for FY 2021.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million. This final rule will impose no mandates on state, local, or tribal governments or on the private sector.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This final rule will have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.

E. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017 and requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” It has been determined that this final rule is a transfer rule that does not impose more than *de minimis* costs and thus is not a regulatory action for the purposes of Executive Order 13771.

F. Congressional Review Act

This final regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

G. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on this year’s proposed rule will be the number of reviewers of this year’s final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed this year’s proposed rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons, we thought that the number of commenters on the proposed rule is a fair estimate of the number of reviewers of this final rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of the proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$110.74 per hour, including overhead and fringe benefits https://www.bls.gov/oes/current/oes_nat.htm. Assuming an average reading speed, we estimate that it would take approximately 4 hours for the staff to review half of the proposed rule. For each SNF that reviews the rule,

the estimated cost is \$442.96 (4 hours × \$110.74). Therefore, we estimate that the total cost of reviewing this regulation is \$20,819.12 (\$442.96 × 47 reviewers).

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 413

Diseases, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 409.35 is amended by revising paragraph (a) to read as follows:

§ 409.35 Criteria for “practical matter”.

(a) *General considerations.* In making a “practical matter” determination, as required by § 409.31(b)(3), consideration must be given to the patient’s condition and to the availability and feasibility of using more economical alternative facilities and services. However, in making that determination, the availability of Medicare payment for those services may not be a factor. For example, if a beneficiary can obtain daily physical therapy services on an outpatient basis, the unavailability of Medicare payment for those alternative services due to the beneficiary’s non-enrollment in Part B may not be a basis for finding that the needed care can only be provided in a SNF.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES; PAYMENT FOR ACUTE KIDNEY INJURY DIALYSIS

■ 3. The authority citation for part 413 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

§ 413.114 [Amended]

■ 4. Section 413.114 is amended in paragraph (c)(2) by removing the reference “§ 413.55(a)(1)” and adding in its place the reference “§ 413.53(a)(1)”.

■ 5. Section 413.338 is amended by revising paragraphs (a)(9) and (11) and (e)(1) and (3) to read as follows:

§ 413.338 Skilled nursing facility value-based purchasing program.

(a) * * *

(9) *Performance standards* are the levels of performance that SNFs must meet or exceed to earn points under the SNF VBP Program for a fiscal year, and are announced no later than 60 days prior to the start of the performance period that applies to the SNF readmission measure for that fiscal year. Beginning with the performance standards that apply to FY 2021, if CMS discovers an error in the performance standard calculations subsequent to publishing their numerical values for a fiscal year, CMS will update the numerical values to correct the error. If CMS subsequently discovers one or more other errors with respect to the same fiscal year, CMS will not further update the numerical values for that fiscal year.

* * * * *

(11) *SNF readmission measure* means, prior to October 1, 2019, the all-cause all-condition hospital readmission measure (SNFRM) or the all-condition risk-adjusted potentially preventable hospital readmission rate (SNFPPR) specified by CMS for application in the SNF Value-Based Purchasing Program. Beginning October 1, 2019, the term *SNF readmission measure* means the all-cause all-condition hospital readmission measure (SNFRM) or the

all-condition risk-adjusted potentially preventable hospital readmission rate (Skilled Nursing Facility Potentially Preventable Readmissions after Hospital Discharge measure) specified by CMS for application in the SNF Value-Based Purchasing Program.

* * * * *

(e) * * *

(1) Beginning October 1, 2016, CMS will provide quarterly confidential feedback reports to SNFs on their performance on the SNF readmission measure. SNFs will have the opportunity to review and submit corrections for these data by March 31st following the date that CMS provides the reports, for reports issued prior to October 1, 2019. Beginning with the performance period quality measure quarterly report issued on or after October 1, 2019 that contains the performance period measure rate and all of the underlying claim information used to calculate the measure rate that applies for the fiscal year, SNFs will have 30 days following the date that CMS provides these reports to review and submit corrections for the data contained in these reports. Beginning with the baseline period quality measure quarterly report issued on or after October 1, 2020 that contains the baseline period measure rate and all of the underlying claim information used to calculate the measure rate that applies for the fiscal year, SNFs will have 30 days following the date that CMS provides these reports to review and submit corrections for the data contained in these reports. Any such correction requests must be accompanied by appropriate evidence showing the basis for the correction.

* * * * *

(3) CMS will publicly report the information described in paragraphs (e)(1) and (2) of this section on the Nursing Home Compare website or a successor website. Beginning with information publicly reported on or after October 1, 2019, the following exceptions apply:

(i) If CMS determines that a SNF has fewer than 25 eligible stays during the baseline period for a fiscal year but has 25 or more eligible stays during the performance period for that fiscal year, CMS will not publicly report the SNF's baseline period SNF readmission measure rate and improvement score for that fiscal year;

(ii) If CMS determines that a SNF is a low-volume SNF with respect to a fiscal year and assigns a performance score to the SNF under paragraph (d)(3) of this section, CMS will not publicly report the SNF's performance period SNF readmission measure rate, achievement score or improvement score for the fiscal year; and

(iii) If CMS determines that a SNF has zero eligible cases during the performance period with respect to a fiscal year, CMS will not publicly report any information for that SNF for that fiscal year.

* * * * *

Dated: July 23, 2020.

Seema Verma

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 29, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020-16900 Filed 7-31-20; 4:15 pm]

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