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Federal Register

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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.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2611 and 2638

RIN 3209–AA56

Guidance Documents Issued by the Office of Government Ethics

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: Pursuant to Executive Order 13891, the U.S. Office of Government Ethics (OGE) is issuing a regulation to detail the process for the issuance of, modifications to, and petitions regarding guidance documents, as they are defined by the Executive Order. Additionally, the regulation states that OGE will post all guidance documents in a new guidance portal on its website. OGE is also detailing the process for the issuance of significant guidance documents and categorical exclusions. Finally, OGE is revising its executive branch ethics program regulation to ensure the consistency in the description of various documents that OGE issues.

DATES: This final rule is effective August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick J. Lightfoot, Assistant Counsel, or Margaret Dylus-Yukins, Assistant Counsel, U.S. Office of Government Ethics, Telephone: 202–482–9300.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Office of Government Ethics (OGE), following consultation with the Office of Management and Budget (OMB), is issuing a new regulation at 5 CFR part 2611 and amending pertinent sections of its executive branch-wide ethics regulations on the executive branch ethics program, as codified at 5 CFR part 2638, in order to establish the policies and procedures for OGE guidance documents issued or revised after *August 20, 2020.*

5 CFR Part 2611—Guidance Document Procedures

OGE is issuing a new 5 CFR part 2611, following consultation with OMB, to satisfy the requirements of Executive Order 13891, titled ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 9, 2019). Pursuant to Executive Order 13891, Federal agencies are required to finalize or amend regulations that set forth processes and procedures for issuing guidance documents.

Subpart A includes general provisions applicable throughout part 2611, including the purpose of the regulation, applicable definitions, and a statement that the regulation does not create any private right of action nor right to judicial review. OGE, in consultation with OMB, defines ''guidance document'' as any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the agency that is intended to have general applicability and future effect, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures of the Administrative Procedure Act. The vast majority of OGE issuances are excluded from the definition of guidance documents because, among other reasons, they are directed to other executive branch agencies or executive branch officials.

Subpart B summarizes the procedures for the issuance of new guidance documents, posting of guidance documents to OGE's website, the process by which a person may submit petitions for the modification or withdrawal of existing guidance documents, and the manner in which OGE will respond to such petitions. Additionally, this Subpart states that OGE will not cite, use, or rely on guidance documents that have been rescinded, withdrawn, or removed through modification, except to establish historical facts or as a matter of comparison to current guidance.

Subpart C describes the process for the issuance and designation of significant guidance documents, as defined in Subpart A, and indicates that significant guidance documents are subject to notice and public comment, as well as responses to those comments. Finally, this Subpart identifies classes of documents that are categorically excluded from the definition of ''guidance document'' at § 2611.102, which were developed in consultation with OMB.

5 CFR Part 2638—Amendments to Written Guidance Descriptions

OGE's regulation at 5 CFR 2638.208 currently describes various forms of written guidance that OGE issues regarding its legal interpretations, program requirements, and educational offerings. Last amended in 2016, this provision utilized the term ''guidance documents'' before it became a specific term of art in Executive Order 13891. Although no substantive change is intended, OGE is amending § 2638.208 to replace the term ''guidance documents'' with the phrase ''written guidance'' in order to reduce any potential confusion.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(A), as Director of the Office of Government Ethics, the notice and comment procedures are being waived because these amendments concern matters of agency organization, procedure and practice.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this final rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of

$100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including 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. In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. The rule is not a significant regulatory action for the purposes of Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects

5 CFR Part 2611

Administrative practice and procedure, Guidance documents, Significant guidance documents.

5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: July 24, 2020

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons stated in the preamble, the U.S. Office of Government Ethics amends 5 CFR chapter XVI as set forth below:

■ 1. Add part 2611 to subchapter A to read as follows:

PART 2611—GUIDANCE DOCUMENTS ISSUED BY THE OFFICE OF GOVERNMENT ETHICS

Subpart A—General Provisions

Sec.

2611.101 Purpose.
2611.102 Definitions.
2611.103 No private right of action or right to judicial review.

Subpart B—Procedures Related to Guidance Documents

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Subpart C—Significant Guidance Documents

2611.301 Designation of significant guidance documents.
2611.302 Public notice and comment on significant guidance documents.
2611.303 Classes of documents categorically excluded.

Authority: 5 U.S.C. App. 101–505; E.O. 13891, 84 FR 55235.

Subpart A—General Provisions

§ 2611.101 Purpose.

This part governs the issuance of guidance documents and significant guidance documents by the U.S. Office of Government Ethics (OGE) which are issued after *August 20, 2020.* This part implements Executive Order 13891, ''Promoting the Rule of Law through Improved Agency Guidance Documents,'' and guidance of the Office of Management and Budget.

§ 2611.102 Definitions.

For purposes of this part,

Director means the Director of OGE, or his or her delegate.

Government ethics laws and regulations include, among other applicable authorities, the provisions related to government ethics or financial disclosure set forth in the following authorities:

(1) Chapter 11 of title 18 of the United States Code;

(2) The Ethics in Government Act of 1978 (Pub. L. 95–521, as amended);

(3) The Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act (STOCK Act) (Pub. L. 112–105, as amended);

(4) Executive Order 12674 (Apr. 12, 1989) as amended by Executive Order 12731 (Oct. 17, 1990); and

(5) Subchapter B of Chapter 16 of title 5 of the United States Code.

Guidance document refers to any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within the jurisdiction of the agency that is intended to have general applicability and future effect, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556. The term is not confined to written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, advisories, and may include video, audio, and web-based formats. The term *guidance document* does not include:

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

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

(3) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

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

(5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.,* informal advisory opinions, case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (*e.g.,* guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.,* congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(6) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(7) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

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

(9) Grant solicitations and awards;

(10) Contract solicitations and awards; or

(11) Purely internal agency policies or guidance directed solely to OGE employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

Note 1 to the definition of ''guidance document'': As described in 5 CFR part 2638, OGE issues a number of documents to agency ethics officials and officers and employees of the executive branch concerning the government ethics laws and regulations and ethics program management. These

documents are generally exempted from the definition of guidance document pursuant to this definition. In the rare case that a document does constitute a guidance document not otherwise excluded from the definition, the procedures set forth in this part will apply.

OGE means the U.S. Office of Government Ethics, or the organizational unit within the office responsible for conducting the relevant provisions of this part.

Significant guidance document means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

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

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

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866, as further amended.

§ 2611.103 No private right of action or right to judicial review.

This part is intended to improve the internal management of OGE. As such, it is for the use of OGE personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

Subpart B—Procedures Related to Guidance Documents

§ 2611.201 Designation and marking of guidance documents.

(a) *Designation of guidance documents.* OGE will determine whether a document constitutes a guidance document prior to issuance.

(b) *Marking of guidance documents.* All guidance documents will:

(1) Identify the activity and entities to which the guidance applies;

(2) Note if the guidance document revises a previously issued guidance document and the guidance document which it revises or replaces;

(3) Include a summary of the subject matter covered by the guidance document;

(4) Include a citation to the statutes and regulations to which the guidance applies;

(5) Include a unique identifier;

(6) Include a title;

(7) Identify the date of issuance or revision;

(8) Include the term ''guidance''; and

(9) Include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. To the extent to which a guidance document provides an interpretation of the government ethics laws and regulations or concerns aspects of ethics program management, the statement will note that such provisions are controlling within the executive branch.

(c) *Avoidance of mandatory language.* Guidance documents will avoid using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement and will not foreclose OGE's consideration of positions advanced by affected private parties.

§ 2611.202 Public access to guidance documents.

(a) *Posting of guidance documents on OGE website.* Guidance documents issued by OGE and in effect will be maintained on, and retrievable from, OGE's website, *www.oge.gov/guidance.*

(b) *Guidance document portal.* The guidance document portal will include a clearly visible disclaimer stating the following:

(1) Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract;

(2) To the extent that a guidance document provides an interpretation of the government ethics laws and regulations or concerns aspects of ethics program management, such provisions are controlling within the executive branch; and

(3) OGE may not cite, use, or rely on any guidance document that is not posted on OGE's website except to establish historical facts.

(c) *Rescinded guidance documents.* Guidance documents that are not maintained on OGE's website are considered rescinded and may not be cited, used, or relied upon except to establish historical facts.

§ 2611.203 Petitions regarding guidance documents.

(a) *Petition regarding modification or withdrawal of previously issued guidance.* Any person may petition OGE to modify or withdraw a particular OGE guidance document. Petitions filed under this section must meet the criteria set forth in paragraph (b) of this section. OGE will respond to petitions in a timely manner, no later than 90 days after receipt of the petition.

(b) *Required information for petition.* A petition filed under this section must:

(1) Be submitted to OGE through one of the below two methods:

(i) By paper submission addressed to ''General Counsel, U.S. Office of Government Ethics, Suite 500, Washington, DC 20005–3917,'' with the words ''Petition for Withdrawal or Modification of Guidance Document'' at the top of the submission; or

(ii) By electronic submission to *usoge@oge.gov* and addressed to ''General Counsel, U.S. Office of Government Ethics,'' with the words ''Petition for Withdrawal or Modification of Guidance Document'' in the subject line of the message.

(2) Describe the nature of the request and set forth the text or substance of the guidance document or specify the guidance document, or portion of the guidance document, that the petitioner seeks to have modified or withdrawn, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information and arguments available to the petitioner to support the action sought, including any alternative text or alternative interpretations and the legal basis for such text or interpretation; and

(5) Provide contact information for the petitioner.

(c) *Review of petition.* Each petition received under this section will be referred to the head of the division responsible for the subject matter of that petition. No hearing, argument, or other proceeding is required to be held on a petition before its disposition under this section.

(d) *Grant of petition.* The Director may grant a petition upon a determination that the petition contains adequate justification to warrant modification or withdrawal of the guidance document or portions of the guidance document. The Director, in his or her sole discretion, may determine that only a partial grant of the petition is appropriate. Modifications to guidance documents will comply with § 2611.201. Modifications to significant guidance documents will comply with subpart C of this part.

(e) *Denial of petition.* The Director may deny a petition or parts of a petition when the petition lacks adequate justification to warrant modification or withdrawal of a guidance document, calls for action that is inconsistent with law or regulation or is beyond OGE's statutory jurisdiction, seeks modification or withdrawal of a document that is not a guidance document, or lacks the required information set forth in paragraph (b) of this section.

(f) *Notification to petitioner.* Following a determination that a petition will be granted or denied, OGE will issue notification of the grant or denial to the petitioner at the address provided by the petitioner in paragraph (b) of this section explaining the reason for the determination. In the event that a petition is received by electronic mail, OGE will send notification to the electronic mail address from which the petition was received.

(g) *Publication of petitions.* In the event that OGE grants a petition under this section, OGE may publish the petition, including attachments and other supporting materials, on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Petitions generally will not be edited to remove any identifying or contact information.

§ 2611.204 Use of rescinded, withdrawn, and modified guidance documents.

OGE will not cite, use, or rely on guidance documents or portions of guidance documents that are rescinded, withdrawn, or removed through modification, except to establish historical facts or as a matter of comparison to current guidance. Upon petition or its own initiative, OGE may reinstate guidance documents or portions of guidance documents previously rescinded, withdrawn, or modified, in conformity with the procedures in this part.

Subpart C—Significant Guidance Documents

§ 2611.301 Designation of significant guidance documents.

(a) *Designation of significant guidance documents.* The Director will submit proposed guidance documents to the Office of Information and Regulatory Affairs, Office of Management and Budget to determine whether the guidance document is a significant guidance document, as defined in § 2611.102, in the same fashion used to determine whether a rulemaking undertaken pursuant to 5 U.S.C. 553 is significant for purposes of Executive Order 12866.

(b) *Compliance with applicable Executive Orders.* Significant guidance documents will demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Order 12866, Executive Order 13563, Executive Order 13609, Executive Order 13771, and Executive Order 13777.

(c) *Issuance of significant guidance documents.* Significant guidance documents will be approved by the Director, or by an official who is serving as Director in an acting capacity, on a non-delegable basis.

§ 2611.302 Public notice and comment on significant guidance documents.

(a) *Public notice and comment.* Except as provided in paragraph (c) of this section, proposed OGE guidance documents that have been deemed significant guidance documents will be published in the **Federal Register** and interested persons will be invited to provide public comment in the form of written data, views, or arguments for or against the proposed significant guidance document. The comment period on guidance documents will be open for a minimum of 30 days. OGE will also post draft significant guidance documents on its website.

(b) *Responses to comments.* OGE will respond to major concerns raised in public comments received. Responses and comments will be posted to OGE's website, either before or at the time that the final significant guidance documents is issued.

(c) *Exemption for good cause shown.* The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OGE finds, in coordination with the Office of Management and Budget, good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Significant guidance documents that are issued without public notice and comment under this paragraph shall include the finding of good cause and a brief statement or reasons thereof.

§ 2611.303 Classes of documents categorically excluded.

OGE has generally determined that the following classes of documents are not guidance documents defined in § 2611.102:

(a) Legal advisories;

(b) Informal advisory opinions and letters;

(c) Formal advisory opinions; and

(d) Guides only directed to agency ethics officials and current Federal employees.

PART 2638—EXECUTIVE BRANCH ETHICS PROGRAM

■ 2. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. 101–505; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 3. Revise § 2638.208 to read as follows:

§ 2638.208 Written guidance on the executive branch ethics program.

This section describes several means by which the Office of Government Ethics provides agencies, employees, and the public with written guidance regarding its legal interpretations, program requirements, and educational offerings. Normally, written guidance is published on the official website of the Office of Government Ethics, *www.oge.gov.*

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2672–20; DHS Docket No. USCIS–2020–0008]

RIN 1615–AC55

Temporary Changes to Requirements Affecting H–2A Nonimmigrants Due To the COVID–19 National Emergency: Partial Extension of Certain Flexibilities

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: As a result of continued disruptions and uncertainty to the U.S. food agriculture sector during the summer and upcoming fall agricultural season caused by the global novel Coronavirus Disease 2019 (COVID–19) public health emergency, the Department of Homeland Security, U.S. Citizenship and Immigration Services, has decided it is necessary to temporarily extend the amendments to certain regulations regarding temporary and seasonal agricultural workers, and their U.S. employers, within the H–2A nonimmigrant classification. Through this temporary final rule DHS is

partially extending some of the provisions of the April 20, 2020, temporary final rule. Namely, the Department will continue to allow H–2A employees whose extension of stay H–2A petitions are supported by valid temporary labor certifications issued by the Department of Labor to begin work with a new employer immediately after the extension of stay petition is received by USCIS. DHS will apply this temporary final rule to H–2A petitions requesting an extension of stay, if they were received on or after August 19, 2020, but no later than December 17, 2020. The temporary extension of these flexibilities will ensure that agricultural employers have access to the orderly and timely flow of legal foreign workers, thereby protecting the integrity of the nation's food supply chain and decreasing possible reliance on unauthorized aliens, while at the same time encouraging agricultural employers' use of the H–2A program, which protects the rights of U.S. and foreign workers.

DATES: This final rule is effective from August 19, 2020, through August 19, 2023. Employers may request the flexibilities under this rule by filing an H–2A petition on or after August 19, 2020 and through December 17, 2020.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2120, Telephone Number 202–272–8377 (not a toll-free call). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

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I. Background

A. Legal Framework

The Secretary of Homeland Security (Secretary) has the authority to amend this regulation under section 102 of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 112, and section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103(a), which authorize the Secretary to administer and enforce the immigration and nationality laws. Under section 101 of the HSA, 6 U.S.C. 111(b)(1)(F), a primary mission of the Department is to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.'' In addition, section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), provides the Secretary with authority to prescribe the terms and conditions of any alien's admission to the United States as a nonimmigrant. The INA further requires that ''[t]he question of importing any alien as [an H–2A] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS], after consultation with appropriate agencies of the Government [the U.S. Department of Labor and the U.S. Department of Agriculture], upon petition by the importing employer.'' INA 214(c)(1), 8 U.S.C. 1184(c)(1). Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), states that '''an unauthorized alien' means . . . that the alien is not at that time . . . authorized to be employed by this chapter or by the [Secretary].''

B. Description of the H–2A Program

The H–2A nonimmigrant classification applies to alien workers seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States on a temporary basis, usually lasting no longer than 1 year, for which U.S. workers are not available. INA 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* 8 CFR 214.1(a)(2). As noted in the statute, not only must the alien be coming ''temporarily'' to the United States, but the agricultural labor or services that the alien is performing must also be ''temporary or seasonal.'' INA 101(a)(15)(H)(ii)(a). The regulations further define an employer's temporary need as employment that is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than 1 year. 8 CFR 214.2(h)(5)(iv)(A). An employer's seasonal need is defined as employment that is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels above those necessary for ongoing operations. *Id.*

An employer, agent, or association (''H–2A petitioner'') must submit a petition to U.S. Citizenship and Immigration Services (USCIS) to obtain authorization of temporary workers as H–2A nonimmigrants before the employer may begin employing H–2A workers. INA 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(2)(i). DHS must approve this petition before the alien can be considered eligible for H–2A status or a visa. To qualify for H–2A classification, the H–2A petitioner must, among other things, offer a job that is of a temporary or seasonal nature, and must submit a single, valid temporary labor certification (TLC) from the U.S. Department of Labor (DOL) establishing that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work, and that employing H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.[1] INA 101(a)(15)(H)(ii)(a) and 218, 8 U.S.C. 1101(a)(15)(H)(ii)(a) and 1188; *see also generally* 8 CFR 214.2(h)(5)(i)(A) and (h)(5)(iv). Aliens who are outside of the United States also must first obtain an H–2A visa from the U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad, if required, and then seek admission with U.S. Customs and Border Protection (CBP) at a U.S. port of entry prior to commencing employment as an H–2A nonimmigrant. Aliens may be admitted for an additional period of up to one week prior to the employment start date for the purpose of travel to the worksite. 8 CFR 214.2(h)(5)(viii)(B).

i. DOL Temporary Labor Certification (TLC) Procedures

Prior to filing the H–2A petition with DHS, the U.S. employer or agent must obtain a valid TLC from DOL for the job opportunity the employer seeks to fill with an H–2A worker(s). As part of the TLC process, the petitioning employer must have demonstrated to the

[1] Under certain emergent circumstances, petitions requesting a continuation of employment with the same employer for 2 weeks or less are exempt from the TLC requirement. *See* 8 CFR 214.2(h)(5)(x).

satisfaction of the Secretary of Labor that (a) there are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition, and (b) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1); *see also* 20 CFR 655.100.

To obtain a TLC from DOL, the employer must first submit an agricultural job order, within 75 to 60 calendar days prior to the start date of work, to the State Workforce Agency (SWA) that serves the state where the actual work will be performed. Once it clears the job order, the SWA will place it into intrastate clearance to initiate the recruitment of U.S. workers. 20 CFR 655.121. After review by the SWA, the employer must submit an *Application for Temporary Employment Certification* with DOL's Office of Foreign Labor Certification (OFLC) no less than 45 calendar days before the start date of work. 20 CFR 655.130. OFLC will review the H–2A application and, if it accepts the application will place a copy of the job order on its electronic job registry. 20 CFR 655.144(a). OFLC will also direct the SWA to place the job order into interstate clearance, may direct the SWA to provide written notice of the job opportunity to relevant organization and physically post the job order in locations workers may gather, and may direct the employer to engage in additional recruitment. 20 CFR 655.143, 655.150, 655.154. As part of its recruitment obligations, an employer must offer the job to any recently laid-off U.S. worker(s) and contact former U.S. workers employed in occupation in the previous year. 20 CFR 655.135(g), 655.153. OFLC will grant certification if the application meets all of the requirements in the Department's regulation, including compliance with all recruitment obligations. 20 CFR 655.161(a). Post-certification, OFLC will keep the job order posted on its electronic registry until 50 percent of the contract period has elapsed, and the SWA must keep the job order on file for the same period of time. 20 CFR 655.144, 655.150. The U.S. employer must also continue to accept referrals of all eligible U.S. workers and must offer employment to any qualified U.S. worker that applies for the job opportunity until 50 percent of the work contract period has elapsed. 20 CFR 655.135(d).

ii. DHS Petition Procedures

After receiving a valid TLC from DOL, the employer listed on the TLC, an employer's agent, or the association of United States agricultural producers named as a joint employer on the TLC (''H–2A petitioner'') may file the H–2A petition with the appropriate USCIS office. INA 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(2)(i), (h)(5)(i)(A). The H–2A petitioner may petition for one or more named or unnamed H–2A workers, but the total number of workers may not exceed the number of positions indicated on the TLC.[2] 8 CFR 214.2(h)(2)(iii) and (h)(5)(i)(B). H–2A petitioners must name the H–2A worker if the worker is in the United States or if the H–2A worker is a national of a country that is not designated as an H–2A participating country. 8 CFR 214.2(h)(2)(iii). USCIS recommends that petitioners submit a separate H–2A petition when requesting a worker(s) who is a national of a country that is not designated as an H–2A participating country. *See* 8 CFR 214.2(h)(5)(i)(F); *see also Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* Notice, 85 FR 3067 (Jan. 17, 2020). Petitioners for such aliens must submit evidence demonstrating the factors by which the request for H–2A workers serves the U.S. national interest. 8 CFR 214.2(h)(5)(i)(F)(*1*)(*ii*). USCIS will review each petition naming a national from a country not on the list and all supporting documentation and make a determination on a case-by-case basis.

A U.S. employer or U.S. agent generally may submit a new H–2A petition, with a new, valid TLC, to USCIS to request an extension of H–2A nonimmigrant status for a period of up to 1 year. 8 CFR 214.2(h)(15)(ii)(C). The H–2A petitioner must name the worker on the Form I–129, Petition for Nonimmigrant Worker,[3] since the H–2A worker is in the United States and requesting an extension of stay. In the event of an emergency circumstance, however, the petitioner may request an extension not to exceed 14 days without first having to obtain an additional approved TLC from DOL if certain criteria are met, by simply submitting the new H–2A petition. *See* 8 CFR 214.2(h)(5)(x).

In 2008, USCIS promulgated regulations allowing H–2A workers to begin work with a new petitioning employer upon the filing of an H–2A petition, before petition approval, provided that the new employer is a participant in good standing in the E-Verify program.[4] 8 CFR 214.2(h)(2)(i)(D) and 8 CFR 274a.12(b)(21). In such a case, the H–2A worker's employment authorization continues for a period not to exceed 120 days beginning on the ''Received Date'' on the Form I–797, Notice of Action, which acknowledges the receipt of the new H–2A extension petition. With the exception of the new employer and worksite, the employment authorization extension remains subject to the same conditions and limitations indicated on the initial H–2A petition. The continued employment authorization extension will terminate automatically if the new employer fails to remain a participant in good standing in the E-Verify program, as determined by USCIS in its discretion.

iii. Admission and Limitations of Stay

Upon USCIS approval of the H–2A petition, the U.S. employer or agent may hire the H–2A workers to fill the job opening. USCIS will generally grant the workers H–2A classification for up to the period of time authorized on the valid TLC. H–2A workers who are outside of the United States may apply for a visa with DOS at a U.S. Embassy or Consulate abroad, if required, and seek admission to the United States with CBP at a U.S. port of entry. Spouses and children of H–2A workers may request H–4 nonimmigrant status to accompany the principal H–2A worker. The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, may be admitted, if otherwise admissible, as H–4 nonimmigrants for the same period of admission or extension as the principal spouse or parent. 8 CFR 214.2(h)(9)(iv). Thus, H–4 dependents of these H–2A workers are subject to the same limitations on stay, and permission to remain in the country during the pendency of the new employer's petition, as the H–2A beneficiary.

[2] Note, however, that effective October 2, 2020, H–2A petitions will be limited to 25 named beneficiaries per H–2A petition. *See* DHS Final Rule, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' 85 FR 46788, 46916 (Aug. 3, 2020).

[3] Effective October 2, 2020, the petitioner will submit the new Form I–129H2A, Petition for Nonimmigrant Worker: H–2A Classification. H–2A petitions will be limited to 25 named beneficiaries per H–2A petition. *See* DHS Final Rule, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' 85 FR 46788, 46916 (Aug. 3, 2020).

[4] *See* ''Changes to Requirements Affecting H–2A Nonimmigrants,'' 73 FR 76891, 76905 (Dec. 8, 2008).

An alien's H–2A status is limited by the validity dates on the approved H–2A petition, which must be less than 1 year. 8 CFR 214.2(h)(5)(viii)(C). H–2A workers may be admitted into the United States for a period of up to 1 week prior to the beginning validity date listed on the approved H–2A petition so that they may travel to their worksites, but may not begin work until the beginning validity date. H–2A workers may also remain in the United States 30 days beyond the expiration date of the approved H–2A petition to prepare for departure or to seek an extension or change of nonimmigrant status. 8 CFR 214.2(h)(5)(viii)(B). H–2A workers do not have employment authorization outside of the validity period listed on the approved petition unless otherwise authorized. 8 CFR 214.2(h)(5)(viii)(B).

The maximum period of stay for an alien in H–2A classification is 3 years. 8 CFR 214.2(h)(5)(viii)(C). Once an alien has held H–2A nonimmigrant status for a total of 3 years, the alien must depart and remain outside of the United States for an uninterrupted period of 3 months before seeking readmission as an H–2A nonimmigrant.[5] 8 CFR 214.2(h)(5)(viii)(C).

C. COVID–19 National Emergency

On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency dating back to January 27, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to the Coronavirus Disease 2019 (COVID–19).[6] On March 13, 2020, President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus in the United States.[7] The President's proclamation declared that the emergency began on March 1, 2020. In response to the Mexican government's call to increase social distancing, DOS announced the temporary suspension of routine immigrant and nonimmigrant visa services processed at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico beginning on March 18, 2020.[8] DOS expanded the temporary suspension of routine immigrant and nonimmigrant visa services to all U.S. Embassies and Consulates on March 20, 2020.[9] DOS designated H–2A visas as mission critical, however, and announced that U.S. Embassies and Consulates have continued to process H–2A cases to the extent possible and implemented a change in its procedures, to include interview waivers.[10] In addition, DHS has identified occupations in food and agriculture as critical to the U.S. public health and safety and economy.[11]

To address disruptions caused by COVID–19 to the U.S. food agriculture sector during the summer growing season, DHS temporarily amended its H–2A regulations to provide certain flexibilities to temporary and seasonal agricultural workers and their U.S. employers. On April 20, 2020, DHS issued a temporary final rule (the ''April 20 TFR''), *Temporary Changes to Requirements Affecting H–2A Nonimmigrants Due to the COVID–19 National Emergency,* which allowed H–2A workers to begin work with new H–2A employers, who have valid TLCs issued by DOL, for a period not to exceed 45 days immediately after the H–2A extension of stay petition is received by USCIS. The April 20 TFR also allowed petitioners to employ H–2A workers seeking an extension of stay beyond the 3-year total limitation of stay. In the April 20 TFR, DHS indicated that it would issue a new temporary final rule to extend its termination date in the event DHS determined that economic circumstances related to our food supply demonstrated a continued need for these temporary changes to the regulatory requirements involving H–2A agricultural employers and workers. The April 20 TFR has been effective from April 20, 2020 through August 18, 2020. 85 FR 21739.

As discussed in more detail below, due to the continuing health and economic crisis caused by COVID–19, DHS has determined that the public health emergency and economic circumstances resulting from COVID 19 are necessitating the continuation of some of the flexibilities implemented through the April 20 TFR, namely the ability of H–2A workers to change employers and begin work before USCIS approves the new H–2A petition. Therefore, DHS is issuing this TFR to extend those flexibilities for an additional 120 days, *i.e.* through December 17, 2020. This timeframe differs from the most recent renewal of a determination of the public health emergency[12] because DHS believes that the COVID–19 pandemic may have a more lasting impact on the U.S. agricultural food sector beyond the 90 days. As a result, DHS will continue to monitor the evolving health crisis caused by COVID–19 and may address it in future rules.

II. Discussion

A. Temporary Changes to DHS Requirements for H–2A Change of Employer Requests During the COVID–19 National Emergency

DHS is committed to both protecting U.S. workers and to helping U.S. businesses receive the legal and work-authorized labor for temporary or seasonal agricultural labor or services that they need.

On July 23, 2020, HHS Secretary Alex Azar signed a renewal of determination, effective July 25, that extends the current COVID–19 public health emergency by up to 90 days.[13] This determination that a public health emergency exists and has existed since January 27, 2020, nationwide, was previously renewed on April 21, 2020. The renewal of determination signals that the United States is facing continued consequences of the COVID–19 National Emergency, which corresponds to the volume of COVID–19 cases reported by the U.S. Centers for

[5] But see, 8 CFR 214.2(h)(21)(ii) expiring on August 18, 2020, which allows USCIS to approve an H–2A petition seeking an extension of stay, submitted with a valid temporary agricultural labor certification, even if any of the aliens requested in the H–2A petition have exhausted the otherwise applicable 3-year maximum period of stay in the United States and have not thereafter been absent from the United States for an uninterrupted period of 3 months, or if any such aliens would exceed the 3-year limit as a consequence of the approval of the extension.

[6] HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[7] Proclamation 9994 of March 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020). *See also https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/* (last visited Aug. 16, 2020).

[8] DOS, *Status of U.S. Consular Operations in Mexico in Light of COVID–19, https://mx.usembassy.gov/status-of-u-s-consular-operations-in-mexico-in-light-of-covid-19/* (last updated Apr. 13, 2020).

[9] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated Mar. 20, 2020).

[10] *See* DOS website, *Important Announcement on H2 Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-h2-visas.html* (last updated Mar. 26, 2020).

[11] DHS, *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID–19 Response, https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf* (Mar. 19, 2020). DHS, *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID_10 Response, https://www.cisa.gov/sites/default/files/publications/Version_3.1_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_0.pdf* (May 19, 2020).

[12] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-23June2020.aspx* (Jul. 23, 2020).

[13] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-23June2020.aspx* (Jul. 23, 2020).

Disease Control and Prevention—5,228,817 as of August 14, 2020.

The COVID–19 pandemic continues to cause disruptions in the domestic food supply chain.[14] As of July 31, 2020, USDA's Economic Research Service reported that ''[t]he coronavirus (COVID–19) pandemic has widely impacted the U.S. economy, including the farm sector and farm households. Farm businesses have experienced disruptions to production due to lowered availability of labor and other inputs . . . [r]eductions in available labor affect crop and livestock production, as well as processing capacity for crop and animal products that leave the farm. Reduced processing capacity results in lower consumption of certain agricultural commodities.'' [15] The H–2A program has been crucial to assuring the continued viability of the nation's food supply chain.[16] Notwithstanding the availability of the H–2A program, U.S. farmers are continuing to experience labor shortages as fewer workers are able to get to the United States. Media outlets in the United States have continued to report on these shortages. For example, a farmer in North Dakota who typically hires the same eight farmhands from South Africa to tend his crops was short half of his crew this year due to COVID–19.[17]

As the public health emergency and economic consequences of it continue, DHS has determined it is necessary to issue a new temporary final rule to extend certain flexibilities implemented through the April 20 TFR because DHS has determined that there is a continued need for them. This TFR extends certain amendments made by the April 20 TFR, to help U.S. agricultural employers reduce disruptions in lawful agricultural-related employment, protect the nation's food supply chain, and lessen impacts from the COVID–19 pandemic and related economic effects, consistent with the declaration of the National Emergency. Due to the continued travel restrictions and visa processing limitations as a result of actions taken to mitigate the spread of COVID–19, as well as the possibility that some H–2A workers may become unavailable due to COVID–19 related illness,[18] U.S. employers who have approved H–2A petitions or who will be filing H–2A petitions might not receive all of the workers requested to fill the temporary positions, and similarly, employers that currently employ H–2A workers may lose the services of workers due to COVID–19 related illness.

Under this temporary final rule, any H–2A petitioner with a valid TLC, *i.e.* one who has already tested the U.S. labor market and was unable to find able, willing, and qualified U.S. workers to perform temporary or seasonal agricultural services or labor, can start employing H–2A workers who are currently in the United States and in valid H–2A status and who have been complying with the terms of their H–2A status immediately after receiving notice that USCIS has received the H–2A petition, but no earlier than the start date of employment listed on the petition. This will allow H–2A workers to move to a new employer to meet urgent temporary or seasonal agricultural needs before USCIS approves the new employer's petition. DHS believes this continued flexibility will help address the challenges faced by U.S. employers due to COVID–19 as the busy fall harvest season approaches. *See* new 8 CFR 214.2(h)(21) and 8 CFR 274a.12(b)(26). However, nothing in this TFR changes the existing DOL requirements for obtaining a TLC which an employer must comply with before filing an H–2A petition with USCIS.

Unlike the permanent regulation at 8 CFR 274a.12(b)(21), which allows the H–2A worker(s) to immediately work for a new H–2A employer in good standing in E-Verify upon the filing of an H–2A extension of stay petition, this TFR, like the April 20 TFR, allows the H–2A worker(s) to immediately work for any new H–2A employer, but no earlier than the start date of employment listed on the H–2A petition, upon the filing of an H–2A extension of stay petition during the COVID–19 National Emergency only.

The Department remains committed to promoting the use of E-Verify to ensure a legal workforce. E-Verify is free, user friendly, and over 98% accurate.[19] Notwithstanding the numerous benefits E-Verify offers to ensure all employers only employ a legal workforce, the Department has determined that it is necessary to temporarily amend its regulations affecting H–2A workers to mitigate the impact on the agricultural industry due to COVID–19. These H–2A petitioners will have completed a test of the U.S. labor market, and DOL will have determined that there are no qualified U.S. workers available to fill these temporary positions. The Department believes that granting H–2A workers the option to begin employment with any new H–2A petitioner as soon as the H–2A petition is received by USCIS will also benefit U.S. agricultural employers and help provide stability to the U.S. food supply chain during the unique challenges the country faces because of COVID–19.

Upon further consideration, DHS has determined that a need exists to strike a balance between providing stability to the U.S. food supply chain, addressing the urgent needs of U.S. agricultural producers, and ensuring that those aliens admitted into the United States as temporary workers in the H–2A nonimmigrant classification in fact remain in this country on a temporary basis, as required by the Act. 8 U.S.C. 1101(a)(15)(H)(ii)(a). Therefore, DHS is not extending the April 20 TFR temporary exceptions to its regulations at 8 CFR 214.2(h)(5)(viii)(C), (h)(13)(i)(B), and (h)(15)(ii)(C) that had allowed aliens to extend their H–2A period of stay beyond the 3-year limitation, without first requiring them to remain outside of the United States for an uninterrupted period of 3 months. Consequently, USCIS will apply the 3-year limit reflected in permanent DHS regulations to any H–2A petition that is received on or after August 19, 2020. These permanent regulations specifically provide, with certain very narrow exceptions, that an H–2A worker's total period of stay in H–2 classification may not exceed 3 years, before he or she must depart from the United States for a minimum of 3 months. 8 CFR 214.2(h)(15)(ii)(C). Petitioners seeking H–2A temporary workers who fill a permanent need or who will remain in the United States permanently, must comply with the

[14] *See, e.g. Food Security and COVID–19, https://www.worldbank.org/en/topic/agriculture/brief/food-security-and-covid-19* (last visited Aug. 14, 2020).

[15] ''Farms and Farm Households During the COVID–19 Pandemic,'' *https://www.ers.usda.gov/covid-19/farms-and-farm-households/* (last visited Aug. 15, 2020).

[16] The Washington Post, ''How one visa program keeps America fed,'' *https://www.washingtonpost.com/video/national/how-one-visa-program-keeps-america-fed/2020/06/17/ac3be98d-1ed1-4d4c-8dc7-85cbbeecb5fc_video.html* (last visited Aug. 15, 2020).

[17] Bloomberg, ''Global Food Output Runs Into Migrant Worker Woes,'' Aug. 7, 2020, *https://www.bloomberg.com/news/newsletters/2020-08-07/supply-chains-latest-migrant-worker-shortages-hit-food-output* (last visited Aug. 15, 2020).

[18] Patch, ''Newsom Opens Hotel Rooms For Farmworkers Exposed To Coronavirus,'' Jul. 29, 2020, *https://patch.com/california/santamonica/s/h6xix/newsom-opens-hotel-rooms-farmworkers-exposed-coronavirus* (last visited Aug. 15, 2020). U.S. News & World Report, ''Nearly 190 Farmworkers Contract Virus in Southern California,'' Jul. 6, 2020, *https://www.usnews.com/news/best-states/california/articles/2020-07-06/nearly-190-farmworkers-contract-virus-in-southern-california* (last visited Aug. 15, 2020).

[19] *See https://www.e-verify.gov/about-e-verify/e-verify-data/e-verify-performance* (last updated Jul. 15, 2020).

requirements applicable to permanent positions. *See, e.g.,* 8 U.S.C. 1153(b)(3).

To be approved under this final rule, an H–2A petition for an extension of stay with a new employer must have been received on or after August 19, 2020, but no later than the last day that this final rule is in effect (*i.e.,* December 17, 2020). If the new petition is approved, the H–2A worker's extension of stay may be granted for the validity of the approved petition, and for a period not to exceed the validity period of the TLC. In addition, the temporary provisions being extended by this rule are the same as the April 20 TFR provisions but differ from the permanent regulatory provisions in that they grant employment authorization for 45 days from the date of the receipt notice. The 45-day employment authorization associated with the filed petition will automatically terminate 15 days after the date of denial or withdrawal if USCIS denies the petition, or if the petition is withdrawn.

To provide greater certainty to the market for the duration of the remainder of the summer and fall agricultural seasons, the changes made by this final rule will automatically terminate on December 17, 2020. DHS will continue to monitor the rapidly evolving situation surrounding the COVID–19 pandemic and associated economic consequences and will determine whether continued flexibilities are needed beyond the 120 days. USCIS will continue to adjudicate H–2A petitions received no later than December 17, 2020 under the provisions of this rule. Any H–2A petition received after the termination of this final rule will be adjudicated in accordance with the existing permanent provisions. *See* 8 CFR 214.2(h)(2)(i)(D) and 274a.12(b)(21).

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

This rule is being issued without prior notice and opportunity to comment and with an immediate effective date pursuant to sections 553(b) and (d) of the Administrative Procedure Act (APA). 5 U.S.C. 551 *et seq.*

1. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The good-cause exception for forgoing notice-and-comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (DC Cir. 2004). Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (DC Cir. 1992), the Department has appropriately invoked the exception in this case, for the reasons set forth below. As also discussed earlier in this preamble, on January 31, 2020, the Secretary of Health and Human Services declared a public health emergency, dating back to January 27, 2020, under section 319 of the Public Health Service Actin response to COVID–19.[20] On March 13, 2020, President Trump declared a National Emergency concerning the COVID–19 outbreak, dated back to March 1, 2020, to control the spread of the virus in the United States.[21] In response to the Mexican government's call to increase social distancing in that country, DOS announced the temporary suspension of routine immigrant and nonimmigrant visa services processed at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico beginning on March 18, 2020.[22] DOS expanded the temporary suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020.[23] On July 23, 2020, the U.S. Department of Health and Human Services (HHS) Secretary Alex Azar signed a renewal of determination, effective July 25, that extends the current COVID–19 public health emergency by up to 90 days.[24] This determination that a public health emergency exists and has existed since January 27, 2020, nationwide, was previously renewed on April 21, 2020.

DOS designated H–2A visas as mission critical, and announced that U.S. Embassies and Consulates will continue to process H–2 cases to the extent possible and implemented a change in its procedures, to include interview waivers.[25] In addition, DHS identified occupations in food and agriculture as critical to the U.S. public health and safety and economy.[26] Due to extended travel restrictions, the limited resumption of routine visa services, as well as the possibility that some U.S. and H–2A workers may become unavailable due to illness related to the spread of COVID–19, U.S. employers who have approved temporary agricultural labor certifications and/or who will be filing H–2A petitions might not receive, or be able to continuously employ, all of the workers requested to fill all of their DHS-approved temporary or seasonal agricultural positions. Due to these anticipated labor shortages, these employers may continue to experience adverse economic impacts to their agricultural operations. Finally, COVID–19 continues to cause disruptions in domestic food supply chains which has led to food insecurity on a global level.[27] To partially address these concerns, DHS is acting expeditiously to put in place rules that will facilitate the continued employment of H–2A workers already present in the United States. This action will reduce labor disruptions that could affect business operations of U.S. employers for the upcoming labor-intensive fall harvest, and continue to support the critical U.S. food supply network.

Courts have found ''good cause'' under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. Courts have held that an agency may use the good-cause exception to address ''a serious threat to the financial stability of [a government] benefit program,'' *Nat'l Fed'n of Fed. Emps.* v. *Devine,* 671 F.2d 607, 611 (DC Cir. 1982), or to avoid ''economic harm and disruption'' to a given industry, which would likely result in higher consumer prices, *Am. Fed'n of Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (DC Cir. 1981). Consistent with the above authorities, the Department has bypassed notice and comment to facilitate the employment of H–2A workers already in the United States, and prevent potential economic harms to H–2A agricultural employers

[20] *Determination of Public Health Emergency.*

[21] Proclamation 9994.

[22] *Status of U.S. Consular Operations in Mexico in Light of COVID–19.*

[23] *Suspension of Routine Visa Services.*

[24] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-23June2020.aspx* (Jul. 23, 2020).

[25] *Important Announcement on H2 Visas.*

[26] *DHS Memorandum on Identification of Essential Critical Infrastructure Workers During COVID–19 Response. DHS Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID_10 Response.*

[27] *See, e.g. Food Security and COVID–19, https://www.worldbank.org/en/topic/agriculture/brief/food-security-and-covid-19* (last visited Aug. 15, 2020). *See also,* ''Farms and Farm Households During the COVID–19 Pandemic'' *https://www.ers.usda.gov/covid-19/farms-and-farm-households/* (last visited Aug. 15, 2020) indicating that ''Farm businesses have experienced disruptions to production due to lowered availability of labor and other inputs . . . [r]eductions in available labor affect crop and livestock production, as well as processing capacity for crop and animal products that leave the farm. Reduced processing capacity results in lower consumption of certain agricultural commodities.''

and downstream employers engaged in the processing of agricultural products, as well as potential harms to the American economy and people that could result from ongoing uncertainty over the availability of H–2A agricultural workers, and potential associated negative impacts on food security in the United States. *See Bayou Lawn & Landscape Servs.* v. *Johnson,* 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). This action is temporary in nature, and includes appropriate conditions to ensure that it is narrowly tailored to the National Emergency caused by COVID–19.

2. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good-cause exception to the 30-day effective date requirement is easier to meet than the good-cause exception for forgoing notice and comment rulemaking. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (DC Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above, we also conclude that the Department has good cause to dispense with the 30-day effective date requirement given that this rule is necessary to prevent serious economic harms to U.S. employers in the agricultural industry caused by unavailability of workers due to COVID–19, and to ensure food stability for the American people.

B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency to secure labor for our food supply.

This rule will help U.S. employers fill critically necessary agricultural job openings, protect their economic investments in their agricultural operations, and contribute to U.S. food security. In addition, it will benefit H–2A workers already in the United States by making it easier for employers to hire them. As this rule helps fill critical labor needs for agricultural employers, DHS believes this rule will help ensure a continual food supply chain in the United States.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. *See* 5 U.S.C. 603(a), 604(a). This final rule is exempt from notice and comment requirements for the reasons stated above in Part III.A. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this final rule. Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 2 U.S.C. 1501, *et seq.* (UMRA), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. 2 U.S.C. 1532. This rule does not contain such a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255, 43258 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, 61 FR 4729 (Feb. 5, 1996).

G. Congressional Review Act

The Office of Information and Regulatory Affairs, of the Office of Management and Budget, has determined that this final rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. DHS will send this temporary final rule to Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

H. National Environmental Policy Act

DHS analyzes actions to determine whether the National Environmental Policy Act, Public Law 91–190, 42 U.S.C. 4231, *et seq.* (NEPA), applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. Categorical exclusions established by DHS are set forth in Appendix A of the Instruction Manual. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy

each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c). This rule temporarily amends regulations governing the H–2A nonimmigrant visa program to facilitate the continued employment of H–2A nonimmigrants in the United States by allowing them to change employers in the United States and begin working in the same visa classification for a period not to exceed 45 days before the nonimmigrant visa petition is approved, due to the National Emergency caused by the COVID–19 global pandemic. This rule does not change the number of H–2A workers that may be employed by U.S. employers as there is not an established statutory limit. It also does not change rules for where H–2A nonimmigrants may be employed; only employers with approved temporary labor certifications for workers to perform temporary or seasonal agricultural work may be allowed to employ H–2A workers under these temporary provisions. Generally, DHS believes NEPA does not apply to a rule intended to make it easier for H–2A employers to hire workers who are already in the United States in addition to, or instead of, also hiring H–2A workers from abroad because any attempt to analyze its potential impacts would be largely speculative, if not completely so. DHS cannot reasonably estimate how many petitions will be filed under these temporary provisions, and therefore how many H–2A workers already in the United States will be employed by different employers, as opposed to how many petitions would have been filed for H–2A workers employed under normal circumstances. DHS has no reason to believe that the temporary amendments to H–2A regulations would change the environmental effect, if any, of the existing regulations. Therefore, DHS has determined that even if NEPA were to apply to this action, this rule clearly fits within categorical exclusion A3(d) in the Instruction Manual, which provides an exclusion for ''promulgation of rules . . . that amend an existing regulation without changing its environmental effect.''

This rule maintains the current human environment by helping to prevent irreparable harm to certain U.S. businesses and to prevent significant adverse effects on the human environment that would likely result from loss of jobs or income, or disruption of the nation's food supply chain. This rule is not a part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

I. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

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

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

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

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218.

■ 2. Amend § 214.2 by adding paragraph (h)(21) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(21) *Change of employers during COVID–19 National Emergency.* (i) If an H–2A nonimmigrant who is physically present in the United States seeks to change employers during the COVID–19 National Emergency, the prospective new H–2A employer may file an H–2A petition on Form I–129 or Form I–129H2A, accompanied by a valid temporary agricultural labor certification, requesting an extension of the alien's stay in the United States. To be approved under this paragraph (h)(21), an H–2A petition must be received on or after August 19, 2020 but no later than December 17, 2020. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition for a period not to exceed the validity period of the temporary agricultural labor certification. Notwithstanding paragraph (h)(2)(i)(D) of this section and 8 CFR 274a.12(b)(21), an alien in valid H–2A nonimmigrant status on August 19, 2020, or lawfully obtaining such status thereafter pursuant to this paragraph (h)(21), is authorized to begin employment with the new petitioner after the petition described in this paragraph (h)(21) is received by USCIS, but no earlier than the start date of employment, indicated in the H–2A petition. The H–2A worker is authorized to commence employment with the petitioner before the petition is approved and subject to the requirements of 8 CFR 274a.12(b)(26) for a period of up to 45 days beginning on the Received Date on Form I–797 (Notice of Action) or, if the start date of employment occurs after the I–797 Received Date, 45 days beginning on the start date of employment indicated in the H–2A petition. If USCIS adjudicates the petition prior to the expiration of this 45-day period and denies the petition for extension of stay, or if the petition is withdrawn by the petitioner before the expiration of the 45-day period, the employment authorization associated with the filing of that petition under 8 CFR 274a.12(b)(26) will automatically terminate 15 days after the date of the denial decision or the date on which the petition is withdrawn.

(ii) Authorization to initiate employment changes pursuant to this paragraph (h)(21) begins at 12 a.m. on August 19, 2020, and ends at the end of December 17, 2020.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

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

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Pub. L. 110–229; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Pub. L. 115–218.

■ 4. Amend § 274a.12 by adding paragraph (b)(26) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(26)(i) Pursuant to 8 CFR 214.2(h)(21) and notwithstanding 8 CFR 214.2(h)(2)(i)(D) and paragraph (b)(21) of this section, an alien is authorized to be employed, but no earlier than the start date of employment indicated in the H–2A petition, by a new employer that has filed an H–2A petition naming the alien as a beneficiary and requesting an extension of stay for the alien, for a period not to exceed 45 days beginning from the ''Received Date'' on Form I–797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay, or 45 days beginning on the start date of employment if the start date of employment indicated in the H–2A petition occurs after the filing. The length of the period (up to 45 days) is to be determined by USCIS in its discretion. However, if USCIS adjudicates the petition prior to the expiration of this 45-day period and denies the petition for extension of stay, or if the petitioner withdraws the petition before the expiration of the 45-day period, the employment authorization under this paragraph (b)(26) will automatically terminate upon 15 days after the date of the denial decision or the date on which the petition is withdrawn.

(ii) Authorization to initiate employment changes pursuant to 8 CFR 214.2(h)(21) and paragraph (b)(26)(i) of this section begins at 12 a.m. on August 19, 2020, and ends at the end of December 17, 2020.

* * * * *

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

RIN 3064–AF19

Incorporation of Existing Statement of Policy Regarding Requests for Participation in the Affairs of an Insured Depository Institution by Convicted Individuals

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: Section 19 of the Federal Deposit Insurance Act requires persons convicted of certain criminal offenses to obtain prior written consent before participating in the conduct of the affairs of any depository institution. The Federal Deposit Insurance Corporation (FDIC) is revising its existing regulations relating to section 19 to revise the FDIC's procedures and standards relating to applications for the FDIC's written consent, and to incorporate and revise the FDIC's existing Statement of Policy for Section 19 of the Federal Deposit Insurance Act (SOP). Incorporating the SOP into the FDIC's regulations will make application of the SOP more transparent, increase certainty concerning the FDIC's application process, afford regulatory relief, and help both insured depository institutions and affected individuals to understand the impact of section 19 and to potentially seek relief from it. The FDIC's existing SOP will be rescinded on the date this final rule (rule) becomes effective.

DATES: This rule is effective September 21, 2020.

FOR FURTHER INFORMATION CONTACT: Timothy Schuett, Review Examiner (763) 614–9473; Brian Zeller, Review Examiner (571) 345–8170; or Larisa Collado, Section Chief (202) 898–8509, *lcollado@fdic.gov,* in the Division of Risk Management Supervision; or Graham Rehrig, Senior Attorney, (202) 898–3829; John Dorsey, Acting Supervisory Counsel, (202) 898–3807; Anne DeSimone, Deputy Regional Counsel, (781) 794–5541; or Andrea Winkler, Acting Assistant General Counsel, (202) 898–3727, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the rule is to clarify how the FDIC interprets and applies section 19 of the Federal Deposit Insurance Act (section 19),[1] clarify the application process for insured depository institutions and individuals who seek relief from section 19, and expand the scope of relief available for certain offenses. The FDIC SOP provides the public with guidance relating to section 19 and the FDIC's application of this statute. The current SOP, with modifications over time, has been published and a resource for the public for over twenty years. However, the terms and procedures outlined in the SOP have not been adopted as formal regulations by the FDIC. To remove potential ambiguities about the FDIC's approach to section 19 or the application process, the rule incorporates much of the current SOP, while adopting certain changes suggested by commenters.

II. Background and Public Comments

Section 19 prohibits, without the prior written consent of the FDIC, the participation in banking by any person who has been convicted of a crime of dishonesty or breach of trust or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense. Further, this law forbids an insured depository institution (IDI) from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. Section 19 also imposes a ten-year ban for a person convicted of certain crimes enumerated in Title 18 of the United States Code, which can be removed only upon a motion by the FDIC and approval by the sentencing court.

On December 16, 2019, the FDIC published a notice of proposed rulemaking (proposal) to incorporate the SOP into the FDIC's existing Procedure and Rules of Practice.[2] In the proposal, the FDIC provided a history of the SOP from its issuance in December 1998, through clarifications in 2007 and 2011, modification in 2012, and through its most-recent revision in August 2018.[3] The FDIC proposed to incorporate the current provisions of the SOP into its rules and procedures in order to provide greater transparency into the FDIC's interpretation and application of section 19, to provide greater certainty concerning the FDIC's application process, and to aid both IDIs and individuals who may be affected by section 19 to understand its impact and potentially seek relief from its provisions. The FDIC proposed to rescind such sections of 12 CFR 308, subpart M, that would be duplicative of the changes proposed for part 303, subpart L, and to revise the remaining sections to ensure conformity for any request for a hearing when an application under section 19 has been denied.

The FDIC, in the proposal, requested comments on all aspects of its approach to section 19. The FDIC also requested comments, in particular, on the following topics:

[1] 12 U.S.C. 1829.

[2] *See* 84 FR 68353.

[3] *See* 84 FR 68353–54.

• The *de minimis* criteria for offenses that represent low risk to the Deposit Insurance Fund;
• expansion of the *de minimis* category for use of fake identification;
• modification of the five-year post-conviction cooling-off period for certain offenses; and
• the application of section 19 to expungements.

The comment period closed on March 16, 2020. The FDIC received multiple comments from nine different commenters, consisting of three policy institutes, a reentry employment provider, a depository institution trade group, two financial institutions, an advocacy group on behalf of 28 additional organizations, and an individual. All of the comments generally supported the proposal. The comment received from the individual did not offer specific changes to the proposal, but the other eight commenters suggested a variety of changes. The comments and the FDIC's responses are discussed below in Sections III and IV.

III. Description and Expected Effects of the Rule

The rule addresses, among other topics, who is covered by section 19, the types of offenses covered by section 19, the effect of the completion of sentencing or pretrial-diversion program requirements in the context of section 19, and the FDIC's procedures for reviewing applications filed under section 19. The rule makes several significant changes to the SOP, partly in response to the public comments. These revisions include the following:

• *Expungements.* The rule excludes all covered offenses that have been expunged or sealed by a court of competent jurisdiction or by operation of law.

• De minimis *offenses* (offenses for which a person will be deemed automatically approved and no application will be required). Increases the small-dollar theft threshold to $1,000. Expands the *de minimis* exception to include the use of a fake or false identification by a person under the age of 21 to circumvent age based restrictions on purchases, activities, or entry (not just alcohol-related purposes). Allows for two covered *de minimis* offenses on a person's criminal record to still qualify for the *de minimis* exception. (Note, no offense committed against an IDI or insured credit union can qualify as ''*de minimis.*'') If an individual has two covered offenses on their record, the rule decreases the amount of time that must elapse, following the date of conviction or entry into a pre-trial diversion program, before the covered offenses may be deemed *de minimis.*[4] The rule also eliminates this waiting period when there is only one covered, *de minimis* offense on a person's record.

• Application procedures. Clarifies when and how an application must be filed, the application types available, and how the FDIC will evaluate an application. In addition, the rule addresses denials of applications.

Specifically, the rule does the following:

A. Revised Provisions of 12 CFR Part 303, Subpart L

1. Section 303.220 What is section 19 of the FDI Act?

This section combines portions of the ''scope'' section in the existing 12 CFR 303.220 and the introduction part of the SOP. Paragraph (a) reflects the scope provisions. Paragraph (b) sets out the application of section 19 to insured depository institutions, including the conditional offers of employment that FDIC-supervised institutions may make. The substance of this paragraph comes from the SOP. Paragraph (c) also comes from the SOP and addresses the need for an application.

2. Section 303.221 Who is covered by section 19?

This section describes who is covered by section 19 and comes mainly from the existing SOP. Paragraph (a) defines ''institution-affiliated parties'' and others who may fall within section 19. Paragraph (b) defines the term ''person'' under section 19 as an individual, not a legal entity. Paragraph (c) concerns individuals who file an application with the FDIC under section 19 and who also seek to participate in the affairs of a bank or savings and loan holding company, noting that such individuals may have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1829(d) and (e). Paragraph (d) defines when ''ownership'' or ''control'' results in the application of section 19 to an individual or individuals who may be deemed in control of, or be deemed to be an owner of, an IDI.

3. Section 303.222 What offenses are covered under section 19?

This section addresses covered criminal offenses under section 19. It comes mainly from the SOP. Paragraph (a) notes that section 19 applies to any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for any such offense. This paragraph also describes the restrictions that section 19 places upon such individuals. Paragraph (b) requires that, to determine whether the criminal offense is one of dishonesty, breach of trust, or money laundering, the FDIC will look to the statutory elements of the criminal offense or to court decisions in the relevant jurisdiction.

Paragraph (c) requires an application for all drug offenses, except for simple possession, unless the criminal offense meets the criteria in § 303.227 for not filing an application. The FDIC has declined to adopt a commenter's proposal that the FDIC eliminate all drug-related convictions from being considered covered offenses under section 19, or significantly narrow the scope of covered drug offenses. The FDIC maintains that an application is required for it to determine the nature of the offense and elements of the crime and therefore it will continue the current requirement that an application be filed, unless the offense is *de minimis.*

4. Section 303.223 What constitutes a conviction under section 19?

This section comes mainly from the SOP, but clarifies the status of convictions reversed on appeal and expands and simplifies the exclusion for expungements. The current SOP notes that a conviction or program entry that has been completely expunged is not subject to section 19 and does not require an application. For the expungement to be considered ''complete'' under the current SOP, the jurisdiction granting the expungement must not allow the conviction or program entry to be used for any subsequent purpose, including but not limited to an evaluation of a person's fitness or character. This constraint has been a source of confusion for the industry and individual applicants, and the FDIC has twice undertaken to clarify this term in prior SOP revisions. The public comments to the NPR make it clear that the confusion remains.

Paragraph (a) states that there must have been a conviction of record for section 19 to apply, and that section 19 does not apply to arrests, pending cases not brought to trial (unless the person has a program entry as set out in § 303.224), or any conviction reversed on appeal unless the reversal was for the purpose of re-sentencing. This revised

[4] The FDIC notes that, during the *de minimis* waiting period, individuals retain the option of filing an application for consideration by the FDIC.

language is in response to one commenter's request that the FDIC clarify its position on appellate decisions as they pertain to the scope of section 19. The FDIC notes, however, that covered offenses that have been *pardoned*—and which are not otherwise excluded by the SOP—will still require an application.

Paragraph (b) clarifies that, absent a program entry, when an individual is *charged* with a covered offense but is subsequently *convicted* of an offense that is not a covered offense, that conviction is not subject to section 19.

Paragraph (c) excludes covered offenses that have been expunged or sealed by a court of competent jurisdiction or by operation of law. Six commenters asked that the FDIC significantly revise its policy on the expungement of criminal records, including proposals to eliminate the requirement of complete expungement. To support this view, commenters highlighted the variance in expungement practices between jurisdictions and the significant ambiguity for applicants and banks that are tasked with interpreting unfamiliar state law. In fact, only a few states and jurisdictions have expungement processes that result in a ''complete expungement'' under the standards set forth in the current SOP. After considering these comments, the FDIC has agreed to expand the scope of the SOP's expungement language. The FDIC believes that these revisions will reduce regulatory burden upon banks and potential applicants by decreasing the number of required applications and reducing the time spent interpreting the expungement laws of various jurisdictions.

Paragraph (d) excludes ''youthful offender'' judgments for minors from the scope of section 19.

5. Section 303.224 What constitutes a pretrial diversion or similar program under section 19?

This section comes mainly from the SOP. Paragraph (a) defines what constitutes a pretrial diversion or similar program (a program entry), and excludes program entries that occurred prior to November 29, 1990.

Paragraph (b) clarifies that when a covered offense either is reduced by a program entry to an offense that would otherwise not be covered by section 19 or is dismissed upon successful completion of a program entry, the offense remains a covered offense for purposes of section 19. The covered offense will require an application unless it is *de minimis* as provided by § 303.227.

Paragraph (c) states that expungements or sealings of program entry records will be treated the same as expungements or sealings of convictions.

6. Section 303.225 What are the types of applications that can be filed?

This section is a combination of the existing §§ 303.221 and 308.158 and the SOP. Paragraph (a) establishes the institution-filing requirement (bank-sponsored applications). Paragraph (b) establishes the procedure to apply when an IDI will not file an application for an individual (individual waiver applications).

7. Section 303.226 When is an application to be filed?

This section states when an application is to be filed, excepting from its requirement those covered offenses which are considered *de minimis* under subpart L. An application will not be considered by the FDIC until all sentencing requirements associated with a conviction have been met or all requirements of the program entry have been completed.

8. Section 303.227 When is an application not required for a covered conviction or program entry (*de minimis* offenses)?

This section comes mainly from the SOP but has been expanded. Under the current SOP, certain minor offenses are deemed to present low risk to insured institutions. Currently, an individual's covered offense may be considered *de minim*is only when there is one conviction or program entry, and the conviction or program entry occurred at least five years before the date on which an application would be required. For applicants whose underlying misconduct occurred when they were 21 years of age or younger, the waiting period is reduced to 30 months. Certain individuals may also be required to complete all sentencing or program requirements before qualifying for the *de minimis* exception.

Eight commenters supported the expansion of the *de minimis* exception to filing as it currently exists, and seven of the commenters provided specific proposals for the expansion, clarification, or modification, of this exception. Three commenters proposed that the FDIC reduce the waiting period to qualify under the *de minimis* framework. Three commenters also proposed that the FDIC increase the simple-theft threshold to $1,000 to align with the ''bad-check'' or insufficient-funds threshold under the *de minimis* framework. Moreover, three commenters proposed that the FDIC include additional minor crimes under the *de minimis* exception, regardless of the maximum punishment for those crimes.

Paragraph (a) establishes the general criteria for convictions or program entries to be considered *de minimis,* if the criteria are met. If the *de minimis* conditions are satisfied, the person is deemed automatically approved and no application will be required. The general criteria have been expanded, in response to comments, in two significant ways: (1) An individual with two convictions or program entries for covered offenses may be eligible for the *de minimis* exception, provided the other criteria are satisfied with respect to both convictions or program entries; and (2) the five-year waiting period has been eliminated when the individual has only one *de minimis* offense, and the waiting period has been reduced to three years when the individual has two *de minimis* offenses (or 18 months if the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger).

The FDIC continues to process a number of applications from individuals who are low risk, and these applications are generally approved. FDIC review of these applications revealed that many include multiple convictions or program entries for minor offenses, or convictions or program entries that occurred less than 5 years (or 30 months) ago. Because these applications are considered low risk and are generally approved, the FDIC is expanding the *de minimis* criteria to include individuals with up to two convictions or program entries, each of which offenses would, by themselves, qualify under the *de minimis* exception.

Paragraph (b) establishes certain other specific exceptions to the filing requirement, which exceptions, if met, will result in a potential application being deemed automatically approved. Partly in response to the comments, the FDIC has made substantive changes to paragraphs (b)(1), (3), and (4). Paragraph (b)(1) shortens the 30-month waiting period under the general criteria to 18 months when all the elements of the offense(s) occurred when the person was age 21 or younger. Paragraph (b)(2) establishes the criteria for when certain convictions or program entries for bad or insufficient-funds checks will not require an application. Paragraph (b)(3) establishes the criteria for when certain small-dollar simple theft convictions or program entries of $1,000 or less will not require an application. The small-dollar, simple theft *de minimis* criteria was added to the SOP by the FDIC

Board in July 2018. The FDIC continues to process section 19 applications for convictions or program entries involving small-dollar, simple theft. These covered offenses are relatively low-risk and generally result in approval of an application following a reasonable period of rehabilitation. The rule increases the dollar limit to $1,000—from the current $500—based on some commenters' suggestions to better align this threshold with the limit for ''bad'' or insufficient funds check(s), and to reduce the number of low-risk applications that have historically been approved. Excluded from this exception to filing are convictions or program entries for burglary, forgery, identity theft, and fraud. Paragraph (b)(4) establishes the criteria for when the creation or possession of a fake or false identification by a person under the age of 21, or the use of a fake or false identification by a person to circumvent age-based restrictions on purchases, activities, or entry will not require an application. This exception was expanded beyond the use of a fake or false identification to purchase alcohol or to enter a premises where alcohol is served. The FDIC believes that this provision can be expanded to provide additional regulatory relief without significantly increasing risk to the financial system.

Paragraph (c) requires that, for any case where the person is able to avail themselves of the *de minimis* exception to filing, she or he must disclose the conviction(s) or program entry(ies) to an IDI and must qualify for a fidelity bond to the same extent as others in a similar position.

Paragraph (d) states that any conviction or program entry for criminal offenses under Title 18 of the U.S. Code, as set out in 12 U.S.C. 1829(a)(2), cannot qualify under the *de minimis* exception to filing an application.

9. Section 303.228 How To File an Application

This section comes from the SOP and requires that an IDI is required to file an application on behalf of an individual under section 19 to participate in its affairs unless the FDIC grants the individual a waiver for good cause shown to file on her or his own behalf. IDIs should file with the FDIC's regional office where the institution's home office is located, and any individual waiver and application should be filed with the FDIC's regional office where the person lives.

10. Section 303.229 How an Application is Evaluated

This section comes from a combination of § 308.157 and the SOP. Paragraph (a) sets out the ultimate determination the FDIC will make as to the level of risk the applicant poses to an IDI and whether it will consent to allow the person to participate in an IDI's affairs. In evaluating the risk posed by the person's participation, the FDIC has established nine factors that it will consider, including other factors that might be relevant to a particular application. Paragraph (b) states that the question of whether a person was guilty of the offense for which the person was convicted, or had a program entry for, is not an issue for part 303, subpart L or for part 308, subpart M. Paragraph (c) states that the FDIC will apply the factors and determination used in paragraph (a) when evaluating an application that is made to terminate the ten-year ban under 12 U.S.C. 1829(a)(2). Paragraph (d) provides that a person must be bonded the same as others in that position, and the person must disclose the covered conviction or program entry to any IDI in which she or he intends to participate.

Paragraphs (e) and (f) pertain to bank-sponsored applications. Paragraph (e) provides that FDIC approval to work pertains to a specific job at a specific IDI. The IDI may be required to seek permission from the FDIC before there may be a significant change in a person's duties or responsibilities, and the FDIC regional director may request a new application. Paragraph (f) states that approval to work at a specific IDI is limited to that institution—or to a successor institution (for instance, as a result of the IDI's merger with or acquisition by another IDI)—and a new application is required to work at another IDI.

11. Section 303.230 What will the FDIC do if the application is denied?

This section is a combination of current §§ 303.223, 308.157, and 308.159. Paragraph (a) provides that the FDIC will provide a written denial of an application, which will summarize or cite the relevant factors from § 303.229. Paragraph (b) provides that the applicant can file a written request for a hearing under part 308, subpart M within 60 days of the denial.

12. Section 303.231 Waiting Time for a Subsequent Application if an Application is Denied

This section comes mainly from § 308.158 and was clarified so that an applicant will need to wait one year from the date of the denial or decision of the FDIC Board or its designee.

B. Revised Provisions of 12 CFR Part 308, Subpart M

1. Section 308.156 Scope

This section has been revised to reflect its application to denials that are issued under 12 CFR part 303, subpart L.

2. Section 308.157 Relevant Considerations

This section will be rescinded.

3. Section 308.158 Filing Papers and Effective Date

This section will be rescinded.

4. Section 308.159 Denial of Application

This section has been revised to reflect the outcome of the application process in part 303, subpart L and to clarify the procedure by which a hearing may be requested. It will be renumbered as § 308.157.

5. Section 308.160 Hearings

This section will remain as it currently exists, but will be renumbered as § 308.158.

After renumbering, §§ 308.159 and 309.160 will be reserved.

C. Expected Effects

The changes adopted will provide immediate relief to IDIs, as well as to individuals who represent a low risk to the Deposit Insurance Fund and who would otherwise be required under section 19 to file waiver applications, if they wish to be employed by an IDI. Moreover, these applications would very likely be approved under existing practices. Based on the FDIC's analysis of applications submitted between January 1, 2017, through April 30, 2020, the changes would not have altered the outcome of any applications that were controversial or ultimately denied.

Overall, the FDIC expects the rule to have relatively small effects, in the aggregate, on the public and insured institutions. The FDIC currently insures 5,186 depository institutions, which could be affected by the rule.[5] Additionally, as discussed previously, the rule will apply to certain persons covered by the provisions of section 19 who are or wish to become employees, officers, directors or shareholders of an IDI. In the period from 2014 through 2019, the FDIC received 69 bank-sponsored section 19 applications, an average of about 12 per year. Additionally, the FDIC received 654

[5] FDIC Call Report Data, December 31, 2019.

individual section 19 applications during the same period, an average of 109 per year.[6] Therefore, the FDIC estimates that the rule would affect at least 12 FDIC-insured depository institutions, and 109 individuals per year. The FDIC acknowledges that these estimates do not fully capture the full effect of the rule; most notably, the estimates do not take into account any individuals or institutions who choose not to apply rather than go through the application process.

One commenter made this point, suggesting that the FDIC is likely underestimating the number of ex-offenders affected by the rule. Specifically, this commenter suggested that the number of section 19 applications received does not take into account the number of individuals or institutions who choose not to apply because of the complexity of the application process. The FDIC agrees that this is one reason the estimates chosen do not fully reflect the impact of the rule.

As described previously, the rule incorporates and revises the current content of the SOP into the FDIC's regulations. The FDIC believes the codification is unlikely to have substantive effects on most covered entities and individuals. The FDIC already considers individuals who have been convicted of a crime of dishonesty, breach of trust, or money laundering, who participate in the affairs of an IDI without the prior written consent of the FDIC, to be subject to section 19, and will continue to do after the SOP becomes codified.

To the extent that the revised consideration of expungements, reduction in waiting periods, increase in the threshold for certain small-dollar simple-theft convictions, or other items provide relief to certain institutions or individuals, the FDIC believes that such effects are likely to be relatively small. As discussed previously, some of these changes are being adopted to establish better alignment with other regulatory limits or more-consistent treatment of individuals. Other revisions are intended to reduce regulatory burden on individuals and IDIs by decreasing the number of applications that would otherwise be required under section 19. The FDIC believes that such changes more accurately reflect the risk of dishonesty and breach of trust posed by the potential employment of certain individuals to institutions. As noted earlier, the FDIC has received on average about 109 section 19 applications per year since 2014, relative to a population of insured institutions of over 5,000, suggesting that the effects of the rule are likely to be relatively small.

In short, the rule will benefit covered entities and individuals by further clarifying the FDIC's interpretation of section 19 and the application process, expanding regulatory relief, and reducing the number of applications required under section 19.

IV. Alternatives Considered

The FDIC considered the other proposals that were submitted by the commenters but believes that the final amendments represent the most appropriate option for covered entities and individuals.

A. Application Process

Two commenters requested that the FDIC reduce the section 19 application burden. One commenter provided this recommendation without specifying the proposed changes. The other commenter asked that the FDIC continually streamline and simplify the application process and not require court documentation from an applicant because the FDIC already has access to criminal ''rap sheets.'' The FDIC notes that it has periodically revised the SOP over the past several decades, and it anticipates that it will revise its section 19 regulations, as needed, in the future. The FDIC revises its application instructions as warranted to improve clarity—such as by noting that bank-sponsored applications and individual-waiver applications are distinct application processes, rather than a two-step process—but a regulation is not the appropriate method to amend the application form. The FDIC declines to adopt the proposal concerning court records. Rap sheets generally do not contain the level of detail needed to adequately assess the circumstances surrounding a crime and sentencing, especially with regard to pretrial diversions. Moreover, the court documentation is used to confirm the information provided by the applicant.

Two commenters made recommendations concerning the FDIC's approval rate of section 19 applications. The two commenters asked that the FDIC simplify the application process to encourage a higher number of applicants, and one commenter asked that the FDIC commit to significantly increasing its application approval-rate. The FDIC does clarify aspects of the application instructions, as noted above. The FDIC anticipates that the expansion of the *de minimis* framework and the exclusion of all expungements and sealed-records orders from the scope of section 19 will reduce the number of applications required. The FDIC, however, declines to commit to an increase in approval rates, since doing so would be arbitrary, and applications are reviewed on a case-by-case basis.

One commenter asked that the FDIC relax approval conditions for bank-sponsored applications. The FDIC declines to adopt this proposal, because the approval conditions are meant to address the specific position being sought at a particular IDI.

One commenter proposed that the FDIC not require the repayment of fees or fines before the submission of an application. The FDIC declines to adopt this proposal in full. Rehabilitation is a significant factor that is evaluated during the application process, and completion of all sentencing requirements is an integral part of rehabilitation. As such, the case must be considered final by the procedures of the applicable jurisdiction. The FDIC notes, however, that an individual is *not* required to have completed all sentencing requirements in order to qualify for the *de minimis* exceptions pertaining to convictions or program entries for (i) ''bad'' or insufficient funds checks, and (ii) the creation, possession, or use of a fake, false, or altered identification to circumvent age-based restrictions.

One commenter asked that the FDIC delegate more authority to process section 19 applications to FDIC regional offices. The FDIC believes that the current delegations are appropriate and provide more consistency and uniformity in decision-making. Moreover, the FDIC anticipates that the expansion of the *de minimis* framework will result in more decision-making at the regional-office level, as regional office staff typically respond to inquiries as to whether the *de minimis* exception applies to particular offenses.

Two commenters requested that the FDIC commit to reducing application-processing times by certain amounts. In response, the FDIC notes that while the agency tries to process applications quickly, the establishment of such a timeline would be an internal-processing matter and would not fall within the purpose or intent of the rule. Moreover, application processing is dependent upon receipt of background investigation materials from other agencies, whose timeframes for action the FDIC does not control.

One commenter made several proposals concerning an applicant's rehabilitation, requesting that the FDIC do the following: provide a checklist of rehabilitation factors, assess rehabilitation relative to the position

[6] Application Tracking System.

sought by the applicant, set maximum limits on rehabilitation time, and relax rehabilitation standards. The FDIC may provide additional information in the application instructions and in the publication *Your Complete Guide to Section 19,* but the rule is not the appropriate forum to provide this information. The FDIC declines to adopt the other proposals. For bank-sponsored applications, the FDIC already considers rehabilitation relative to the position sought by the applicant. However, individual waivers allow a person to work in any position, so this proposal is not feasible for such applications. Rehabilitation, in the context of individual waivers, is not assessed relative to any potential position but rather to the nature of the covered offense. The FDIC does not adopt the proposal concerning setting maximum limits on rehabilitation time because the agency believes that such limits would be arbitrary. Nor does the FDIC adopt the proposal concerning the relaxation of rehabilitation standards. Rehabilitation in relation to the nature of the offense is one of the standards that is assessed when the FDIC processes applications, and the *de minimis* exception, as amended, provides sufficient flexibility.

Three commenters made proposals concerning transparency, asking that the FDIC improve its web resources, issue written denials (rather than ask an applicant to withdraw an application), and publicize more application data. The FDIC believes that its website, *www.fdic.gov,* specifically the brochure *Your Complete Guide to Section 19,* available at *https://www.fdic.gov/regulations/applications/resources/brochure-section-19.pdf,* provides sufficient and convenient resources in a single location. The FDIC also notes that a regulation is not the appropriate mechanism to apply such a requirement on the FDIC. As for the request concerning written denials, the FDIC cannot issue a denial if an individual chooses not to proceed with an application. The FDIC already publishes the orders for approvals and denials of section 19 applications on its website—specifically, on the FDIC Enforcement Decisions and Orders page (*https://orders.fdic.gov/s/searchform*), which is searchable—and aggregates numbers of all section 19 applications processed in its annual report. A regulation is not the appropriate method to apply such a requirement on the FDIC.

B. Bank Hiring Practices

Four commenters suggested that the FDIC revise policies concerning bank hiring practices. Two commenters asked that the FDIC clarify that banks are allowed to delay inquiry into an applicant's criminal history until after a job offer is extended. The FDIC notes that this approach is already stated as permissible in the SOP for *FDIC-supervised* banks. To the extent that the commenters request that the FDIC *direct* IDIs to follow this practice, the FDIC declines to make this change for several reasons. First, the FDIC does not have primary supervisory authority over IDIs that are subject to the supervisory authority of other Federal banking agencies (FBAs). Therefore, it is within the supervisory authority of the other FBAs to determine what is satisfactory to them in reviewing which policies and procedures their respective institutions adopt to ensure compliance with section 19. Second, the FDIC's authority under section 19 focuses on the review needed to provide consent to remove the bar imposed by section 19 and allow an individual to participate in the affairs of an IDI. It does not grant the FDIC rulemaking authority to impose conditions or requirements on an IDI other than to note that the IDI faces a criminal penalty for acting in violation of the statute.

Two commenters asked that the FDIC clarify what constitutes a ''reasonable inquiry'' for a bank background check. The FDIC declines to adopt this proposal. The procedures that constitute a reasonable inquiry will vary from bank to bank, and the FDIC believes that this determination is best left to the business judgments of these institutions.

C. Coverage of Section 19

Five commenters requested that the FDIC change its interpretation of the coverage of section 19. One commenter asked that the SOP note that Federal law preempts state and local law concerning section 19. The FDIC believes that it is inappropriate to include such a statement in this regulation but notes that section 19 applies to all IDIs, as defined under Title 12 of the U.S. Code.

One commenter asked that the FDIC further clarify whether independent contractors and other individuals are considered institution-affiliated parties (IAPs), for section 19 purposes. The FDIC believes that additional clarification is unnecessary because the FDIC's revised section 19 regulations, 12 U.S.C. 1813(u) and its related caselaw, as well as other statutory and regulatory provisions, provide ample clarification as to who qualifies as an IAP under Title 12 of the U.S. Code.

Two commenters asked that the FDIC recommend changes to section 19 to Congress. This request is outside the scope of this rulemaking.

Four commenters requested that the FDIC establish a time limit on covered offenses, whereby offenses would be ''washed out,'' for section 19 purposes, after a certain period of time has passed. The FDIC notes that certain covered offenses—such as money laundering—have a mandatory 10-year prohibition period, absent court approval, under 12 U.S.C. 1829(a)(2). Therefore, the FDIC could not grant a section 19 waiver for an applicant convicted under a crime listed in section 1829(a)(2) without Congress amending section 19. For covered offenses that are not specifically listed under section 1829(a)(2), the FDIC declines to provide a blanket washout rule. Section 19 has no maximum time limit for how long an individual is prohibited from participation at an IDI. Congress would have to change section 19 for the FDIC to implement such a proposal. However, the FDIC notes that the expanded *de minimis* framework provides significant regulatory relief.

D. Covered Offenses

One commenter requested that the FDIC narrow the definition of ''pretrial diversion'' in the SOP. The FDIC declines to adopt this proposal and believes that the existing SOP language adequately and fairly describes pretrial diversion program entries.

Two commenters proposed that the FDIC reduce the type of offenses covered by the SOP. The FDIC declines to adopt these proposals. The types of offenses covered by section 19 are broadly defined in the statute as those involving dishonesty, breach of trust, or money laundering. The FDIC determines whether certain crimes involve such elements under section 19 when the FDIC processes applications. A change to the text of section 19 would require legislation. Moreover, the regulation will codify certain minor crimes as *de minimis,* which will exclude such crimes from requiring an application.

E. De minimis Exception

Two commenters asked that the time actually served in jail component of the *de minimis* exception be amended to exclude instances where the applicant only served pretrial detention. The FDIC declines to adopt this proposal because pretrial detention is typically incorporated into the ultimate sentence as time served.

One commenter proposed that the maximum time served be increased to three years, and that other restrictions on the freedom of movement (such as probation), be excluded from being considered actual time served. The FDIC notes that the ''time served'' factor does

not apply to individuals on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location. The FDIC further notes that the ''time served'' factor does not apply to individuals who are restricted to a substance abuse treatment program facility for part or all of the day. The ''time served'' factor applies to individuals confined to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental-competency grounds, but not to individuals ordered to attend outpatient psychiatric treatment. The FDIC declines to further expand the time-served component, because the FDIC believes that this proposal is too expansive.

Two commenters asked that the FDIC expand the *de minimis* exception for offenses committed by persons aged 21 or younger. One proposal called for the elimination of the maximum-punishment factor. The FDIC declines to expand the *de minimis* framework beyond the significant revisions outlined in Section III, which revisions pertain, in part, to offenses committed by persons 21 years of age or younger.

One commenter asked that the FDIC exclude entirely from consideration all offenses that occurred before a certain, relatively young age. The FDIC believes that this request is too expansive and declines to adopt the proposal.

Three commenters recommended that the FDIC increase the actual jail-time-served factor. The FDIC declines to further expand the *de minimis* framework beyond the significant revisions outlined in Section III.

One commenter suggested that the FDIC increase the ''bad'' or insufficient funds check(s) threshold from $1,000 to $2,500. The FDIC declines to expand the *de minimis* framework as proposed, because the FDIC considers the current threshold appropriate.

One commenter asked that the FDIC expand the maximum potential incarceration period for a covered offense from one year to three years, under the *de minimis* framework. The FDIC declines to further expand the *de minimis* exception beyond the significant revisions outlined in Section III and believes that the current threshold is appropriate.

F. Status Quo, or Issuing the Rule as Originally Proposed

The FDIC also considered the status quo alternative of retaining the existing section 19 SOP and regulations, as well as issuing the rule as originally proposed.[7] The FDIC, however, believes that the rule further clarifies the FDIC's application of section 19 and the application process for IDIs and individuals who seek relief from its provisions, while posing no substantive costs, relative to the status quo alternative. Additionally, the FDIC believes that the changes adopted more accurately reflect the risk of dishonesty, breach of trust, and money laundering posed by the potential employment of certain individuals to institutions. None of the commenters advocated for the status quo alternative. Moreover, the revisions made between the proposal and the final rule should result in significant regulatory relief for IDIs and individuals.

V. Regulatory Analysis

The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),[8] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The rule includes clarification of reporting requirements in an existing FDIC information collection entitled *Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (3064–0018) that should result in a decrease in the number of applications filed. However, the FDIC does not currently have access to data that would enable it to accurately estimate what the actual decrease may be. As such, the FDIC does not believe that a change to the number of respondents or the PRA burden in its existing information collection is necessary at this time. The FDIC will continue to monitor the number of applications received going forward, and will incorporate any changes in future submissions, including the next information-collection renewal. Therefore, no information collection request will be submitted to the OMB for review.

The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a rule on small entities.[9] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[10] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. As discussed further below, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of FDIC-supervised small entities.

The FDIC insures 5,186 depository institutions, of which 3,815 are defined as small banking organizations according to the RFA.[11] In the period from 2014 through 2019, the FDIC received 33 bank-sponsored section 19 applications from small, FDIC-insured institutions, an average of about 6 per year. Additionally, the FDIC received 654 section 19 applications from individuals during the same period, an average of 109 per year.[12] To determine the maximum number of small, FDIC-supervised institutions who could be affected by the rule, this analysis assumes that each applicant is seeking employment at a different bank; each bank is a small, FDIC-insured institution; and no FDIC-insured institutions or individuals are affected except those who have submitted section 19 applications. Based on these assumptions, 115 (3.0 percent of) small, FDIC-insured institutions on average, annually, would be affected by the rule.[13] However, in the FDIC's experience, section 19 applications from individuals are compelled by the applicant's intent to seek employment at

[7] 12 CFR part 303, subpart L and 12 CFR part 308, subpart M.

[8] 44 U.S.C. 3501 *et seq.*

[9] 5 U.S.C. 601 *et seq.*

[10] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261 (July 18, 2019), effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[11] FDIC Call Report, December 31, 2019.

[12] Application Tracking System.

[13] (115/3,815) * 100 = 3.01 percent.

FDIC-insured institutions that are generally not small. Therefore, the FDIC believes that the number of small, FDIC-insured institutions affected by the rule could be less than 115.

As described previously, the rule incorporates and revises the current content of the SOP into the FDIC's regulations. The FDIC considers individuals who have been convicted of a crime of dishonesty, breach of trust, or money laundering, who participate in the affairs of an IDI without the prior written consent of the FDIC, to be subject to section 19, and will continue to do so under the rule. The rule will, however, expand the scope of the *de minimis* exception and, therefore, expand the number of offenses that will not require an application under section 19. Both of these changes will likely result in a reduction in section 19 applications.

To the extent that the current content of the SOP conveys any ambiguity as to the FDIC's application of section 19 or the application process, the rule will benefit covered entities by further clarifying this topic and process. Based on the FDIC's estimate, mentioned earlier, that the rule could affect about 3 percent of small FDIC-insured institutions per year, such effects are likely to be relatively small.

To the extent that the revised consideration of expungements, reduction in waiting periods, increases in certain small-dollar simple-theft convictions, or other items provide relief to certain small institutions or individuals, the FDIC believes that such effects are likely to be relatively small. As discussed previously, some of these changes are being adopted to establish better alignment with other regulatory limits or more-consistent treatment of individuals. Other revisions are intended to reduce regulatory burden on individuals and IDIs by decreasing the number of applications that would otherwise be required under section 19. The FDIC believes that such changes more accurately reflect the risk of dishonesty and breach of trust posed by the potential employment of certain individuals to small institutions. Again, based on the FDIC's estimate, mentioned earlier, that the rule could affect about 3 percent of small FDIC-insured institutions per year, such effects are likely to be relatively small.

Based on the information above, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act [14] requires each FBA to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the rule in a simple and straightforward manner. The FDIC did not receive any comments on the use of plain language.

Riegle Community Development and Regulatory Improvement Act of 1994

Under section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[15] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each FBA must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[16]

The FDIC has determined that the final rule would not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply. Therefore, in conjunction with the RCDRIA, the rule will be effective on September 21, 2020.

The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[17] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[18]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (A) An annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[19]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act, and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 303

Administrative practice and procedure.

12 CFR Part 308

Rules of practice and procedure.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 1819 (Seventh and Tenth), the FDIC amends 12 CFR parts 303 and 308 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831*o,* 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415, and 15 U.S.C. 1601–1607.

■ 2. Revise subpart L to read as follows:

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of, or Who Have Program Entries for, Certain Criminal Offenses)

Sec.

303.220 What is section 19 of the FDI Act?
303.221 Who is covered by section 19?
303.222 What offenses are covered under section 19?
303.223 What constitutes a conviction under section 19?
303.224 What constitutes a pretrial diversion or similar program (program entry) under section 19?
303.225 What are the types of applications that can be filed?
303.226 When must an application be filed?
303.227 When is an application not required for a covered offense or program entry (de minimis offenses)?
303.228 How to file an application.
303.229 How an application is evaluated.
303.230 What will the FDIC do if the application is denied?

[14] 12 U.S.C. 4809.

[15] 12 U.S.C. 4802(a).

[16] 12 U.S.C. 4802.

[17] 5 U.S.C. 801 *et seq.*

[18] 5 U.S.C. 801(a)(3).

[19] 5 U.S.C. 804(2).

303.231 Waiting time for a subsequent application if an application is denied.

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of, or Who Have Program Entries for, Certain Criminal Offenses)

§ 303.220 What is section 19 of the FDI Act?

(a) This subpart covers applications under section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829. Under section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense, may not become, or continue as, an institution-affiliated party (IAP) of an insured depository institution (IDI); own or control, directly or indirectly, any IDI; or otherwise participate, directly or indirectly, in the conduct of the affairs of any IDI without the prior written consent of the FDIC.

(b) In addition, the law bars an IDI from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. IDIs should therefore make a reasonable inquiry regarding an applicant's history to ensure that a person who has a conviction or program entry covered by the provisions of section 19 is not hired or permitted to participate in its affairs without the written consent of the FDIC issued under this subpart. FDIC-supervised IDIs may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the institution and to determine if the applicant is barred under section 19, but the job applicant may not work for, be employed by, or otherwise participate in the affairs of the IDI until the IDI has determined that the applicant is not barred under section 19.

(c) If there is a conviction or program entry covered by the bar of section 19, an application under this subpart must be filed seeking the FDIC's consent to become, or to continue as, an IAP; to own or control, directly or indirectly, an IDI; or to otherwise participate, directly or indirectly, in the affairs of the IDI. The application must be filed, and consented to, prior to serving in any of the foregoing capacities unless such application is not required under the subsequent provisions of this subpart. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, a person is fit to participate in the conduct of the affairs of an IDI without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

§ 303.221 Who is covered by section 19?

(a) Section 19 covers IAPs, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an IDI. Therefore, all employees of an IDI that fall within the scope of section 19, including de facto employees, as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to section 19. Whether other persons who are not IAPs are covered depends upon their degree of influence or control over the management or affairs of an IDI. In the context of the FDIC's application of section 19, coverage would apply to an IDI's holding company's directors and officers to the extent that they have the power to define and direct the management or affairs of an IDI. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an IDI or its holding company will be covered if they participate in the affairs of the IDI or are in a position to influence or control the management or affairs of the insured institution. Typically, an independent contractor does not have a relationship with the IDI other than the activity for which the institution has contracted. An independent contractor who influences or controls the management or affairs of the IDI would be covered by section 19.

(b) The term ''person,'' for purposes of section 19, means an individual, and does not include a corporation, firm, or other business entity.

(c) Individuals who file an application with the FDIC under the provisions of section 19 who also seek to participate in the affairs of a bank holding company or savings and loan holding company may have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1829(d) and (e).

(d) Section 19 specifically prohibits a person subject to its provisions from owning or controlling an IDI. The terms ''control'' and ''ownership'' under section 19 shall have the meaning given to the term ''control'' in the Change in Bank Control Act (12 U.S.C. 1817(j)(8)(B)). A person will be deemed to exercise ''control'' if that person has the power to vote 25 percent or more of the voting shares of an IDI (or 10 percent of the voting shares if no other person has more shares) or the ability to direct the management or policies of the institution. Under the same standards, a person will be deemed to ''own'' an IDI if that person owns 25 percent or more of the institution's voting stock, or 10 percent of the voting shares if no other person owns more. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of section 19 will be required to divest their control or ownership of shares above the foregoing limits.

§ 303.222 What offenses are covered under section 19?

(a) The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust, or money laundering. ''Dishonesty'' means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and includes offenses that Federal, state or local laws define as dishonest. ''Breach of trust'' means a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

(b) Whether a crime involves dishonesty, breach of trust, or money laundering will be determined from the statutory elements of the offense itself or from court determinations that the statutory provisions of the offense involve dishonesty, breach of trust, or money laundering.

(c) All convictions or program entries for offenses concerning the illegal manufacture, sale, distribution of, or trafficking in controlled substances shall require an application unless no application is required under this subpart. Convictions or program entries for criminal offenses involving the simple possession of a controlled substance are not covered under section 19.

§ 303.223 What constitutes a conviction under section 19?

(a) *Convictions requiring an application.* There must be a conviction of record. Section 19 does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 303.224. Section 19 does not cover acquittals or any conviction that has been reversed on

appeal, unless the reversal was for the purpose of re-sentencing. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted will require an application.

(b) *Convictions not requiring an application.* When an individual is charged with a covered offense and, in the absence of a program entry as set out in § 303.224, is subsequently convicted of an offense that is not a covered offense, the conviction is not subject to section 19.

(c) *Expungements.* If an order of expungement or an order to seal has been issued in regard to a conviction, or if a record has been otherwise expunged by operation of law, then the conviction shall not be considered a conviction of record and shall not require an application.

(d) *Youthful offenders.* An adjudication by a court against a person as a ''youthful offender'' under any youth-offender law applicable to minors as defined by state law, or any judgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law, does not require an application. Such an adjudication does not constitute a matter covered under section 19 and is not a conviction or program entry for determining the applicability of § 303.227.

§ 303.224 What constitutes a pretrial diversion or similar program (program entry) under section 19?

(a) A program entry is characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement, whether formal or informal, by the accused to treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternatives. Whether the outcome of a case constitutes a program entry is determined by relevant Federal, State, or local law, and, if not so designated under applicable law, then the determination of whether a disposition is a program entry will be made by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by section 19.

(b) When a covered offense either is reduced by a program entry to an offense that would otherwise not be covered by section 19 or is dismissed upon successful completion of a program entry, the covered offense remains a covered offense for purposes of section 19. The covered offense will require an application unless it is *de minimis* as provided by § 303.227 of this subpart.

(c) Expungements or sealings of program entries will be treated the same as those for convictions.

§ 303.225 What are the types of applications that can be filed?

(a) *Institution filing requirement (bank-sponsored applications).* Applications are required to be filed by the IDI, which intends for a person covered by the provisions of section 19 to participate in its affairs. Bank-sponsored applications shall be filed with the appropriate FDIC Regional Office, as required by this subpart.

(b) *Waiver applications.* If an IDI does not file an application regarding an individual, the individual may file a request for a waiver of the institution filing requirement. Such a waiver application shall be filed with the appropriate FDIC Regional Office and shall set forth substantial good cause why the application should be granted.

§ 303.226 When must an application be filed?

Except for situations in which no application is required under this subpart, an application must be filed when there is present a conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or when such person has a program entry regarding that offense. Before an application is considered by the FDIC, all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The FDIC's application forms as well as additional information concerning section 19 can be accessed at the FDIC's regional offices or on the FDIC's website.

§ 303.227 When is an application *not* required for a covered offense or program entry (*de minimis* offenses)?

(a) *In general.* Approval is automatically granted and an application will not be required where all of the following *de minimis* criteria are met.

(1) The individual has been convicted of, or has program entries for, no more than two covered offenses, including those subject to paragraph (b) of this section; and for each covered offense, all of the sentencing requirements associated with the conviction, or conditions imposed by the program entry, have been completed (the sentence- or program-completion requirement does *not* apply under paragraphs (b)(2) and (4) of this section);

(2) Each covered offense was punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and the individual served three days or less of jail time for each covered offense. The FDIC considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified times periods or both. Jail time includes confinement to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental-competency grounds. The definition is *not* intended to include any of the following:

(i) Persons on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location;

(ii) Persons who are restricted to a substance-abuse treatment program facility for part or all of the day; and

(iii) Persons who are ordered to attend outpatient psychiatric treatment;

(3) If there are two convictions or program entries for a covered offense, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, except as provided in paragraph (b)(1) of this section; and

(4) Each covered offense was not committed against an IDI or insured credit union.

(b) *Other types of offenses for which the* de minimis *exception applies and no application is required*—(1) *Age of person at time of covered offense.* If there are two convictions or program entries for a covered offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger, then the *de minimis* criteria in paragraph (a)(3) of this section shall be met if the convictions or program entries were entered at least 18 months prior to the date an application would otherwise be required.

(2) *Convictions or program entries for insufficient funds checks.* Convictions or program entries of record based on the writing of ''bad'' or insufficient funds check(s) shall be considered *de minimis* offenses under this provision if the following conditions apply:

(i) The aggregate total face value of all ''bad'' or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for ''bad'' or

insufficient funds checks is $1,000 or less;

(ii) No IDI or insured credit union was a payee on any of the ''bad'' or insufficient funds checks that were the basis of the conviction(s) or program entry(ies); and

(iii) The individual has no more than one other *de minimis* offense under this section.

(3) *Convictions or program entries for small-dollar, simple theft.* Convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) shall be considered *de minimis* offenses under this provision if the following conditions apply. Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

(i) The value of the currency, goods, or services taken is $1,000 or less;

(ii) The theft was not committed against an IDI or insured credit union;

(iii) The individual has no more than one other *de minimis* offense under this section; and

(iv) If there are two *de minimis* offenses under this section, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, or at least 18 months prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(4) *Convictions or program entries for the use of a fake, false, or altered identification.* A conviction or program entry for the creation or possession of a fake, false, or altered form of identification by a person under the age of 21, or the use of a fake, false, or altered form of identification by such a person to circumvent age-based restrictions on purchases, activities, or premises entry, shall be considered a *de minimis* offense under this provision if the following conditions apply.

(i) The individual has no more than one other *de minimis* offense under this section; and

(ii) If there are two *de minimis* offenses under this section, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required; or at least 18 months prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(c) *Fidelity bond coverage and disclosure to institutions.* Any person who meets the criteria under this section shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which he or she intends to participate.

(d) *Non-qualifying convictions or program entries.* No conviction or program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1829(a)(2) can qualify under any of the *de minimis* exceptions set out in this section.

§ 303.228 How to file an application.

Forms and instructions should be obtained from the FDIC's website (*www.fdic.gov*), and the application must be filed with the appropriate FDIC Regional Director. The application must be filed by an IDI on behalf of a person (bank-sponsored) unless the FDIC grants a waiver of that requirement (individual waiver). Individual waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown. A person may request an individual waiver and file an application on her or his own behalf within the same application. The appropriate Regional Office for a bank-sponsored application is the office covering the state where the IDI's home office is located. The appropriate Regional Office for an individual filing for a waiver of the institution filing requirement is the office covering the state where the person resides. States covered by each FDIC Regional Office can be located on the FDIC's website.

§ 303.229 How an application is evaluated.

(a) The ultimate determinations in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an IDI, and whether the affiliation, ownership, control, or participation by the person in the conduct of the affairs of the institution may constitute a threat to the safety and soundness of the institution or the interests of its depositors or threaten to impair public confidence in the institution. In determining the degree of risk, the FDIC will consider:

(1) Whether the conviction or program entry is for a criminal offense involving dishonesty, breach of trust, or money laundering and the specific nature and circumstances of the offense;

(2) Whether the participation directly or indirectly by the person in any manner in the conduct of the affairs of the IDI constitutes a threat to the safety and soundness of the institution or the interests of its depositors or threatens to impair public confidence in the institution;

(3) Evidence of rehabilitation including the person's age at the time of the covered offense, the amount of time that has elapsed since the occurrence of the conviction or program entry, and the person's employment history and full legal history;

(4) The position to be held or the level of participation by the person at an IDI;

(5) The amount of influence the person will be able to exercise over the operation, management, or affairs of an IDI;

(6) The ability of management of the IDI to supervise and control the person's activities;

(7) The level of ownership or control the person will have at an insured depository institution;

(8) The applicability of the IDI's fidelity bond coverage to the person; and

(9) Any additional factors in the specific case that appear relevant to the application or the applicant including, but not limited to, the opinion or position of the primary Federal or State regulator.

(b) The question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime shall not be at issue in a proceeding under this subpart or under 12 CFR part 308, subpart M.

(c) The foregoing factors will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date under 12 U.S.C. 1829(a)(2) for certain Federal offenses.

(d) All approvals and orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will also be conditioned upon that person disclosing the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which he or she wishes to participate.

(e) When deemed appropriate, bank-sponsored applications are to allow the person to work in a specific job at a specific bank and may also be subject to the additional conditions, including that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties or responsibilities. In the case of bank-sponsored applications, such proposed changes may, in the discretion of the Regional Director, require a new application.

(f) In situations in which an approval has been granted for a person to participate in the affairs of a particular IDI and the person subsequently seeks to participate at another IDI, another application must be submitted and approved by the FDIC prior to the person participating in the affairs of the other IDI.

§ 303.230 What will the FDIC do if the application is denied?

(a) The FDIC will inform the applicant in writing that the application has been denied and summarize or cite the relevant considerations specified in § 303.229 of this subpart.

(b) The denial will also notify the applicant that a written request for a hearing under 12 CFR part 308, subpart M, may be filed with the Executive Secretary within 60 days after the denial. The request for a hearing must include the relief desired, the grounds supporting the request for relief, and any supporting evidence.

§ 303.231 Waiting time for a subsequent application if an application is denied.

An application under section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application under section 19. If the original denial is subject to a request for a hearing, then the subsequent application may be filed at any time more than one year after the decision of the Board of Directors, or its designee, denying the application. The prohibition against participating in the affairs of an IDI under section 19 shall continue until the individual has been granted consent in writing to participate in the affairs of an IDI by the Board of Directors or its designee.

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831*o*, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78*o*(c)(4), 78*o*–4(c), 78*o*–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 4. Revise subpart M to read as follows:

Subpart M—Procedures Applicable to the Request for and Conduct of a Hearing after Denial of an Application Under Section 19 of the FDI Act

Sec.
308.156 Scope.
308.157 Denial of applications.
308.158 Hearings.
308.159–308.160 [Reserved]

Subpart M—Procedures Applicable to the Request for and Conduct of a Hearing after Denial of an Application under Section 19 of the FDI Act

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed under section 19 of the FDI Act, 12 U.S.C. 1829 (section 19), and 12 CFR part 303, subpart L, by an insured depository institution (IDI) or an individual, which individual has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, to seek the prior written consent of the FDIC for the individual to become or continue as an institution-affiliated party (IAP) with respect to an IDI; to own or control directly or indirectly an IDI; or to participate directly or indirectly in any manner in the conduct of the affairs of an IDI; and shall apply only after such application has been denied under part 12 CFR part 303, subpart L.

§ 308.157 Denial of applications.

If an application is denied under 12 CFR part 303, subpart L, then the applicant may request a hearing under this subpart. The applicant will have 60 days after the date of the denial to file a written request with the Executive Secretary. In the request, the applicant shall state the relief desired, the grounds supporting the request for relief, and provide any supporting evidence that the applicant believes is responsive to the grounds for the denial.

§ 308.158 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed under § 308.157. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The burden of going forward with a *prima facie* case shall be upon the FDIC. The ultimate burden of proof shall be upon the person proposing to become or continue as an IAP with respect to an IDI; to own or control directly or indirectly an IDI; or to participate directly or indirectly in any manner in the conduct of the affairs of an IDI.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.6 through 308.12, 308.16, and 308.21 of the Uniform Rules (subpart A of this part) and §§ 308.101, 308.102, and 308.104 through 308.106 the Local Rules (subpart B of this part) shall apply to hearings held under this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this paragraph, the presiding officer shall have the power to administer oaths and affirmations; to take or cause to be taken depositions of unavailable witnesses; and to issue, revoke, quash, or modify subpoenas and subpoenas *duces tecum.* Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules (subpart A of this part).

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20

days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the IDI may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of a hearing. If a hearing is waived, the person shall remain barred under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

§ § 308.159–308.160 [Reserved]

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 24, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–16464 Filed 8–19–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0294; Airspace Docket No. 20–AGL–8]

RIN 2120–AA66

Amendment of Area Navigation (RNAV) Route T–354; Northcentral United States.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Area Navigation (RNAV) route T–354 in the northcentral United States. The modified T-route expands the availability of RNAV routing in support of the FAA's Next Generation Air Transportation System (NextGen) modernization efforts to transition the National Airspace System (NAS) from a ground-based to satellite-based Performance Based Navigation (PBN) system.

The RNAV route T–325 modifications proposed in the notice of proposed rulemaking (NPRM) require additional coordination and flight inspection activities. As such, the T–325 modifications are removed from this rule.

DATES: Effective date 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a NPRM for Docket No. FAA–2020–0294 in the **Federal Register** (85 FR 22047; April 21, 2020), amending RNAV routes T–325 and T–354 to expand the availability of RNAV routing in support of NextGen efforts to transition the NAS from a ground-based to satellite-based PBN system. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2019–1105 in the **Federal Register** (85 FR 38785; June 29, 2020), amending RNAV route T–354 by changing the Siren, WI (RZN), route point listed as a VOR/Distance Measuring Equipment (''VOR/DME'') to ''DME''. That airway amendment, effective September 10, 2020, is included in this rule.

Additionally, subsequent to the NPRM, the FAA determined the RNAV route T–325 modifications proposed in the NPRM require additional coordination and flight inspection activities. As a result, the T–325 modifications are removed from this rule and will be reworked in a separate rulemaking action.

United States 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 RNAV route listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to modify RNAV route T–354. The RNAV route change is described below.

T–354: T–354 extends between the Park Rapids, MN, VOR/DME and the Siren, WI, DME. The Siren DME is removed and replaced with the SSKYY, WI, waypoint (WP) (located over the Siren DME), and the route is extended

southeastward from the SSKYY, WI, WP to the Cunningham, KY, VOR/DME. The following points are added between the SSKYY WP and the Cunningham VOR/DME: TONOC, WI, FIX; KOETZ, WI, WP; HRMNN, WI, WP; FOMAG, WI, WP; MAYSE, WI, WP; HOMRC, IL, WP; CPTON, IL, WP; BLLUE, IL, WP; BOSTN, IL, WP; and the Bible Grove, IL, VORTAC. The unaffected segments of the existing route remain as charted.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of modifying RNAV route T–354 to expand the availability of RNAV routing in support of NextGen modernization efforts to transition the NAS from a ground-based to satellite-based PBN system qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–354 Park Rapids, MN (PKD) to Cunningham, KY (CNG) [Amended]

Park Rapids, MN (PKD)	VOR/DME	(Lat. 46°53′53.34″ N., long. 095°04′15.21″ W.)
BRNRD, MN	WP	(Lat. 46°20′53.81″ N., long. 094°01′33.54″ W.)
SSKYY, WI	WP	(Lat. 45°49′13.60″ N., long. 092°22′28.26″ W.)
TONOC, WI	FIX	(Lat. 45°03′47.56″ N., long. 091°38′11.87″ W.)
KOETZ, WI	WP	(Lat. 44°13′15.00″ N., long. 091°28′14.00″ W.)
HRMNN, WI	WP	(Lat. 43°55′32.51″ N., long. 090°58′04.07″ W.)
FOMAG, WI	WP	(Lat. 43°29′38.44″ N., long. 089°46′09.53″ W.)
MAYSE, WI	WP	(Lat. 43°10′14.18″ N., long. 089°42′46.52″ W.)
HOMRC, IL	WP	(Lat. 41°34′04.67″ N., long. 089°30′20.55″ W.)
CPTON, IL	WP	(Lat. 41°06′51.57″ N., long. 089°11′58.93″ W.)
BLLUE, IL	WP	(Lat. 40°07′09.20″ N., long. 088°32′45.48″ W.)
BOSTN, IL	WP	(Lat. 39°53′46.57″ N., long. 088°26′18.96″ W.)
Bible Grove, IL (BIB)	VORTAC	(Lat. 38°55′13.24″ N., long. 088°28′54.50″ W.)
Cunningham, KY (CNG)	VOR/DME	(Lat. 37°00′30.99″ N., long. 088°50′12.89″ W.)

* * * * *

Issued in Washington, DC, on August 13, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–18252 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0110; Airspace Docket No. 20–AGL–5]

RIN 2120–AA66

Establishment of Class E Airspace; Killdeer and New Town, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Dunn County Weydahl Field, Killdeer, ND, and New Town Municipal Airport, New Town, ND. This action is the result of the new public instrument procedures being established at these airports.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 establishes Class E airspace extending upward from 700 feet above the surface at Dunn County Weydahl Field, Killdeer, ND, and New Town Municipal Airport, New Town, ND, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 7472; February 10, 2020) for Docket No. FAA–2020–0110 to establish Class E airspace extending upward from 700 feet above the surface at Dunn County Weydahl Field, Killdeer, ND, and New Town Municipal Airport, New Town, ND. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Establishes Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius Dunn County Weydahl Field, Killdeer, ND, with an extension 1.1 miles each side of the 293° bearing from the airport extending from the 6.4-mile radius to 7.9 miles west of the airport;

And establishes Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of New Town Municipal Airport, New Town, ND.

These actions are the result of new public instrument procedures being established at these airports.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ *71.1* [Amended]

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

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

* * * * *

AGL ND E5 Killdeer, ND [Establish]

Dunn County Weydahl Field, ND
(Lat. 47°23′29″ N, long. 102°46′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dunn County Weydahl Field, and within 1.1 miles each side of the 293° bearing from the airport extending from the 6.4-mile radius to 7.9 miles west of the airport.

* * * * *

AGL ND E5 New Town, ND [Establish]

New Town Municipal Airport, ND
(Lat. 47°58′04″ N, long. 102°28′41″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport.

Issued in Fort Worth, Texas, on August 17, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–18284 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0186; Airspace Docket No. 19–ANE–5]

RIN 2120–AA66

Amendment and Establishment of Area Navigation (RNAV) Routes; Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends low altitude RNAV route T–300, and establish low altitude RNAV routes T–391, T–393, and T–395 in the northeastern United States. The changes reduce the dependency of the National Airspace System (NAS) on ground-based navigational systems, and assist with the transition to a more efficient Performance Based Navigation (PBN) route structure. This action also provides RNAV routing in support the FAA's VOR Minimum Operating Network (VOR MON) program.

DATES: Effective date 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Sean Hook, 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 expand the availability of RNAV in the northeastern United States to improve the efficiency of the NAS by lessening the dependency on ground-based navigation aids.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0186 in the **Federal Register** (85 FR 16582; March 24, 2020) amending low altitude RNAV route T–300, and establishing low altitude RNAV routes T–391, T–393, and T–395 in the northeastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation routes are published in paragraph 6011 of FAA Order 7400.2D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in the document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending low altitude RNAV route T–300, and establishing low altitude RNAV routes T–391, T–393, and T–395, in the northeastern United States. This action expands the availability of RNAV and improves the efficiency of the NAS by reducing the dependency on ground-based navigation systems. The T-routes provide RNAV capability in the northeast U.S. where certain VOR navigation aids are planned for decommissioning as part of the FAA's VOR MON program. The following is a general description of the routes.

T–300: T–300 is an existing route that currently extends between the Albany, NY (ALB) VORTAC, and the Martha's Vineyard, MA (MVY), VOR/DME. The FAA is extending T–300 north of the Albany, NY (ALB), VORTAC to the SSENA, NY, waypoint (WP). The SSENA, NY, WP is located in the vicinity of the Massena, NY (MSS), VORTAC which is planned for decommissioning at a later date. The following points are inserted between the Albany VORTAC and the SSENA WP: OTOLE, NY, Fix; GASSY, NY, Fix; OPDIE, NY, WP; UUBER, NY, WP; JONNN, NY, Fix; and the STANK, NY, WP. T–300 overlies VOR Federal airway V–203 between the Albany VORTAC, and the GASSY, NY, Fix. From that point, T–300 offsets to the east of V–203, passing through the OPDIE, NY, WP; UUBER, NY, WP; JONNN, NY, Fix; and STANK, NY, WP, to the SSENA, NY, WP.

The FAA is removing the Norwich, CT (ORW), VOR/DME; the FALMA, RI, Fix; and the Martha's Vineyard, MA, VOR/DME from the T–300 route description. The Norwich VOR/DME is replaced by the YANCT, CT, Fix which is inserted in the route description between the NELLIE, CT, Fix, and the MINNK, RI, Fix. The YANCT WP is located in the vicinity of the Norwich VOR/DME which is planned for decommissioning at a later date. Finally, the current T–300 route segment that extends between the MINNK, RI, Fix, and the Martha's Vineyard VOR/DME is removed from the route and that end of the route is realigned to proceed from the MINNK Fix southeastward to the NEWBE, RI, Fix, and the DEEPO, MA, fix.

T–391: T–391 is a new route that overlies VOR Federal airway V–29 between the TUMPS, NY, Fix, and the Massena, NY (MSS), VORTAC. T–391 extends between the TUMPS Fix and the SSENA, NY, WP. The SSENA WP is located in the vicinity of the Massena VORTAC, as described under T–300, above. T–391 includes following points between the TUMPS Fix and the SSENA WP: Syracuse, NY (SYR), VORTAC;

PAGER, NY, Fix; BRUIN, NY, Fix; Watertown, NY (ART) VORTAC; WILRD, NY, Fix; and the LETUS, NY, Fix.

T–393: T–393 is a new route that overlies VOR Federal airway V–151 between the GAILS, MA, Fix, and the Burlington, VT (BTV), VOR/DME. The following points are included between the GAILS Fix and the Burlington VOR/DME: INNDY, MA, Fix; Providence, RI (PVD) VOR/DME; FOSTY, RI, Fix; PUTNM, CT, WP; GRIPE, MA, Fix; Gardner, MA (GDM), VOR/DME; KEYNN, NH, WP; STRUM, NH, Fix; UNKER, NH, Fix; MCADM, NH, Fix; LBNON, NH, WP; ZIECH, VT, Fix; DAVID, VT, Fix; Montpelier, VT (MPV), VOR/DME; CEVIB, VT, Fix; and the POROE, VT, Fix.

The PUTNM, CT WP is located in the vicinity of the Putnam, CT (PUT), VOR/DME which is planned for decommissioning at a later date. The KEYNN, NH, WP is located in the vicinity of the Keene, NH (EEN), VORTAC which is planned for decommissioning at a later date. The LBNON, NH, WP is located in the vicinity of the Lebanon, NH (LEB), VOR/DME which is planned for decommissioning at a later date.

T–395: T–395 is a new route that overlies VOR Federal airway V–322 between the Concord, NH (CON), VOR/DME and the BRLIN, NH, WP. The BRLIN WP is located in the vicinity of the Berlin, NH (BML), VOR/DME, which is planned for decommissioning at a later date. The following points is included between the Concord VOR/DME and the BRLIN WP: YECKA, NH, Fix; GRUMP, NH, Fix; LAROE, NH, Fix; NOTTY, NH, Fix; WYLIE, ME, Fix; and the JOBBY, NH, Fix.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending low altitude RNAV route T–300, and establishing low altitude RNAV routes T–391, T–393, and T–395 in the northeastern United States qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–300 SSENA, NY to DEEPO, MA [Amended]

SSENA, NY	WP	(Lat. 44°54′51.43″ N, long. 074°43′21.31″ W)
STANK, NY	WP	(Lat. 44°47′00.00″ N, long. 074°07′00.00″ W)
JONNN, NY	FIX	(Lat. 44°34′13.71″ N, long. 074°01′38.96″ W)
UUBER, NY	WP	(Lat. 44°28′00.25″ N, long. 074°01′10.54″ W)
OPDIE, NY	WP	(Lat. 44°16′46.05″ N, long. 074°00′14.41″ W)
GASSY, NY	FIX	(Lat. 43°24′53.26″ N, long. 073°57′50.84″ W)
OTOLE, NY	FIX	(Lat. 42°56′58.56″ N, long. 073°51′05.77″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.21″ N, long. 073°48′11.47″ W)
NELIE, CT	FIX	(Lat. 41°56′27.64″ N, long. 072°41′18.88″ W)
YANTC, CT	WP	(Lat. 41°33′22.81″ N, long. 071°59′56.95″ W)
MINNK, RI	FIX	(Lat. 41°21′40.67″ N, long. 071°25′27.20″ W)
NEWBE, RI	FIX	(Lat. 41°12′24.39″ N, long. 071°04′26.92″ W)
DEEPO, MA	FIX	(Lat. 41°06′53.96″ N, long. 070°50′09.85″ W)

* * * * * * *

T–391 TUMPS, NY to SSENA, NY [New]

TUMPS, NY	FIX	(Lat. 43°01′18.27″ N, long. 076°10′04.09″ W)
Syracuse, NY (SYR)	VORTAC	(Lat. 43°09′37.87″ N, long. 076°12′16.41″ W)
PAGER, NY	FIX	(Lat. 43°25′25.64″ N, long. 076°09′30.34″ W)
BRUIN, NY	FIX	(Lat. 43°39′59.04″ N, long. 076°06′55.97″ W)
Watertown, NY (ART)	VORTAC	(Lat. 43°57′07.67″ N, long. 076°03′52.66″ W)

WILRD, NY	FIX	(Lat. 44°15′43.61″ N, long. 075°47′03.12″ W)
LETUS, NY	FIX	(Lat. 44°37′22.34″ N, long. 075°27′11.44″ W)
SSENA, NY	WP	(Lat. 44°54′51.43″ N, long. 074°43′21.31″ W)

* * * * * * *

T–393 GAILS, MA to Burlington, VT (BTV) [New]

GAILS, MA	FIX	(Lat. 41°52′08.51″ N, long. 070°24′07.69″ W)
INNDY, MA	FIX	(Lat. 41°46′19.19″ N, long. 071°05′55.93″ W)
Providence, RI (PVD)	VOR/DME	(Lat. 41°43′27.63″ N, long. 071°25′46.71″ W)
FOSTY, RI	FIX	(Lat. 41°50′35.46″ N, long. 071°38′31.34″ W)
PUTNM, CT	WP	(Lat. 41°57′19.65″ N, long. 071°50′38.76″ W)
GRIPE, MA	FIX	(Lat. 42°08′08.87″ N, long. 071°54′32.47″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.31″ N, long. 072°03′29.48″ W)
KEYNN, NH	WP	(Lat. 42°47′39.99″ N, long. 072°17′30.35″ W)
STRUM, NH	FIX	(Lat. 42°55′51.18″ N, long. 072°16′48.88″ W)
UNKER, NH	FIX	(Lat. 43°20′55.19″ N, long. 072°14′40.50″ W)
MCADM, NH	FIX	(Lat. 43°32′44.84″ N, long. 072°13′39.34″ W)
LBNON, NH	WP	(Lat. 43°40′44.43″ N, long. 072°12′58.18″ W)
ZIECH, VT	FIX	(Lat. 43°49′58.39″ N, long. 072°18′14.50″ W)
DAVID, VT	FIX	(Lat. 43°54′35.43″ N, long. 072°20′53.51″ W)
Montpelier, VT (MPV)	VOR/DME	(Lat. 44°05′07.74″ N, long. 072°26′57.76″ W)
CEVIB, VT	FIX	(Lat. 44°11′40.96″ N, long. 072°42′15.29″ W)
POROE, VT	FIX	(Lat. 44°13′28.02″ N, long. 072°46′26.54″ W)
Burlington, VT (BTV)	VOR/DME	(Lat. 44°23′49.58″ N, long. 073°10′57.48″ W)

* * * * * * *

T–395 Concord, NH (CON) to BRLIN, NH [New]

Concord, NH (CON)	VOR/DME	(Lat. 43°13′11.23″ N, long. 071°34′31.63″ W)
YECKA, NH	FIX	(Lat. 43°28′08.16″ N, long. 071°26′13.93″ W)
GRUMP, NH	FIX	(Lat. 43°33′05.83″ N, long. 071°23′27.86″ W)
LAROE, NH	FIX	(Lat. 43°44′58.72″ N, long. 071°16′47.95″ W)
NOTTY, NH	FIX	(Lat. 44°01′57.29″ N, long. 071°07′11.43″ W)
WYLIE, ME	FIX	(Lat. 44°14′36.30″ N, long. 070°59′57.84″ W)
JOBBY, NH	FIX	(Lat. 44°24′34.54″ N, long. 071°04′43.11″ W)
BRLIN, NH	WP	(Lat. 44°38′00.82″ N, long. 071°11′10.32″ W)

* * * * *

Issued in Washington, DC, on August 13, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–18046 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0815; Airspace Docket No. 19–ASW–8]

RIN 2120–AA66

Revocation, Amendment, and Establishment of Multiple Air Traffic Service (ATS) Routes Due to the Decommissioning of the Greene County, MS, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Jet Route J–590, amends VHF Omnidirectional Range (VOR) Federal airways V–11 and V–70, and establishes Area Navigation (RNAV) routes T–362 and T–365. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Greene County, MS (GCV), VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The Greene County VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0815 in the **Federal Register** (84 FR 64797; November 25, 2019), removing Jet Route J–590, amending VOR Federal airways V–11 and V–70, and establishing RNAV routes T–362 and T–365 due to the planned decommissioning of the VOR portion of

the Greene County, MS, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Subsequent to the NPRM, the FAA published a rule for Docket No. FAA–2019–0688 in the **Federal Register** (85 FR 13479; March 9, 2020), amending VOR Federal airway V–11 by amending the EDGEE fix in the airway description to describe it as the intersection of the Fort Wayne VORTAC 038° and the Flag City, OH, VORTAC 308° radials. That airway amendment, effective May 21, 2020, is included in this rule.

Jet Routes are published in paragraph 2004, 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.

Availability and Summary of Documents for Incorporation by Reference

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

Differences From the NPRM

In the NPRM, the FAA proposed to establish RNAV route T–362 overlying VOR Federal airway V–70 between the Fighting Tiger, LA, VORTAC and the Allendale, SC, VOR to mitigate the loss of the V–70 airway segment proposed to be removed and to provide RNAV routing capability between the Baton Rouge, LA, and Allendale, SC, areas. In the proposed T–362 route description, the RNAV route turn point listed between the Monroeville, AL, VORTAC and the Eufaula, AL, VORTAC route points was incorrectly identified as the CRENS waypoint. After closer review of the V–70 airway routing, the correct RNAV route turn point between the Monroeville VORTAC and Eufaula VORTAC was determined to be the YIBYI waypoint. To accurately overlay the proposed T–362 route over the V–70 airway between the Fighting Tiger VORTAC and Allendale VOR, the proposed T–362 route description should have reflected the ''YIBYI waypoint'' instead of the ''CRENS waypoint'' between the Monroeville VORTAC and Eufaula VORTAC route points. This RNAV route point correction to the T–362 description is included in this action.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Jet Route J–590, modifying VOR Federal airways V–11 and V–70, and establishing RNAV routes T–362 and T–365 due to the planned decommissioning of the Greene County, MS, VOR. The air traffic service (ATS) route actions are described below.

J–590: J–590 extends between the Lake Charles, LA, VORTAC and the Montgomery, AL, VORTAC. The jet route is removed in its entirety.

V–11: V–11 extends between the Brookley, AL, VORTAC and the intersection of the Fort Wayne, IN, 038° and Flag City, OH, 308° radials (EDGEE fix). The airway segment between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–70: V–70 extends between the Monterrey, Mexico, VOR/DME and the Allendale, SC, VOR; and between the Grand Strand, SC, VORTAC and the Cofield, NC, VORTAC. The airspace within Mexico is excluded. The airway segment between the Picayune, MS, VOR/DME and the Monroeville, AL, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

T–362: T–362 is a new route that extends between the Fighting Tiger, LA, VORTAC and the Allendale, SC, VOR. This T-route mitigates the loss of the V–70 airway segment that is removed and provides RNAV routing capability between the Baton Rouge, LA, area and the Allendale, SC, area.

T–365: T–365 is a new route that extends between the Brookley, AL, VORTAC and the Magnolia, MS, VORTAC. This T-route mitigates the loss of the V–11 airway segment that is removed and provides RNAV routing capability between the Mobile, AL, area and the Jackson, MS, area.

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

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of removing Jet Route J–590, modifying VOR Federal airways V–11 and V–70, and establishing RNAV routes T–362 and T–365 due to the planned decommissioning of the Greene County, MS, VOR qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes

* * * * *

J–590 [Removed]

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–11 [Amended]

From Magnolia, MS; Sidon, MS; Holly Springs, MS; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Brickyard, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Flag City, OH, 308° radials.

* * * * *

V–70 [Amended]

From Monterrey, Mexico; Brownsville, TX; INT Brownsville 338° and Corpus Christi, TX, 193° radials; 34 miles standard width, 37 miles 7 miles wide (4 miles E and 3 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; Palacios; Scholes, TX; Sabine Pass, TX; Lake Charles, LA; Lafayette, LA; Fighting Tiger, LA; to Picayune, MS. From Monroeville, AL; INT Monroeville 073° and Eufaula, AL, 258° radials; Eufaula; Vienna, GA; to Allendale, SC. From Grand Strand, SC; Wilmington, NC; Kinston, NC; INT Kinston 050° and Cofield, NC, 186° radials; to Cofield. The airspace within Mexico is excluded.

* * * * *

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–362 Fighting Tiger, LA (LSU) to Allendale, SC (ALD) [New]

Fighting Tiger, LA (LSU)	VORTAC	(Lat. 30°29′06.48″ N, long. 091°17′38.64″ W)
Picayune, MS (PCU)	VOR/DME	(Lat. 30°33′40.20″ N, long. 089°43′49.76″ W)
Green County, MS (GCV)	DME	(Lat. 31°05′52.66″ N, long. 088°29′10.06″ W)
Monroeville, AL (MVC)	VORTAC	(Lat. 31°27′33.57″ N, long. 087°21′09.14″ W)
YIBYI, AL	WP	(Lat. 31°44′10.50″ N, long. 086°16′47.98″ W)
Eufaula, AL (EUF)	VORTAC	(Lat. 31°57′00.90″ N, long. 085°07′49.73″ W)
Vienna, GA (VNA)	VORTAC	(Lat. 32°12′48.39″ N, long. 083°29′50.12″ W)
KLICK, GA	WP	(Lat. 32°33′47.00″ N, long. 082°33′01.47″ W)
MILEN, GA	WP	(Lat. 32°54′02.88″ N, long. 081°36′33.99″ W)
Allendale, SC (ALD)	VOR	(Lat. 33°00′44.98″ N, long. 081°17′32.04″ W)

T–365 Brookley, AL (BFM) to Magnolia, MS (MHZ) [New]

Brookley, AL (BFM)	VORTAC	(Lat. 30°36′45.80″ N, long. 088°03′19.78″ W)
Green County, MS (GCV)	DME	(Lat. 31°05′52.66″ N, long. 088°29′10.06″ W)
MIZZE, MS	WP	(Lat. 31°50′02.25″ N, long. 089°21′16.86″ W)
Magnolia, MS (MHZ)	VORTAC	(Lat. 32°26′02.65″ N, long. 090°05′59.18″ W)

* * * * *

Issued in Washington, DC, on August 13, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–18253 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31326; Amdt. No. 3918

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 20, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 2020.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29

Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs.

The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/ Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 7, 2020.

Wade E.K. Terrell,

Manager, Flight Procedures & Airspace Group.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
10-Sep-20	IN	Indianapolis	Indianapolis Intl	0/2531	7/21/20	This NOTAM, published in Docket No. 31324, Amdt No. 3916, TL 20–19, (85 FR 47645; August 6, 2020) is hereby rescinded in its entirety.
10-Sep-20	MI	Battle Creek	Battle Creek Executive At Kellogg Field.	0/0801	7/29/20	Takeoff Minimums and Obstacle DP, Amdt 3.
10-Sep-20	NC	Charlotte	Charlotte/Douglas Intl	0/2595	7/22/20	RNAV (GPS) Y RWY 36L, Amdt 1B.
10-Sep-20	NC	Charlotte	Charlotte/Douglas Intl	0/2602	7/22/20	ILS OR LOC RWY 36L, ILS RWY 36L (SA CAT I), ILS RWY 36L (CAT II–III), Amdt 1A.
10-Sep-20	NC	Whiteville	Columbus County Muni	0/2678	7/22/20	RNAV (GPS) RWY 24, Orig.
10-Sep-20	CA	Marysville	Yuba County	0/2930	7/22/20	ILS OR LOC RWY 14, Amdt 6.
10-Sep-20	AK	Deadhorse	Deadhorse	0/3332	7/27/20	RNAV (GPS) Z RWY 6, Amdt 2A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
10-Sep-20	WA	Renton	Renton Muni	0/3473	7/27/20	RNAV (GPS) Y RWY 16, Amdt 5.
10-Sep-20	LA	Gonzales	Louisiana Rgnl	0/3828	7/23/20	RNAV (GPS) RWY 17, Amdt 1C.
10-Sep-20	LA	Gonzales	Louisiana Rgnl	0/3830	7/23/20	VOR–A, Amdt 2B.
10-Sep-20	OH	Cleveland	Cuyahoga County	0/3974	7/24/20	ILS OR LOC RWY 24, Amdt 16A.
10-Sep-20	NM	Carlsbad	Cavern City Air Trml	0/4503	7/24/20	RNAV (GPS) RWY 32L, Amdt 1C.
10-Sep-20	OK	Miami	Miami Rgnl	0/4562	7/27/20	VOR/DME–A, Amdt 2B.
10-Sep-20	OK	Miami	Miami Rgnl	0/4564	7/27/20	RNAV (GPS) RWY 17, Amdt 1A.
10-Sep-20	NC	Andrews	Western Carolina Rgnl	0/4616	7/28/20	RNAV (GPS) RWY 8, Amdt 1.
10-Sep-20	TN	Memphis	Memphis Intl	0/5263	7/29/20	ILS OR LOC RWY 36C, ILS RWY 36C (CAT II &III), Amdt 3E.
10-Sep-20	MI	Battle Creek	Battle Creek Executive At Kellogg Field.	0/5801	7/29/20	RNAV (GPS) RWY 23R, Amdt 1C.
10-Sep-20	MI	Battle Creek	Battle Creek Executive At Kellogg Field.	0/5802	7/29/20	RNAV (GPS) RWY 31, Amdt 1.
10-Sep-20	MI	Battle Creek	Battle Creek Executive At Kellogg Field.	0/5804	7/29/20	RNAV (GPS) RWY 5L, Amdt 1B.
10-Sep-20	MI	Battle Creek	Battle Creek Executive At Kellogg Field.	0/5805	7/29/20	ILS OR LOC RWY 23R, Amdt 19A.

[FR Doc. 2020–17733 Filed 8–19–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31325 Amdt. No. 3917]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 20, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 2020.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the

airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

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

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 7, 2020.

Wade E.K. Terrell,

Manager, Flight Procedures & Airspace Group.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 10 September 2020

Aniak, AK, Aniak, Takeoff Minimums and Obstacle DP, Amdt 4
Bethel, AK, Bethel, ILS Y OR LOC Y RWY 19R, Orig-E
Bethel, AK, Bethel, ILS Z OR LOC Z RWY 19R, Amdt 7G
Bethel, AK, Bethel, RNAV (GPS) RWY 1R, Amdt 1A
Bethel, AK, Bethel, VOR RWY 1L, Amdt 2D
Cold Bay, AK, Cold Bay, ILS OR LOC RWY 15, Amdt 19
Cold Bay, AK, Cold Bay, LOC BC RWY 33, Amdt 11
Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 15, Amdt 3
Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 33, Amdt 3
Cold Bay, AK, Cold Bay, Takeoff Minimums and Obstacle DP, Amdt 9
Dillingham, AK, Dillingham, RNAV (GPS) RWY 1, Amdt 3
Mekoryuk, AK, Mekoryuk, NDB–B, Orig, CANCELLED
Mekoryuk, AK, Mekoryuk, NDB/DME–A, Amdt 4, CANCELLED
Evergreen, AL, Evergreen Rgnl/Middleton Field, RNAV (GPS) RWY 10, Amdt 1D
Guntersville, AL, Guntersville Muni—Joe Starnes Field, RNAV (GPS) RWY 7, Orig-B
Guntersville, AL, Guntersville Muni—Joe Starnes Field, RNAV (GPS) RWY 25, Orig-A
Huntsville, AR, Huntsville Muni, VOR/DME RWY 12, Amdt 2A, CANCELLED
Rogers, AR, Rogers Muni-Carter Field, VOR RWY 2. Amdt 13E, CANCELLED
Grass Valley, CA, Nevada County, VOR OR GPS–A, Amdt 1C, CANCELLED
Hemet, CA, Hemet-Ryan, RNAV (GPS) RWY 5, Orig-D
San Jose, CA, Reid-Hillview Of Santa Clara County, RNAV (GPS) RWY 13L, Amdt 1
San Jose, CA, Reid-Hillview Of Santa Clara County, RNAV (GPS) Y RWY 31R, Amdt 1
San Jose, CA, Reid-Hillview Of Santa Clara County, RNAV (GPS) Z RWY 31R, Amdt 2
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, ILS OR LOC RWY 18, ILS RWY 18 (SA CAT I), ILS RWY 18 (SA CAT II), Orig-A
Webster City, IA, Webster City Muni, NDB RWY 32, Amdt 8A, CANCELLED
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28L, Amdt 2
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28R, Amdt 2
Kankakee, IL, Greater Kankakee, ILS OR LOC RWY 4, Amdt 8
Kankakee, IL, Greater Kankakee, RNAV (GPS) RWY 4, Amdt 2
Kankakee, IL, Greater Kankakee, RNAV (GPS) RWY 16, Amdt 1B
Kankakee, IL, Greater Kankakee, RNAV (GPS) RWY 22, Amdt 1B
Kankakee, IL, Greater Kankakee, RNAV (GPS) RWY 34, Amdt 1B
Lincoln, IL, Logan County, NDB RWY 21, Amdt 2A, CANCELLED
Brazil, IN, Brazil Clay County, VOR RWY 9, Amdt 7B. CANCELLED
Cambridge, MD, Cambridge-Dorchester Rgnl, RNAV (GPS)-A, Orig-A
Augusta, ME, Augusta State, RNAV (GPS) RWY 35, Orig-C
Bay City, MI, James Clements Muni, VOR–A, Amdt 12B, CANCELLED
Cassville, MO, Cassville Muni, VOR RWY 9, Amdt 2B, CANCELLED
Eldon, MO, Eldon Model Airpark, Takeoff Minimums and Obstacle DP, Orig-B
Binghamton, NY, Greater Binghamton/Edwin A Link Field, ILS OR LOC RWY 16, Amdt 7
Binghamton, NY, Greater Binghamton/Edwin A Link Field, ILS OR LOC RWY 34, Amdt 5
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 10, Amdt 1
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 16, Amdt 2
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 28, Amdt 3
Southampton, NY, Southampton, COPTER RNAV (GPS) 190, Orig-B
East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt 5, CANCELLED
Tulsa, OK, Tulsa Intl, ILS OR LOC RWY 36R, ILS RWY 36R (SA CAT I), ILS RWY 36R (CAT II), Amdt 29H
Bradford, PA, Bradford Rgnl, ILS OR LOC RWY 32, Amdt 13

Nacogdoches, TX, Nacogdoches A L Mangham Jr Rgnl, NDB RWY 18, Amdt 1C, CANCELLED
Richmond, VA, Richmond Intl, ILS OR LOC RWY 2, Amdt 2C
Richmond, VA, Richmond Intl, VOR RWY 20, Amdt 1D
Bennington, VT, William H. Morse State, VOR RWY 13, Amdt 1B, CANCELLED
Springfield, VT, Hartness State (Springfield), Takeoff Minimums and Obstacle DP, Amdt 3A
Charleston, WV, Yeager, ILS OR LOC RWY 23, Amdt 31A
Powell, WY, Powell Muni, NDB RWY 31, Amdt 2C, CANCELLED

Rescinded: On July 13, 2020 (85 FR 41912), the FAA published an Amendment in Docket No. 31319 Amdt No. 3911, to Part 97 of the Federal Aviation Regulations under sections 97.37. The following entry for Jaffrey, NH effective September 10, 2020, is hereby rescinded in its entirety:

Jaffrey, NH, Jaffrey Airfield-Silver Ranch, Takeoff Minimums and Obstacle DP, Amdt 1A

Rescinded: On August 6, 2020 (85 FR 47643), the FAA published an Amendment in Docket No. 31323 Amdt No. 3915, to Part 97 of the Federal Aviation Regulations under sections 97.29, and 97.33. The following entries for El Paso, TX effective September 10, 2020, are hereby rescinded in their entirety:

El Paso, TX, El Paso Intl, ILS OR LOC RWY 22, Amdt 32E
El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 22, Orig-F
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 22, Amdt 1B

[FR Doc. 2020–17732 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200810–0211]

RIN 0694–AI19

Clarification of Entity List Requirements for Listed Entities When Acting as a Party to the Transaction Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) is clarifying the supplemental license requirements for parties listed on the Entity List pursuant to the Export Control Reform Act of 2018 (ECRA). Specifically, this final rule clarifies the Entity List's supplemental licensing requirements to state that these end-user controls apply to any listed entity when that entity is acting as a purchaser, intermediate or ultimate consignee, or end-user as defined in the Export Administration Regulations (EAR).

DATES: This rule is effective August 17, 2020.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations (EAR)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote. The ERC approved the clarifications of the Entity List requirements in this rule, which will apply to all current entities on the Entity List and subsequent additions and modifications to the Entity List.

Clarification of Entity List Requirements

As referenced above, § 744.11(a) of the EAR sets forth supplemental license requirements applicable to exports, reexports, and transfers (in-country) to entities listed on the Entity List, which have been involved, are involved, or pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. In contrast to other provisions of the EAR (*i.e.,* §§ 740.2(a)(17), 744.15(b), and 758.1(b)(8)) that set forth restrictions applicable to exports, reexports, and transfers (in-country) to which a person listed on the Unverified List (*See:* Supplement No. 6 to part 744 of the EAR) is a *party to the transaction,* § 744.11(a) imposes supplemental license requirements on exports, reexports, and transfers (in-country) *to entities listed on the Entity List.* Prior to publication of this final rule, § 744.11 did not explicitly address circumstances in which a listed entity may be playing a role other than consignee or end-user in the transaction, *e.g.,* a purchaser or intermediate consignee.

However, since the first set of additions pursuant to § 744.11 on September 22, 2008 (73 FR 54503), Entity List rules published through 2019 typically included a sentence in the Background section of the rules that described the Entity List license requirements and limitations on the use of license exceptions. The purpose of this sentence was to alert exporters, reexporters, and transferors that BIS intended these requirements to apply to those listed entities when acting as any party to the transaction. The sentence specified that,

> The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user.

Since 2019, BIS has evaluated how to revise the EAR to better clarify that Entity List license requirements, as specified on the Entity List, are intended to apply to listed entities regardless of their role as a party to a transaction.

This final rule amends the regulatory text to clarify that Entity List license requirements apply to entities on the Entity List, not only when they are party to a transaction as either an ultimate consignee or end-user, but also when they are party as a purchaser or intermediate consignee.

Consistent with the authority granted under § 4812(c) of ECRA, BIS is amending §§ 744.11 and 744.16 of the EAR and the introductory text of the Entity List in Supplement No. 4 to part 744 to specify that the Entity List

requirements apply to all entities involved in a transaction subject to the EAR as described in § 748.5(c)–(f) of the EAR. These changes will make clear for exporters, reexporters, and transferors the scope of the Entity List's licensing requirements to effect the purpose of the Entity List.

As BIS has noted in the answers to frequently asked questions on its website, freight forwarders and other ''intermediate consignees'' may have access to items subject to the EAR, which creates a risk of diversion when such entities are listed on the Entity List. Similarly, a ''purchaser'' may coordinate all aspects of the purchase of items subject to the EAR from specifying the exporter, reexporter, or transferor, including designating the ultimate consignee who will receive the goods, to specifying the logistical arrangements made to effect delivery of the items to the ultimate consignee. Accordingly, when a person is listed on the Entity List, that person's participation as a purchaser or intermediate consignee in an export, reexport, or transfer (in-country) of items subject to the EAR presents a risk that the person's involvement in a transaction may circumvent the basis for their inclusion on the Entity List.

These clarifications to the Entity List requirements align with other end-user controls under the EAR. Specifically, as noted above, this language revision is consistent with EAR controls pursuant to § 744.15(b), which set forth restrictions applicable to exports, reexports, and transfers (in-country) involving persons listed on the Unverified List. BIS has determined that aligning the language of the Entity List and Unverified List requirements should ease the compliance burden on exporters, reexporters, and transferors because it will eliminate any confusion in interpretation of these two end-user control lists.

Changes Made to the EAR

In this final rule, BIS is revising § 744.11(a) of the EAR to specify that supplemental license requirements for entities included on the Entity List apply regardless of the role that the listed entity has in the transaction (*i.e.,* purchaser, intermediate consignee, ultimate consignee or end-user). The definitions of ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' and ''end-user'' are defined in § 748.5(c)–(f) and part 772 of the EAR.

Also in § 744.11(a), BIS is removing text indicating that the scope of the license requirements apply only to an entity listed on the Entity List ''in an entry that contains a reference to this section.'' BIS is removing this text because it is not consistent with the current practice of including references in Entity List entries to other parts of the EAR that set forth the scope of the supplemental license requirements and license review policies applicable to those entities. This final rule also makes conforming changes to the remainder of § 744.11.

BIS is also revising § 744.16(a) of the EAR, which similarly clarifies that the supplemental license requirements applicable to exports, reexports, and transfers (in-country) to *entities listed on the Entity List,* including on the basis of other sections of parts 744 (*e.g.,* §§ 744.2, 744.3, and 744.4) and 746. In keeping with the revision to § 744.11(a) described above, BIS is also clarifying that the license requirement described in § 744.16(a) applies whenever an entity listed on the Entity List is a party to the transaction as defined in § 748.5(c)–(f) of the EAR.

Finally, BIS is replacing the reference to ''items listed in an entry on the Entity List'' in § 744.16(a) of the EAR with a reference to the License Requirement column on the Entity List. BIS is making this change because the License Requirement column describes which items subject to the EAR require a license when an entity involved in a transaction is listed on the Entity List.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. BIS expects this rule will slightly increase the number of license applications required to be submitted to BIS each year by clarifying that the existing Entity List requirements apply to exports, reexports, and transfers (in-country) in which an entity listed on the Entity List acts as any party to the transaction, which will now include when the listed entity is a purchaser or intermediate consignee. BIS estimates the total number of additional license applications will not exceed 25 per year, for a total increase in public burden under OMB control number 0694–0088 of no more than 17 hours and 40 minutes per year. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or online at *https://www.reginfo.gov/public/do/PRAMain.*

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

4. Pursuant to § 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no

regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USE AND END-USER BASED

■ 1. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 84 FR 49633 (September 20, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 2. Section 744.11 is amended by revising paragraph (a) to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f). License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

* * * * *

■ 3. Section 744.16 is amended by revising paragraph (a) to read as follows:

§ 744.16 Entity List.

* * * * *

(a) *License requirements.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not, without a license from BIS, export, reexport, or transfer (in-country) any items included in the License Requirement column of an entity's entry on the Entity List (supplement No. 4 to this part) when that entity is a party to a transaction as described in § 748.5(c) through (f) of the EAR. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in Supplement No. 4 to this part.

* * * * *

■ 4. Supplement No. 4 to part 744 is amended by revising the introductory text of the supplement to read as follows:

Supplement No. 4 to Part 744—Entity List

This Supplement lists certain entities subject to license requirements for specified items under this part 744 and part 746 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f). This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–17908 Filed 8–17–20; 2:30 pm]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 426

[Docket No. SSA–2020–0002]

RIN 0960–AI47

Improved Agency Guidance Documents

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule explains our process for issuing guidance documents under Executive Order (E.O.) 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' We will follow this process when we issue future guidance documents that meet the criteria set forth in the E.O. and the Office of Management and Budget's (OMB) guidance on the E.O.

DATES: This final rule will be effective September 21, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Dulski, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–2341. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On October 9, 2019, President Trump issued E.O. 13891.[1] E.O. 13891 mandates that agencies, consistent with applicable law, finalize regulations, or amend existing regulations as necessary, to explain the process for issuing guidance documents as defined by the E.O. We are publishing this final rule to fulfill E.O. 13891's requirements.

As defined in E.O. 13891, guidance documents are agency statements of general applicability, intended to have future effect on the behavior of regulated parties, that set forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. Unless the document falls within an enumerated exclusion to this definition,[2] any document that satisfies this definition would qualify as a guidance document, regardless of name or format.

The documents that we issue include Program Operations Manual System (POMS) instructions; the Hearings, Appeals and Litigation Law (HALLEX) manual; Social Security Rulings (SSR); and Acquiescence Rulings.[3] Most of the documents that we issue do not qualify as guidance documents under E.O. 13891; however, some may. We will use

[1] 84 FR 55235, available at: *https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents.*

[2] E.O. 13891 section 2 (b) lists the following as exclusions to the definition of guidance document: (i) Rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions; (ii) rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code; (iii) rules of agency organization, procedure, or practice; (iv) decisions of agency adjudications under section 554 of title 5, United States Code, or similar statutory provisions; (v) internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; and (vi) internal executive branch legal advice or legal opinions addressed to executive branch officials. See 84 FR at 55235–36.

[3] See *other written guidelines* in 20 CFR 404.1602 and 416.1002 for more information about POMS and SSRs. See 20 CFR 402.35 for information about where we publish SSRs and ARs. See 20 CFR 404.985 and 416.1485 for more information about ARs. Additionally, our POMS instructions are publicly available at *https://secure.ssa.gov/poms.nsf/Home?readform,* our HALLEX manual is publicly available at *https://www.ssa.gov/OP_Home/hallex/hallex.html,* and our SSRs and ARs are publicly available at *https://www.ssa.gov/OP_Home/rulings/rulings.html.*

the process in this final rule for the documents we issue, as appropriate.

As required by E.O. 13891, this final rule includes:

- A requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract.
- Procedures for the public to petition for withdrawal or modification of a particular guidance document, including a designation of the official to whom the public should direct petitions.
- Specific requirements for a guidance document that qualifies as ''significant,'' unless an exemption applies.[4]

For significant guidance documents, absent an exemption from some or all requirements, this final rule sets forth the following requirements, as prescribed by E.O. 13891:

- A period of public notice and comment of at least 30 days before issuance, and a public response to major concerns raised in comments, except when we find, for good cause, that notice and public comment are impracticable, unnecessary, or contrary to the public interest.
- Approval on a non-delegable basis by our agency head or by the head of one of our components whom the President appoints, before issuance.
- Review by the Office of Information and Regulatory Affairs under Executive Order 12866, before issuance.
- Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

On October 31, 2019, OMB issued a memorandum, M–20–02 ''Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents''' (Memorandum M–20–02).[5] Memorandum M–20–02 directs that an agency's regulations should require guidance documents to, at minimum:

- Include the term ''guidance.''
- Identify the agency or office issuing the document.
- Identify the activities to which and the persons to whom the document applies.
- Include the date of issuance.
- Note if it is a revision to a previously issued guidance document and, if so, identify the guidance document that it replaces.
- Provide the title of the guidance and the document identification number.
- Include the citation to the statutory provision or regulation to which it applies or which it interprets.
- Include the disclaimer that the guidance document does not have the force and effect of law and is not meant to bind the public, except as authorized by law or incorporated into a contract.
- Include a short summary of the subject matter covered in the guidance document at the top of the document.

Based on the requirements of E.O. 13891 and consistent with the guidance in Memorandum M–20–02, we are adding a new part to our regulations—20 CFR chapter III part 426.

For more information about the documents that we issue, please see *www.socialsecurity.gov/guidance.*

Rulemaking Analyses and Notices

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. Under 5 U.S.C. 553 (b)(3)(A), agencies are not required to provide prior notice and opportunity for the public to comment for a rule that is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. We find this rule is exempt from the requirement to provide prior notice and opportunity for public comment because it is a rule of ''agency organization, procedure, or practice.'' It merely explains the process we will follow when issuing guidance documents as defined by the E.O., and how we will comply with the requirements of the E.O. Accordingly, we are issuing this final rule without prior public comment.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with OMB and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it.

Executive Order 13771

This final rule is not an Executive Order 13771 regulatory action because it results in costs that are *de minimis.*

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities, because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13132

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this final rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Paperwork Reduction Act

This final rule does not impose any new requirements under the Paperwork Reduction Act (PRA), nor does it require modification to any of SSA's existing OMB PRA-approved information collections. If in the future SSA publishes individual guidance documents that involve public information collection, we will seek PRA approval for them in advance of collecting the information.

(Catalog of Federal Domestic Assistance Program Nos. 9601, Social Security—Disability Insurance; 96.006 Supplemental Security Income)

List of Subjects for 20 CFR Part 426

Social security, Guidance.

[4] A significant guidance document is a guidance document that may reasonably be anticipated to: (i) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866. E.O. 13891, section 2(c), 84 FR at 55236. The Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs determines if a guidance document is significant. An exemption applies when the agency and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements. E.O. 13891, section 4(a)(iii), 84 FR at 55237.

[5] Available at *https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf.*

The Commissioner of the Social Security Administration, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary **Federal Register** Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

■ For the reasons set out in the preamble, we amend 20 CFR chapter III by adding part 426 to read as follows:

PART 426—GUIDANCE DOCUMENTS

Sec.
426.5 Purpose.
426.10 Explanation of agency guidance documents.
426.15 When guidance documents are nonbinding.
426.20 Procedures for the public to request withdrawal or modification of a guidance document.
426.25 Significant guidance documents.

Authority: Secs. 205(a)–(b) and (d)–(h), and 702(a)(5) of the Social Security Act (42 U.S.C., 405(a)–(b) and (d)–(h) and 902(a)(5)); and E.O. 13891, 84 FR 55235.

§ 426.5 Purpose.

We established this part to comply with the requirements of Executive Order 13891 of October 9, 2019, Promoting the Rule of Law Through Improved Agency Guidance Documents. The rules in this part relate to agency guidance documents. They explain what constitutes guidance documents, describe the non-binding nature of guidance documents, the procedures to request withdrawal or modification of guidance documents, and the additional requirements and procedures for significant guidance documents.

§ 426.10 Explanation of agency guidance documents.

(a) *Guidance documents.* Guidance documents are agency statements of general applicability, intended to have future effect on the behavior of regulated parties, that set forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.

(b) *Documents not classified as guidance.* Guidance documents do *not* include:

(1) Agency statements of specific, rather than general, applicability.

(2) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation.

(3) Legislative rules promulgated under 5 U.S.C. 553 (or similar statutory provisions), or exempt from rulemaking requirements under 5 U.S.C. 553(a).

(4) Rules of agency organization, procedure, or practice.

(5) Decisions of agency adjudication.

(6) Documents or agency statements that are directed solely to the issuing agency or other agencies (or personnel of such agencies) that are not anticipated to have substantial future effect on the behavior of regulated parties or the public.

(7) Legal briefs and other court filings.

(8) Legal opinions by the Office of Legal Counsel at the Department of Justice.

(9) Legal advice or opinions from our Office of the General Counsel.

(c) *Elements of guidance documents.* In general, each published guidance document should, at a minimum:

(1) Include the term ''guidance.''

(2) Identify the agency or office issuing the document.

(3) Identify the activities to which and the persons to whom the document applies.

(4) Include the date of issuance.

(5) Note if it is a revision to a previously issued guidance document and, if so, identify the guidance document that it replaces.

(6) Provide the title of the guidance and the unique document identification number.

(7) Include the citation to the statutory provision or regulation to which it applies or which it interprets.

(8) Include the disclaimer in 20 CFR 426.15(b).

(9) Include a short summary of the subject matter covered in the guidance document at the top of the document.

(d) *Our guidance documents.* Any document that satisfies the definition in paragraph (a) of this section and that does not meet an exclusion in paragraph (b) of this section qualifies as a guidance document, regardless of name or format. On our internet site, we maintain an indexed, searchable web page, which contains links to all of our guidance documents in effect.

(e) *Rescinded guidance documents.* We will not cite, use, or rely on guidance documents that are rescinded, except to establish historical facts. Any guidance documents that do not appear on our internet site as described in paragraph (d) of this section, will be considered rescinded.

§ 426.15 When guidance documents are nonbinding.

(a) Guidance documents lack the force and effect of law, unless expressly authorized by law or incorporated into a contract.

(b) We will include a disclaimer on guidance documents clarifying that they do not have the force and effect of law and are not meant to bind the public in any way, and are intended only to provide clarity to the public regarding existing requirements under the law or agency policies. When a guidance document is binding because the law authorizes binding guidance or because a contract incorporates the guidance, we will modify the disclaimer to reflect either of those facts.

§ 426.20 Procedures for the public to request withdrawal or modification of a guidance document.

The public may ask us to consider withdrawing or modifying an existing guidance document. The public may direct these requests to the Commissioner of the Social Security Administration by sending an email to *Regulations@ssa.gov* or mail to 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. We will respond within 90 days of receipt.

§ 426.25 Significant guidance documents.

(a) *Significant guidance documents.* Significant guidance documents are guidance documents that may be reasonably anticipated to do one or more of the following:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(b) *Significance determination.* We will refer to the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, or the Administrator's designee, the question of whether a guidance document is significant.

(c) *Actions we will take before issuing significant guidance documents.* For significant guidance documents, unless we and the Administrator of the Office of Information and Regulatory Affairs agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, we will do the following:

(1) Submit the guidance document for review by the Office of Information and Regulatory Affairs under Executive Order 12866.

(2) Publish a document in the **Federal Register** announcing the availability of a significant guidance document and make the draft guidance document available on our website.

(3) Provide a public notice and comment period of at least 30 days before issuance of a final guidance document, and a public response to major concerns raised in comments, except when we for good cause find (and incorporate such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

(4) Obtain approval on a non-delegable basis from the Commissioner of Social Security, or from a component head the President appoints (with or without confirmation by the Senate), or from an official who is serving in an acting capacity as either of the foregoing.

(5) Comply with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), 13771 (Reducing Regulation and Controlling Regulatory Costs), and 13777 (Enforcing the Regulatory Reform Agenda).

[FR Doc. 2020–17878 Filed 8–19–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–581]

Schedules of Controlled Substances: Placement of Cenobamate in Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, an interim final rule with request for comments published in the **Federal Register** on March 10, 2020, placing cenobamate [(1R)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate, including its salts, in schedule V of the Controlled Substances Act (CSA). With the issuance of this final rule, the Drug Enforcement Administration maintains cenobamate, including its salts, in schedule V of the CSA.

DATES: The effective date of this rulemaking is August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), when the Drug Enforcement Administration (DEA) receives notification from the Department of Health and Human Services (HHS) that the Secretary has approved a certain new drug and HHS recommends control in the CSA schedule II–V, DEA is required to issue an interim final rule, with opportunity for public comment and to request a hearing, controlling the drug within a specified 90-day timeframe and subsequently to issue a final rule. 21 U.S.C. 811(j). When controlling a drug pursuant to subsection (j), DEA must apply the scheduling criteria of 21 U.S.C. 811 (b) through (d) and 812(b). 21 U.S.C. 811(j)(3).

On March 10, 2020, DEA published an interim final rule in the **Federal Register** to make cenobamate (including its salts) a schedule V controlled substance. 85 FR 13741. The interim final rule provided an opportunity for interested persons to submit comments, as well as file a request for hearing or waiver of hearing, on or before April 9, 2020. DEA received two comments and did not receive any requests for hearing or waiver of hearing.

Comments Received

In response to the interim final rule, DEA received two comments. One comment was blank and the second comment was not related to the scheduling of cenobamate. Therefore, DEA has no responses to those comments.

Based on the rationale set forth in the interim final rule, DEA adopts the interim final rule, without change.

Requirements for Handling Cenobamate

As indicated above, cenobamate has been a schedule V controlled substance by virtue of an interim final rule issued by DEA in March 2020. Thus, this final rule does not alter the regulatory requirements applicable to handlers of cenobamate that have been in place since that time. Nonetheless, for informational purposes, we restate here those requirements. Cenobamate is subject to the CSA's schedule V regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule V substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) cenobamate, or who desires to handle cenobamate, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who intends to handle cenobamate, and is not registered with DEA, must submit an application for registration and may not continue to handle cenobamate, unless DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who obtains a schedule V registration to handle cenobamate and subsequently determines they are no longer willing or able to maintain such registration must surrender all quantities of currently held cenobamate, or may transfer all quantities of cenobamate to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Cenobamate is subject to schedule III–V security requirements and must be handled and stored in accordance with 21 CFR 1301.71–1301.93. Non-practitioners handling cenobamate must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of cenobamate must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Since March 10, 2020, every DEA registrant who possesses any quantity of cenobamate was required to keep an inventory of cenobamate on hand, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for cenobamate, or products containing cenobamate, pursuant to 21 U.S.C. 827, and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for cenobamate, or products containing cenobamate, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule V controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of cenobamate may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act and the CSA.

9. *Importation and Exportation.* All importation and exportation of cenobamate must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving cenobamate not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

This final rule, without change, affirms the amendment made by the interim final rule that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemaking. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is: (1) Approved by HHS and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause. DEA issued an interim final rule on March 10, 2020, and solicited public comments on that rule. Subsection (j) further provides that after giving interested persons the opportunity to comment and to request a hearing, the Attorney General, as delegated to the Administrator of DEA, shall issue a final rule in accordance with the scheduling criteria of 21 U.S.C. 811(b) through (d) and 812(b). As stated above, the two public comments DEA received to the interim final rule did not necessitate any response. DEA is now issuing the final rule in accordance with subsection (j).

Executive Orders (E.O.) 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of E.O. 12866 and the principles reaffirmed in E.O. 13563.

This final rule is not an E.O. 13771 regulatory action pursuant to E.O. 12866 and OMB guidance.[1]

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

E.O. 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E.O. 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

[1] Office of Mgmt. & Budget, Exec. Office of The President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 Titled ''Reducing Regulating and Controlling Regulatory Costs'' (Feb. 2, 2017).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding the applicability of the APA, DEA was not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local 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.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. However, pursuant to the CRA, DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 21 CFR part 1308, which

published on March 10, 2020 (85 FR 13741), is adopted as final without change.

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–17357 Filed 8–19–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–631]

Schedules of Controlled Substances: Temporary Placement of Isotonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary order to schedule *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (commonly known as isotonitazene), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I. This action is based on a finding by the Acting Administrator that the placement of isotonitazene in schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle isotonitazene.

DATES: This temporary scheduling order is effective August 20, 2020, until August 20, 2022. If this order is extended or made permanent, DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Controlled Substances Act (CSA) provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance permanently are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling [1] for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of DEA (Administrator). 28 CFR 0.100.

Background

21 U.S.C. 811(h)(4) requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[2] The Acting Administrator transmitted notice of his intent to place isotonitazene in schedule I on a temporary basis to the Assistant Secretary for Health of HHS (Assistant Secretary) by letter dated March 2, 2020. The Assistant Secretary responded to this notice by letter dated March 31, 2020, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for isotonitazene. The Assistant Secretary also stated that HHS had no objection to the temporary placement of isotonitazene in schedule I of the CSA.

The Drug Enforcement Administration (DEA) has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). Isotonitazene is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for isotonitazene under section 505 of the FDCA, 21 U.S.C. 355. DEA has found that the control of isotonitazene in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety.

As required by 21 U.S.C. 811(h)(1)(A), DEA published a notice of intent to temporarily schedule isotonitazene in the **Federal Register** on June 18, 2020. 85 FR 38619. That notice of intent discussed findings from DEA's three-factor analysis dated May 2020, which DEA made available on *www.regulations.gov* contemporaneously with the publication of the notice of intent. This temporary scheduling order discusses updated findings on isotonitazane for one of the three factors (Factor 5) in DEA's July 2020 analysis related to law enforcement seizures, overdoses, and regulatory status.

To find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Available data and information for isotonitazene summarized below indicate that it has high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. DEA's May and July 2020 three-factor analyses and the Assistant Secretary's March 31, 2020, letter are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov.*

[1] Though the Drug Enforcement Administration (DEA) has used the term ''final order'' with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Isotonitazene

The availability of synthetic opioids in the illicit drug market continues to pose an imminent hazard to the public safety. Adverse health effects associated with the abuse of synthetic opioids and the continued evolution and increased popularity of these substances have been a serious concern in recent years. As the United States continues to experience an unprecedented epidemic of opioid misuse and abuse, the presence of new synthetic opioids with no approved medical use exacerbates the epidemic. The trafficking and abuse of new synthetic opioids are deadly new trends.

The identification of isotonitazene, chemically known as *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine), in the illicit drug market has been reported in Canada, Estonia, Germany, Latvia, Sweden, and the United States (see Factor 4 below). Data obtained from preclinical pharmacology studies shows that isotonitazene has a pharmacological profile similar to that of the potent synthetic opioid etonitazene, a schedule I controlled substance. Because of the pharmacological similarities of isotonitazene to etonitazene, the use of isotonitazene presents a high risk of abuse and may negatively affect users and communities. The abuse of isotonitazene has been associated with at least 19 fatalities in the United States (see Factor 5 below). The positive identification of this substance in overdose and post-mortem cases is a serious concern for public safety. Thus, isotonitazene poses an imminent hazard to public safety.

Available data and information for isotonitazene, as summarized below, indicates that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–631.

Factor 4. History and Current Pattern of Abuse

The chemical syntheses of isotonitazene (a benzimidazole derivative) and other benzimidazole derivatives (including schedule I substances such as synthetic opioids etonitazene and clonitazene) were first reported in the scientific literature in 1957. Isotonitazene is not an approved pharmaceutical product and is not approved for medical use anywhere in the world. As discussed in the background section, the Assistant Secretary stated in a March 31, 2020, letter to DEA that there are no INDs or FDA-approved NDAs for isotonitazene in the United States. Hence, DEA notes there is no legitimate channel for isotonitazene as a marketed drug product.

Since 2014, numerous synthetic opioids structurally related to fentanyl and several opioids from other structural classes have begun to emerge in the illicit drug market, as evidenced by the identification of these drugs in forensic drug exhibits and toxicology samples. Beginning in April 2019, isotonitazene emerged on the illicit synthetic drug market in the United States, as evidenced by its identification in drug seizures and in biological samples collected and submitted to National Medical Services (NMS) Laboratory [3] in August 2019. In August 2019, isotonitazene was first reported in a drug case in Belgium and in toxicology casework in Canada (a toxicological sample was collected in March 2019). In the United States, the Center for Forensic Science Research and Education (under the novel psychoactive substances discovery program) first reported isotonitazene in November 2019.

According to a report by the European Monitoring Center for Drugs and Drug addiction and Europol,[4] between April 2019 and January 2020, four member-states (Estonia, Latvia, Germany, and Sweden) have reported 24 isotonitazene cases involving 109.6 grams of powder (22 cases) and 4.5 grams of liquid (two cases). Isotonitazene has been encountered by United States law enforcement primarily in powder form. In March 2020, Canada law enforcement also encountered isotonitazene in a tablet form, as a white triangular tablet with 'M' logo on one side and '8' logo on the other side, and as a blue tablet in Dilaudid counterfeit pills. Identification of isotonitazene in counterfeit pills is deeply concerning because the identity, purity, and quantity of isotonitazene in this formulation are uncertain, thus presenting additional safety concerns for unsuspecting users.

In the United States, isotonitazene has been identified as a single substance or in combination with other substances. In April 2019, the United States Customs and Border Protection (CBP) seized 1.6 grams of isotonitazene in California. In addition, Wisconsin State Crime Laboratories identified isotonitazene mixed with heroin and bromazolam, a nonscheduled benzodiazepine, in seized powder. Further, isotonitazene was identified in a substance obtained from the scene of a death investigation in Iowa. Evidence suggests that individuals are using isotonitazene as a replacement to heroin or other opioids, either knowingly or unknowingly.

Factor 5. Scope, Duration, and Significance of Abuse

Isotonitazene, similar to etonitazene (schedule I), has been described as a potent synthetic opioid and evidence suggests it is being abused for its opioidergic effects (see Factor 6). The abuse of isotonitazene, similar to other synthetic opioids, has resulted in adverse health effects. Isotonitazene has been positively identified in 18 death investigations between August 2019 and January 2020. These reports were from four states—Illinois (9), Indiana (7), Minnesota (1), and Wisconsin (1). Most (n = 12) of the decedents were male. The ages ranged from 24 to 66 years old with an average age of 41. Other substances identified in postmortem blood specimens obtained from these decedents include etizolam (6); flualprazolam, a nonscheduled benzodiazepine (7); fentanyl (6); heroin (3); tramadol, a schedule IV narcotic (2); and U–47700, a schedule I synthetic opioid (1). The average concentration of isotonitazene in these biological samples (blood) was 2.2 ± 2.1 nanogram/milliliter (ng/ml) (range 0.4 to 9.5 ng/ml). Isotonitazene was detected as the only opioid in 50 percent (n = 9) of the specimens for these decedents. DEA [5] is aware of another postmortem case that occurred in January 2020 in Pennsylvania where isotonitazene was identified in a biological sample. In total, isotonitazene has been positively identified in 19 postmortem cases.

[3] NMS Labs, in collaboration with the Center for Forensic Science Research and Education at the Fredric Rieders Family Foundation and the Organized Crime Drug Enforcement Task Force at the U.S. Department of Justice, has received funding from the Centers for Disease Control and Prevention to develop systems for the early identification and notification of novel psychoactive substances in the drug supply within the United States.

[4] European Monitoring Centre for Drugs and Drug Addiction and Europol (2020), EMCDDA initial report on the new psychoactive substance *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine (isotonitazene). In accordance with Article 5b of Regulation (EC) No 1920/2006 (as amended), Publications Office of the European Union, Luxembourg.

[5] Email communication from DEA Philadelphia Field Division on March 4, 2020.

Recent communication from Minnesota Department of Health[6] reports the positive identification of isotonitazene in two overdose cases.

Law enforcement data indicate that isotonitazene has appeared in the United States' illicit drug market. According to the National Forensic Laboratory Information System (NFLIS)[7] database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories, there have been 48 encounters of isotonitazene in the United States (queried May 14, 2020). These 48 encounters occurred in 2019 and 2020 in five states: California (1), Iowa (5), Ohio (4), Tennessee (13), and Wisconsin (25). One of these encounters consisted of 1.6 grams of isotonitazene seized by the CBP in California in April 2019.

As of May 2020, Ohio and Wisconsin enacted emergency legislation to control isotonitazene as a schedule I controlled substance. Internationally, isotonitazene is controlled under Estonia, Latvia, Poland, and Sweden drug control legislation. In the United Kingdom, isotonitazene is controlled under the Psychoactive Substances Act 2016. Further, isotonitazene is controlled under the Norwegian Medicines Act and Lithuania medicine legislation.[8]

The population likely to abuse isotonitazene appears to be the same as those abusing prescription opioid analgesics, heroin, tramadol, fentanyl, and other synthetic opioid substances. This is evidenced by the types of other drugs co-identified in isotonitazene fatal overdose cases. Because abusers of isotonitazene are likely to obtain it through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well characterized. According to the most recent data from the National Survey on Drug Use and Health (NSDUH),[9] as of 2018, an estimated 10.3 million people aged 12 years or older had misused opioids in the past year, including 9.9 million prescription pain reliever misusers and 808,000 heroin users. In 2018, an estimated 2.0 million people had an opioid use disorder which included 1.7 million people with a prescription pain reliever use disorder and 0.5 million people with heroin use disorder. This population abusing opioids is likely to be at risk of abusing isotonitazene. Individuals who initiate (*i.e.,* use a drug for the first time) use of isotonitazene are likely to be at risk of developing substance use disorders, overdoses, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.). Law enforcement and toxicology reports demonstrate that isotonitazene is being illicitly distributed and abused.

Factor 6. What, If Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids in the illicit drug market. Data obtained from pre-clinical studies demonstrate that isotonitazene exhibits a pharmacological profile similar to that of etonitazene and other mu-opioid receptor agonists. In an *in vivo* (in mice) study, isotonitazene was 500 times more potent than morphine as an analgesic in a tail-flick assay. The tail-flick assay is useful in evaluating antinociceptive effect. Data from *in vitro* studies showed that isotonitazene activated the mu-opioid receptor and acted as a mu-opioid receptor agonist. Isotonitazene, similar to hydromorphone and fentanyl, activated the mu-opioid receptor and acted as an agonist via interaction at the mu-opioid receptor with β-arrestin-2, a regulatory protein, in a live cell-based receptor assay. Naloxone, an opioid receptor antagonist, blocked isotonitazene's activation of the mu-opioid receptor. Substances that act as an agonist at the mu-opioid receptors have a high potential for addiction and can induce dose-dependent respiratory depression.

As with any mu-opioid receptor agonist, the potential health and safety risks for users are high. The public health risks attendant to the abuse of heroin and other mu-opioid receptor agonists are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses. According to the Centers for Disease Control and Prevention (CDC), opioids, mainly synthetic opioids other than methadone, are predominantly responsible for drug overdose deaths in recent years. A CDC report shows that from 2013 to 2018,[10] opioid-related overdose deaths in the United States increased from 25,052 to 46,802. Of the drug overdose death data for 2018, opioids were involved in about 69.5 percent of all drug-involved overdose deaths.

In the United States, isotonitazene has been co-identified with other substances in 18 postmortem cases, and DEA is aware of an additional death in January 2020, involving isotonitazene. These deaths associated with isotonitazene occurred in five states: Illinois (9), Indiana (7), Minnesota (1), Pennsylvania (1), and Wisconsin (1). Information gathered from case histories and autopsy findings shows that isotonitazene use is similar to that of classic opioid agonists. Evidence obtained from reported cases of death scenarios suggests that isotonitazene, similar to heroin, can be used intravenously.[11]

The introduction of potent synthetic opioids such as isotonitazene into the illicit market exacerbates problematic opioid use for those seeking these powerful opioids. As documented by a published toxicology report, poly-substance abuse remains common in fatalities associated with the abuse of isotonitazene.[12]

[6] Email communication from Minnesota Department of Health: Biomonitoring and Emerging Contaminants Unit; received May 26, 2020.

[7] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011. NFLIS data was queried on May 14, 2020.

[8] The Medicines Act, LOVDATA, *https://lovdata.no/dokument/NL/lov/1992-12-04-132,* 1992.

[9] The National Survey on Drug Use and Health (NSDUH), formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by HHS' Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population twelve years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year, and past month abuse or dependence. The 2018 NSDUH annual report is available at *https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf* (last accessed June 18, 2020).

[10] CDC National Center for Health Statistics (NCHS), National Vital Statistics System, Mortality. NCHS Data Brief, Number 356, January 2020.

[11] Krotulski AJ, Papsun DM, Kacinko SL, and Logan BK (2020). Isotonitazene Quantitation and Metabolite Discovery in Authentic Forensic Casework. *Journal of Analytical Toxicology.* [Epub ahead of print].

[12] *Id.*

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of isotonitazene pose an imminent hazard to the public safety. DEA is not aware of any currently accepted medical uses for isotonitazene in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for isotonitazene indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by 21 U.S.C. 811(h)(4), by a letter dated March 2, 2020, the Acting Administrator notified the Assistant Secretary for Health of DEA's intention to temporarily place isotonitazene in schedule I. DEA subsequently published a Notice of Intent in the **Federal Register** on June 18, 2020. 85 FR 38619.

Conclusion

In accordance with the provisions of 21 U.S.C. 811(h), the Acting Administrator considered available data and information, and herein sets forth the grounds for his determination that it is necessary to temporarily schedule *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (commonly known as: Isotonitazene) in schedule I of the CSA to avoid an imminent hazard to the public safety.

Because the Acting Administrator hereby finds it necessary to temporarily place isotonitazene in schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling this substance is effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this temporary order, isotonitazene will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, isotonitazene must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of August 20, 2020. Any person who currently handles isotonitazene, and is not registered with DEA, must submit an application for registration and may not continue to handle isotonitazene as of August 20, 2020, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA on or after August 20, 2020, is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle isotonitazene must surrender all currently held quantities of isotonitazene.

3. *Security.* Isotonitazene is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of August 20, 2020. Non-practitioners handling isotonitazene must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of isotonitazene must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from August 20, 2020, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of isotonitazene on the effective date of this order must take an inventory of all stocks of these substances on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including isotonitazene) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to isotonitazene pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, 1317, and § 1307.11. Current DEA registrants authorized to handle isotonitazene shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute isotonitazene must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312 as of August 20, 2020.

8. *Order Forms.* All DEA registrants who distribute isotonitazene must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of August 20, 2020.

9. *Importation and Exportation.* All importation and exportation of isotonitazene must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of August 20, 2020.

10. *Quota.* Only DEA registered manufacturers may manufacture isotonitazene in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of August 20, 2020.

11. *Liability.* Any activity involving isotonitazene not authorized by, or in violation of the CSA, occurring as of August 20, 2020, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

21 U.S.C. 811(h) provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement of a publication in the **Federal Register** of a Notice of Intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling order. The APA expressly differentiates between an order and a rule, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making.*'' 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an *order* instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in 21 U.S.C. 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this action might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice-and-comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Acting Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this action is not a significant regulatory action. E.O. 12866 directs 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). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866. In addition, because this action is not considered an E.O. 12866 ''significant regulatory action,'' it does not meet the definition of an E.O. 13771 regulatory action. Therefore, the repeal and cost offset requirements of E.O. 13771 have not been triggered.

This action 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. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(48) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(48) *N,N*-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: isotonitazene; *N,N*-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1*H*-benzimidazole-1-ethanamine) 9614

* * * * *

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–17951 Filed 8–19–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9614]

RIN 1545–AM97

Certain Outbound Property Transfers by Domestic Corporations; Certain Stock Distributions by Domestic Corporations; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to a Treasury Decision 9614, which was published in the **Federal Register** on Tuesday, March 19, 2013. Treasury Decision 9614 contained final regulations that apply to transfers of certain property by a domestic corporation to a foreign corporation in certain nonrecognition exchanges, or to distributions of stock of certain foreign corporations by a domestic corporation in certain nonrecognition distributions.

DATES:

Effective date: These corrections are effective on August 20, 2020.

Applicability date: March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Logan M. Kincheloe at (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9614) that are the subject of this correction are issued under section 367 of the Internal Revenue Code.

Need for Correction

As published on March 19, 2013 (53 FR 17024), the final regulations (TD 9614; FR Doc. 2013–05700), contained errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 1.367(a)–3 is amended by adding paragraph (g)(1)(v)(A) and (B) to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(g) * * *

(1) * * *

(v) * * *

(A) Except as provided in paragraphs (g)(1)(v)(B) of this section and § 1.367(a)–3T(g)(1)(ix), the rules of paragraph (d)(2)(vi) of this section apply only to transactions occurring on or after January 23, 2006. See § 1.367(a)–3(d)(2)(vi), as contained in 26 CFR part 1 revised as of April 1, 2005, for transactions occurring on or after July 20, 1998, and before January 23, 2006.

(B)(*1*) For purposes of paragraph (d)(2)(vi)(B)(*1*) of this section as contained in 26 CFR part 1 revised as of April 1, 2007, except as provided in paragraph (g)(1)(v)(B)(*3*) of this section, the following conditions must be satisfied for transactions occurring on or after December 28, 2007, and before March 18, 2013: The conditions and requirements of section 367(a)(5) and paragraph (g)(1)(v)(B)(*2*) of this section must be satisfied with respect to the domestic acquired corporation's transfer of assets to the foreign acquiring corporation and those conditions and requirements apply before the application of the exception under paragraph (d)(2)(vi)(B)(*1*) of this section as contained in 26 CFR part 1 revised as of April 1, 2007.

(*2*) The domestic acquired corporation is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (controlling domestic corporations) immediately before the reorganization, appropriate basis adjustments under section 367(a)(5) are made to the stock received by the controlling domestic corporations in the reorganization, and any other conditions as provided in regulations under section 367(a)(5) are satisfied. For purposes of determining whether the domestic acquired corporation is controlled by five or fewer domestic corporations, all members of the same affiliated group within the meaning of section 1504 are treated as one corporation. Any adjustments to stock basis required under section 367(a)(5) must be made to the stock received by the controlling domestic corporation in the reorganization so the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange is reflected in the stock received. The basis adjustment requirement cannot be satisfied by adjusting the basis in stock of the foreign acquiring corporation held by the controlling domestic corporation before the reorganization. To the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange cannot be preserved in the stock received by the controlling domestic corporation in the reorganization, the domestic acquired corporation's transfer of property to the foreign acquiring corporation is subject to section 367(a) and (d).

(*3*) For transactions occurring on or after August 19, 2008, and before March 18, 2013, the following condition also applies: To the extent any of the retransferred assets constitute property to which section 367(d) applies, the exception under paragraph (d)(2)(iv)(B)(*1*) of this section, as contained in 26 CFR part 1 revised as of April 1, 2007, applies only if the property to which section 367(d) applies is treated as property subject to section 367(a) for purposes of satisfying the conditions and requirements of section 367(a)(5).

* * * * *

§ 1.367(a)–7 [Amended]

■ **Par. 3.** In § 1.367(a)–7 amend paragraph (f)(10) by removing ''§ 1.367(a)–1T(d)(4)'' and adding in its place ''§ 1.367(a)–1(d)(4)''.

Martin V. Franks,

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

[FR Doc. 2020–16354 Filed 8–19–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[Docket ID: DOD–2016–HA–0107]

RIN 0720–AB68

Collection From Third Party Payers of Reasonable Charges for Healthcare Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule exercises the DoD's authority to update current regulations to compute reasonable charges for inpatient and ambulatory (outpatient) institutional resources and also for pharmaceuticals, durable medical equipment (DME), supplies, immunizations, injections or other medications administered or furnished by DoD military medical treatment facilities (MTFs) under their three existing healthcare cost recovery programs: Third Party Collections, Medical Services Account, and Medical Affirmative Claims.

DATES: This rule is effective on September 21, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. DeLisa E. Prater, Program Manager, Defense Health Agency Uniform Business Office, (703) 275–6380.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This rule updates the reasonable charges methodologies for inpatient and ambulatory institutional billing to allow for the use of Itemized Resource Utilization (IRU) based rates–developed from the cost to provide inpatient and ambulatory institutional healthcare resources–in addition to current bundled prospective reimbursement approaches of diagnostic related group (DRG), ambulatory payment classification (APC), ambulatory surgery center (ASC) and ambulatory procedure visit (APV) based rates. It also revises the reasonable charges methodology for pharmaceuticals, DME, supplies, immunizations, injections or medication administered to allow for their calculation using either Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) prevailing rates or IRU based rates—developed from the cost to provide these healthcare items and resources—regardless of whether CHAMPUS prevailing rates are available. The additional IRU methodology implements an itemized rate and reasonable charges structure that improves collections and operation of DoD's healthcare cost recovery programs by ensuring MTFs receive appropriate reimbursement for institutional healthcare resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication provided or administered and is more consistent with civilian health insurance industry practice. The final rule also replaces ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian health insurance industry terminology and better promote identification and separate billing of institutional and professional services.

A. Purpose of the Final Rule

The purpose of this final rule is to incorporate new additional statutory authority for calculating reasonable institutional facility charges for: (a) Inpatient services and resources provided at DoD military MTFs in addition to the current authorized methodology which uses all-inclusive prospective CHAMPUS DRG based payment rates (including professional charges), and (b) ambulatory services provided at DoD MTFs in addition to the current authorized methodologies which use all-inclusive CHAMPUS APC and ambulatory surgery center (ASC) based payment rates and Military Health System (MHS) ambulatory procedure visit (APV) based payment rates. As defined in 32 CFR 199.2, the term ''facility charges'' means the charges, either inpatient or outpatient, made by a MTF to cover the overhead costs of providing the service (*e.g.,* building costs such as depreciation and interest, staffing costs, drugs and supplies; overhead costs such as utilities, housekeeping, maintenance). It also revises the reasonable charges methodology for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided to allow for their reasonable charges calculation using either CHAMPUS prevailing or cost based rates regardless of whether CHAMPUS prevailing rates are available. The legal authority for this final rule is 10 U.S.C. 1095(f), 1097b(b) and 1079b.

B. Summary of the Major Provisions of the Final Rule

a. It creates an additional exception to the general rule that reasonable charges under 32 CFR 220.8(a), 220.8(b), 220.8(f)(5) and 220.8(f)(6) for inpatient and ambulatory institutional resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication administered are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. Specifically, it authorizes DoD MTFs to use an alternative reasonable charges methodology based on IRU rates–developed from the cost to provide these resources and items–in addition to the use of aggregated and prospective DRG, APC, ASC and APV and prevailing CHAMPUS based encounter rates.

b. As a ''housekeeping'' change, it replaces ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian health insurance industry terminology and better promote identification and separate billing of institutional and professional services as required by 32 CFR 220.8(b).

C. Legal Authority for This Program

Legal authority for the final rule is outlined in the following statutes and regulations listed below:

a. 10 U.S.C. 1079b(a)—Procedures for charging fees for care provided to civilians; retention and use of fees collected.

This section authorizes the Secretary of Defense to implement procedures under which the DoD can charge civilians that are not covered beneficiaries for trauma and other medical care provided. The charges must represent the cost of the service, as determined by the Secretary. This section can be accessed via the following link: *https://www.govinfo.gov/content/pkg/USCODE-2011-title10/pdf/USCODE-2011-title10-subtitleA-partII-chap55-sec1079b.pdf.*

b. 10 U.S.C. 1085—Medical and dental care from another executive department: Reimbursement.

This section authorizes any executive department providing inpatient medical or dental care to a member or former member of the uniformed services under the jurisdiction of another department to seek reimbursement for the care provided, at a rate representative of the cost of the provision of this care. The authority to establish these rates is delegated by the President to the Secretary of Defense for facilities of armed forces under jurisdiction of a military department. This section can be accessed via the following link: *https://www.govinfo.gov/content/pkg/USCODE-2011-title10/pdf/USCODE-2011-title10-subtitleA-partII-chap55-sec1085.pdf.*

c. 10 U.S.C. 1095(f)—Health care services incurred on behalf of covered beneficiaries: collection from third-party payers.

This section authorizes the Secretary of Defense to determine rates for covered beneficiaries using methodologies based on per diem rates, all-inclusive per visit rates, diagnosis related group, or other methodologies as appropriate. This section can be accessed via the following link: *https://www.govinfo.gov/content/pkg/USCODE-2011-title10/pdf/USCODE-2011-title10-subtitleA-partII-chap55-sec1095.pdf.*

II. Regulatory History

DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and ambulatory (outpatient) institutional services and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided at DoD MTFs to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. *See* 10 U.S.C. 1095 and 32 CFR 220.2. Also, DoD must collect from nonbeneficiaries (or their insurers) the cost of trauma or other medical care provided to them and from other federal agencies, the average cost of healthcare provided to their beneficiaries at DoD MTFs (10 U.S.C. 1079b(a) and 1085). Currently, DoD uses all-inclusive prospective CHAMPUS DRG based payment rates (including professional charges) as the reasonable charges for inpatient care and all-inclusive CHAMPUS APC and ASC based and MHS APV charges for miscellaneous institutional ambulatory care in its healthcare cost recovery programs—Third Party Collection, Medical Services Account and Medical Affirmative Claims. The MHS APV rate

is authorized by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) Policy Memorandum, ''Use of CPT Code 99199'' (September 14, 2004) because MTFs currently do not have the appropriate software to group encounters into APCs and ASCs. Also, DoD uses the average cost for pharmaceutical rates because CHAMPUS prevailing rates are not available. However, DoD uses CHAMPUS based rates for DME, supplies, immunizations, injections or medication administered.

III. Discussion of Comments and Changes

The proposed rule was published in the **Federal Register** on December 18, 2018 (83 FR 64768–64771). Comments were accepted for 60 days until February 19, 2019. One comment was received, but it was unrelated to the rule. No other comments were received during this comment period.

No changes to the rule are being made as a result of this comment period, or otherwise.

IV. Summary of Changes From the Proposed Rule

Since the publication of the proposed rule, no changes have been made to the rule as a result of the comment period, further internal coordination, or administrative corrections.

V. Regulatory Analyses

A. Regulatory Planning and Review

a. Executive Orders

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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, distribute 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. It has been determined that this rule is not a significant regulatory action. This rule does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

There are no cost savings to the public anticipated by amending the current 32 CFR part 220. Consistent with the analysis of transfer payments under OMB Circular A–4, this final rule does not involve regulatory costs subject to Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

b. Summary

This rule will create an additional exception to the general rule that reasonable charges for inpatient and ambulatory institutional resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication administered are based on the rates used by CHAMPUS. Specifically, this rule authorizes DoD MTFs use a methodology based on IRU, developed from the cost to provide these resources and items, to establish reasonable charges.

c. Affected Population

No new populations will be billed that were not previously billed, and reimbursement will continue to be required from populations currently being billed. Under this final rule, the individual rates these populations are billed will change to rates that, using the new IRU methodology, more accurately capture the underlying cost of the provision of care.

Additionally, third-party payers will receive medical bills from MTFs in a manner more consistent with the submission of medical bills in the private sector which will enhance their ability to process these claims.

d. Expected Costs

The final rule will create an additional exception to the general rule that reasonable charges under 32 CFR 220.8(a), 220.8(b), 220.8(f)(5) and 220.8(f)(6) for inpatient and ambulatory institutional resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication administered are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. This final rule authorizes DoD MTFs to use an alternative reasonable charges methodology based on IRU rates—developed from the cost to provide these resources and items—in addition to the use of aggregated and prospective DRG, APC, ASC and APV and prevailing CHAMPUS based encounter rates. The new IRU based rates will be developed specific to individual medical services, while currently some CHAMPUS rates are based on aggregate or per-diem averages across a wider range of services. The itemized capture of resources will be enabled by the enterprise Electronic Health Records system known as MHS GENESIS currently being deployed across the Military Health System. Services rendered during patient visits can be captured at the transactional level on a patient account, resulting in a claim with charges that are more representative of the actual cost of rendering services during the specific visit.

e. Benefits

Compared to currently established CHAMPUS based rates, IRU based rates are more representative of actual costs specific to the institutional resources and also to pharmaceuticals, DME, supplies, immunizations, injections or medication administered or consumed in the provision of care to a patient. Also, IRU based rates provide DoD the ability it does not currently have to bill third party payers in an itemized manner that they are accustomed to. With the availability of IRU based rates, DoD MTFs can bill for institutional resources and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered using charge descriptions (*i.e.,* an MTF's comprehensive list of items and services for which it can charge) and individual cost-based rates associated with those descriptions. As a result, institutional bills are much more consistent with the actual resources and services provided to the patient, third party payers who receive MTF claims will have the detailed data needed for reimbursement, and the potential for MTFs to receive appropriate reimbursement improves. MTF claims are frequently returned for additional information or denied because they are not in an itemized format consistent with standard industry health insurance practice. The format of resulting line-item inpatient charges based on IRU rates will more closely resemble the format currently used in the health insurance industry and promote more efficient claim adjudication. This rule will not affect any payments by TRICARE as this rule

does not pertain to purchased care. It specifically applies to rate development for cost recovery in the direct care setting.

In addition, using only the current methodologies for reasonable charges based on bundled prospective DRG/APC/ASC/APV based rates methods and CHAMPUS prevailing rates methods for pharmaceuticals, DME, supplies, immunizations, injections or medication administered limits MTFs' flexibility and ability to effectively accommodate current and new provider reimbursement methodologies and is likely reducing and resulting in missed reimbursement opportunities from third party payers. Third party payers do not uniformly have nor apply payment methods and rates to claims received. Rather, they each have their own distinct set of rules for and levels of payment that are not necessarily DRG/APC/ASC/APV/CHAMPUS rate based. For example, there are multiple versions of groupers, and a payer's reimbursement policy may use a different grouper than DoD or not involve a grouper at all. Moreover, third party payers are increasingly replacing fee-for-service with value-based performance payment portfolios (*e.g.,* pay for performance, bundled payments, shared savings/accountable care organizations) for providers, including DoD MTFs. Itemized billing using IRU based rates provides payers with the detailed data needed for whatever reimbursement process they use yielding fewer requests for additional information and re-processing of claims and increased potential reimbursement.

Additional benefits from allowing for IRU based charges include:

(1) Providing greater transparency of DoD MTFs' financial efficiency and performance through more detailed purchasing, dispensing, and financial billing functions. IRU based charges provide information necessary to complete detailed analyses into what and how a MTF is purchasing, dispensing, and billing, which will lead to more informed decisions on how to save money, time, and effort at each of those three stages.

(2) Enabling different MTF departments and decision makers to come together to discuss common practices, terminology, and reporting, allowing for the development and analysis of benchmarks evaluating clinical performance, and identifying and implementing the most cost-effective delivery modes available.

(3) Providing the ability to track and monitor resources used to treat patients, thereby allowing MTF staff, management, and leadership to better control and manage costs, and optimize the efficiency of operations to deliver efficient care or prevent unnecessary care.

This IRU based charges approach is consistent with 10 U.S.C. 1095(f) and 1097b(b) that authorize the ASD(HA) to calculate all third-party payment collections and rates charged to civilians and interagency payers based on any appropriate method. It is the ASD(HA)'s determination that itemized IRU based rates for inpatient and ambulatory resources and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided better represents the reasonable charges and costs of providing care to all patients in MTFs.

The rule also replaces ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian healthcare insurance industry terminology. The current regulation uses ''hospital'' interchangeably to mean both: (1) A facility that provides emergency, inpatient, and in some cases outpatient medical care for sick or injured people; and (2) the institutional component of a hospital stay (*i.e.,* overhead and ancillary, diagnostic and treatment services, other than professional services provided by the facility during the inpatient stay such as room and board, laboratory tests and the technical component of radiology services). It is the general rule under CHAMPUS, 32 CFR 220.8(b) and also industry best practice to identify and charge separately for institutional and inpatient professional services. This nomenclature change helps DoD MTFs reinforce the distinction and better promotes identification and separate billing of institutional and professional services as required by 32 CFR 220.8(b) and in accordance with health insurance industry best practice.

f. Alternatives

The enterprise-wide Electronic Health Record system known as MHS GENESIS that is currently being deployed across the Military Health System requires the itemized capture of services rendered at the transaction level for each patient visit. Once this system and its related billing applications are deployed, no action to adopt this final rule will result in the inability to generate, submit, and collect on claims for services rendered at MTFs. The preferred alternative is adoption of this final rule for reasons as outlined in the Benefits section of this preamble.

B. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

C. Small Entities

The RFA requires that each Federal agency analyze options for regulatory relief of small business if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This final rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' (2 U.S.C. 1532) requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this final rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this final rule is not subject to this requirement.

F. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

G. Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been determined that this final rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance, and Military personnel.

Accordingly, 32 CFR part 220 is amended as follows:

PART 220–COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE CHARGES FOR HEALTHCARE SERVICES

■ 1. The authority citation for part 220 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095(f), 1097b(b) and 1079b.

■ 2. Section 220.8 is amended by:
■ a. Revising paragraphs (b), (c)(1), (c)(5) introductory text, and (c)(5)(i);
■ b. In paragraph (d), removing ''inpatient hospital care'' and adding in its place ''care''; and
■ c. Revising paragraphs (f)(2), (f)(5) and (f)(6) and adding paragraph (f)(8).

The revisions read as follows:

§ 220.8 Reasonable charges.

* * * * *

(b) *Inpatient institutional and professional services on or after October 1, 2017.* Reasonable charges for inpatient institutional services provided on or after October 1, 2017, are based on either of two methods as determined by the ASD(HA). The first uses the CHAMPUS Diagnosis Related Group (DRG) payment system rates under 32 CFR 199.14(a)(1). Certain adjustments are made to reflect differences between the CHAMPUS payment system and MHS billing solutions. Among these are to include in the inpatient hospital service charges adjustments related to direct medical education and capital costs (which in the CHAMPUS system are handled as annual pass through payments). Additional adjustments are made for long stay outlier cases. The second method uses Itemized Resource Utilization (IRU) rates based on the cost to provide inpatient institutional resources. Like the CHAMPUS system, inpatient professional services are not included in the inpatient institutional services charges calculated under either methodology, but are billed separately in accordance with paragraph (e) of this section. In lieu of either method described in this paragraph (b), the method in effect prior to April 1, 2003 (described in paragraph (c) of this section), may continue to be used for a period of time after April 1, 2003, if the ASD(HA) determines that effective implementation requires a temporary deferral.

(c) * * * (1) *In general.* Prior to April 1, 2003, the computation of reasonable charges for inpatient institutional and professional services is reasonable costs based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average charge per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under CHAMPUS pursuant to 32 CFR 199.14(a)(1). The method in effect prior to April 1, 2003 (as described in this paragraph (c)), may continue to be used for a period of time after April 1, 2003, if the ASD(HA) determines that effective implementation requires a temporary deferral of the method described in paragraph (b) of this section.

* * * * *

(5) *Identification of professional and institutional charges.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, inpatient billings are subdivided into two categories:

(i) Institutional charges (which refer to routine service charges associated with the facility encounter or hospital stay and ancillary charges).

* * * * *

(f) * * *

(2) With respect to inpatient institutional charges in the Burn Center at Brooke Army Medical Center, the ASD(HA) may establish an adjustment to the rate otherwise applicable under the payment methodologies under this section to reflect unique attributes of the Burn Center.

* * * * *

(5) The charge for immunizations, allergen extracts, allergic condition tests, and the administration of certain medications when these services are provided by or through a facility of the Uniformed Services or a separate immunizations or shot clinic, are based either on CHAMPUS prevailing rates or on IRU rates based on the cost to provide these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

(6) The charges for pharmacy, durable medical equipment and supply resources are based either on CHAMPUS prevailing rates or on IRU rates based on the cost to provide these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each item provided.

* * * * *

(8) Ambulatory (outpatient) institutional services on or after October 1, 2017. Reasonable charges for institutional facility charges for ambulatory services provided on or after October 1, 2017, are based on any of three methods as determined by the ASD(HA). The first uses the CHAMPUS Ambulatory Payment Classification (APC) and Ambulatory Surgery Center (ASC) payment system rates under 32 CFR 199.14(a)(1)(ii) and (iii) and 32 CFR 199.14(d) respectively. The second uses a bundled MHS Ambulatory Procedure Visit (APV) payment system rate charge reflected by the average cost of providing an APV exclusive of professional services. The third method uses IRU rates based on the cost to provide ambulatory institutional resources. Like the CHAMPUS system, ambulatory professional services are not included in the ambulatory institutional facility charges calculated under any of the three methodologies, but are billed separately in accordance with paragraph (e) of this section.

* * * * *

Dated: July 21, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–16131 Filed 8–19–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0245]

RIN 1625–AA08

Special Local Regulation; Potomac River, Between Jones Point, VA, and National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters located at Washington, DC, during a swim event on August 23, 2020. This rule will prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

DATES: This rule is effective from 6:30 a.m. to 11 a.m. on August 23, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0245 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable and contrary to the public interest. On April 20, 2020, WaveOne Open Water of Washington, DC, notified the Coast Guard that it will be conducting ''Washington's Crossing: Swim Across the Potomac'' from 7:30 a.m. to 10 a.m. on August 23, 2020. The swim event consists of approximately 175 participating swimmers competing on a designated, marked course located in National Harbor on the Potomac River, downriver of the Wilson Bridge in Washington, DC. We must establish this safety zone by August 23, 2020, to ensure the safety of particpants and nearby waterway users. Hazards from the swim competition include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the ''Washington's Crossing: Swim Across the Potomac'' event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Maryland-National Capital Region (COTP) has determined that potential hazards associated with the swim event to be held August 23, 2020, will be a safety concern for anyone intending to participate in the event and for vessels that operate within and near the specified waters of the Potomac River. The purpose of this rule is to ensure the safety of vessels and the navigable waters in the regulated area before, during and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 6:30 a.m. to 11 a.m. on August 23, 2020. The special local regulation will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47′35″ N, longitude 077°02′22″ W, thence east along the northern extent of the Woodrow Wilson Memorial (I–495/I–95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47′36″ N, longitude 077°01′32″ W, thence south along the Maryland shoreline to latitude 38°46′52″ N, longitude 077°01′13″ W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47′23″ N, longitude 077°03′03″ W, thence north along the Virginia shoreline to the point of origin. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7:30 a.m. to 10 a.m. swim event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location and duration of the regulated area, which would impact a small designated area of the Potomac River for less than 5 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the status of the regulated area. Moreover, the rule will allow vessels and persons to seek permission to enter the regulated area.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the

reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for less than 5 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0245 to read as follows:

§ 100.T05–0245 Washington's Crossing: Swim Across the Potomac, Potomac River, National Harbor, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Potomac River, encompassed by a line connecting the following points, beginning at Jones Point Park, VA, shoreline at latitude 38°47′35″ N, longitude 077°02′22″ W, thence east along the northern extent of the Woodrow Wilson Memorial (I–495/I–95) Bridge, at mile 103.8, to the Rosilie Island shoreline at latitude 38°47′36″ N, longitude 077°01′32″ W, thence south along the Maryland shoreline to latitude 38°46′52″ N, longitude 077°01′13″ W, at National Harbor, MD shoreline, thence west across the Potomac River to the George Washington Memorial Parkway highway overpass and Cameron Run shoreline at latitude 38°47′23″ N, longitude 077°03′03″ W, thence north along the Virginia shoreline to the point of origin. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the ''Washington's Crossing: Swim Across the Potomac'' swim event, or otherwise designated by the event sponsor as having a function tied to the event.

(c) *Regulations.* (1) Except for participants and vessels already at berth, all non-participants are prohibited from entering, transiting

through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP Maryland-National Capital Region or PATCOM.

(2) To seek permission to enter, contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). If permission is granted, the non-participant may enter the regulated area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP Maryland-National Capital Region or PATCOM.

(3) The COTP Maryland-National Capital Region will provide notice of the regulated area through advanced notice via Fifth Coast Guard District Local Notice to Mariners, broadcast notice to mariners, and on-scene official patrols.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 6:30 a.m. through 11 a.m. on August 23, 2020.

Dated: August 17, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–18405 Filed 8–19–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0659; FRL–10012–03]

Fludioxonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil in or on *Brassica,* leafy greens, subgroup 4–16B, except watercress, at 15 parts per million (ppm); vegetable, *Brassica,* head and stem, group 5–16 at 2 ppm; kohlrabi at 2 ppm; modifies the current watercress tolerance from 7 ppm to 10 ppm; and removes existing tolerances for *Brassica,* head and stem, subgroup 5A and *Brassica,* leafy greens, subgroup 5B. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 20, 2020. Objections and requests for hearings must be received on or before October 19, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0659, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0659 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 19, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0659, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is

available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 10, 2020 (85 FR 7500) (FRL–10005–02), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8754) by Syngenta Crop Protection, LLC, 410 Swing Road, Greensboro, NC 27409. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on *Brassica* leafy greens subgroup 4–16B at 10.0 parts per million (ppm); Vegetable, Head and Stem *Brassica,* Group 5–16 at 2.0 ppm; and Kohlrabi at 2.0 ppm. The petition also requested that the following established tolerances be removed: *Brassica,* leafy greens, subgroup 5B at 10.0 ppm and *Brassica,* head and stem, subgroup 5A at 2.0 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.*

Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing the requested tolerances, with slight modifications for consistency with the Organisation for Economic Co-Operation and Development (OECD) tolerance-rounding class practice and EPA's commodity vocabulary and harmonization with the Codex Alimentarius Commission (Codex). In addition, EPA is establishing tolerances for watercress and subgroup 4–16B that vary slightly from what the petitioner requested. The reasons for these changes are discussed in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

In the **Federal Register** on November 6, 2018 (83 FR 55491) (FRL–9982–75), EPA published a final rule establishing a tolerance for residues of the fungicide fludioxonil in or on beet, sugar, roots. That document contains a summary of the toxicological profile and points of departure, assumptions for exposure assessment, and the Agency's determination concerning the children's safety factor, which have not changed. Those discussions are incorporated by reference into this document. The Agency conducted a revised risk assessment to incorporate exposure to residues of fludioxonil from use on *Brassica,* leafy greens, subgroup 4–16B; Vegetable, *Brassica,* head and stem, group 5–16; and Kohlrabi.

An acute dietary assessment was not performed because there were no adverse effects resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fludioxonil is not expected to pose an acute risk. As to residue levels in food, an unrefined chronic dietary exposure and risk assessment was conducted assuming 100% percent crop treated (PCT) and tolerance-level residues for all food commodities. EPA assessed the exposure in drinking water, additional dietary exposure and the overall aggregate exposure.

Chronic dietary risks are below the Agency's level of concern: 54% of the chronic population-adjusted dose (cPAD) for children 1 to 2 years old, the population group receiving the greatest exposure. Moreover, the short-term aggregate risk for the populations with the highest total exposure margin of exposure (MOEs) of 15,000 for adults and 4,600 for children 1 to 2 years old. Using the exposure assumptions described for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs above the level of concern (LOC) of 100 for all scenarios assessed and are not of concern.

Intermediate- and long-term aggregate risk assessments were not performed because there are no registered or proposed uses of fludioxonil that result in intermediate- or long-term residential exposures. The chronic aggregate exposure assessment consists of exposure from food and water only.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, including infants and children, from aggregate exposure to fludioxonil residues. More detailed information on the subject action to establish a tolerance in or on *Brassica,* leafy greens, subgroup 4–16B; Vegetable, *Brassica,* head and stem, group 5–16; and Kohlrabi can be found in the document entitled, ''Human Health Risk Assessment for Section 3 Registration for Crop Group Conversions/Expansions for *Brassica,* Leafy Greens, Subgroup 4–16B Vegetable and *Brassica,* Head and Stem, Group 5–16 and to Establish an Individual Tolerance on Kohlrabi'' by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2019–0659.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high-performance liquid chromatography/ultraviolet (HPLC/UV) methods (Methods AG–597 and AG–597B) are available for enforcing tolerances for fludioxonil on plant commodities. Additionally, fludioxonil is recoverable by the Quick Easy Cheap Effective Rugged and Safe (QuEChERS) multiresidue method using HPLC with tandem mass spectrometry detection (MS/MS) for analysis. An adequate liquid chromatography, tandem MS (LC–MS/MS) method (Analytical Method GRM025.03A) is available for enforcing tolerances for residues of fludioxonil in or on livestock commodities.

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

B. International Residue Limits

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

The tolerance expressions are harmonized for the United States, Canada, and Codex. Codex has adopted MRLs for many commodities contained in subgroup 4–16B: 9 ppm on upland cress; 10 ppm on watercress; 15 ppm on arugula; broccoli raab; cabbage, Chinese, bokchoy; cabbage, Chinese, Napa; collards; cress, garden; kale; mizuna; mustard greens; rape greens; turnip tops; and 20 ppm on radish tops. EPA is establishing a tolerance at 15 ppm for subgroup 4–16B and 10 ppm on watercress, which harmonizes most of the commodities in the group. EPA is not harmonizing the U.S. tolerances for upland cress and radish tops with the Codex MRLs because no data are available to EPA for those commodities that would indicate a tolerance different than the crop group tolerance would be appropriate. Codex has also adopted MRLs for broccoli (0.7 ppm) and cabbage (2 ppm) which are both commodities in the vegetable, *Brassica,* head and stem, group 5–16. The group 5–16 tolerance level of 2 ppm is harmonized with Codex for cabbage, but the Codex MRL of 0.7 ppm for broccoli is too low to harmonize. There are no Codex MRLs for residues of fludioxonil in or on kohlrabi.

C. Response to Comments

EPA received two anonymous comments in response to the notice of filing for fludioxonil proposed new uses. In summary, one comment states that commodities need to be free from pesticides in order for us to be safe. The other states that the product should not be sold, that it is fluoride on plants, that no one needs to have fluoride ingested from eating plants with pesticides, and that accumulation of pesticides over many years kills people, and should not be authorized.

In response to both comments, the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. In examining whether the pesticide is safe, EPA has evaluated hazard and exposure data and conducted dietary, residential, and aggregate exposure assessments to estimate the risk to human health that will result from all registered and proposed uses of fludioxonil. Based on its assessment of the available information, EPA has concluded that the tolerances for fludioxonil are safe. The commenter has provided no information that would support an Agency determination that these tolerances are not safe. Regarding the comment on fluoride: The benzodioxole group remains intact during fludioxonil metabolism; *i.e.,* all metabolites identified retained both fluorine atoms; therefore, there is no exposure—and thus no risk from exposure—to fluoride.

D. Revisions to Petitioned-for Tolerances

The petitioner requested a conversion of the existing subgroup *brassica,* leafy greens subgroup 5B at 10 ppm to the new subgroup, *brassica,* leafy greens, subgroup 4–16B at 10 ppm. EPA has decided to establish this new subgroup tolerance at 15 ppm in order to harmonize with a larger number of Codex MRLs for the commodities contained in subgroup 4–16B, with the exception of watercress. Watercress is not a commodity in subgroup 5B; therefore, EPA had previously established a separate tolerance for watercress, which was lower than the subgroup 5B tolerance. At the request of the petitioner, EPA is retaining the separate tolerance for watercress, rather than simply covering residues in or on watercress as part of the subgroup, but is increasing that separate tolerance to 10 ppm, which is in line with the petitioner's request to establish the subgroup 4–16B tolerance at 10 ppm (since watercress is a commodity covered by that subgroup) and harmonized with the Codex MRL for watercress.

V. Conclusion

Therefore, tolerances are established for residues of fludioxonil: [4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile], in or on *brassica,* leafy greens, subgroup 4–16B, except watercress at 15 ppm; vegetable, *brassica,* head and stem, group 5–16 at 2 ppm; and kohlrabi at 2 ppm. In addition, EPA is revising the existing tolerance for watercress from 7.0 ppm to 10 ppm and removing existing tolerances for *brassica* leafy greens subgroup 5B at 10.0 ppm and *brassica,* head and stem, subgroup 5A at 2.0 ppm as they are superseded by the new tolerances established in this rule.

VI. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and

responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 16, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.516, paragraph (a)(1):

■ i. Add a heading to the table;

■ ii. Remove the entries for ''Brassica, head and stem, subgroup 5A'' and ''Brassica, leafy greens subgroup 5B'';

■ iii. Add alphabetically the entries ''*Brassica,* leafy greens, subgroup 4–16B, except watercress''; ''Kohlrabi'' and ''Vegetable, *brassica,* head and stem, group 5–16''; and

■ iv. Revise the entry for ''Watercress''.

The additions and revision read as follows:

§ 180.516 Fludioxonil; tolerance for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Brassica, leafy greens, subgroup 4–16B, except watercress	15
* * * * *	
Kohlrabi	2
* * * * *	
Vegetable, *Brassica,* head and stem, group 5–16	2
* * * * *	
Watercress	10

* * * * *

[FR Doc. 2020–17155 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20–759; FRS 16956]

Second Amendment to Collocation Agreement

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau of the Federal Communications Commission (FCC or Commission) announces that on July 10, 2020, the FCC, the Advisory Council on Historic Preservation (Council or ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) executed the attached *Second Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation NPA) to facilitate the collocation of wireless facilities on existing towers under Section 106 of the National Historic Preservation Act (NHPA).

DATES: Effective August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–1550, *Paul.DAri@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, DA No. 20–759, released on July 20, 2020. This document will also be available *https://docs.fcc.gov/public/attachments/DA-20-759A1.pdf.* The amendment facilitates the collocation of wireless facilities on existing towers by eliminating review under Section 106 of the National Historic Preservation Act for certain collocations that involve a limited expansion beyond the boundaries of a tower site.

Synopsis

1. The Collocation NPA, which was executed in 2001 and first amended in 2016, provides that a collocation on an existing tower is excluded from Section 106 review unless it involves one of the enumerated circumstances, which include a substantial increase in the size of the tower. Prior to the amendment, a ''substantial increase in the size of the tower'' was defined to include, among other factors, any excavation outside the current tower site. In contrast, the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (codified at 47 CFR, part 1, appendix C)—executed by the FCC, ACHP, and NCSHPO in 2004, subsequent to the Collocation NPA—excludes from Section 106 review the replacement of a tower that involves deployment and excavation by no more than 30 feet in any direction outside the boundaries of an existing tower site.

2. The FCC, ACHP, and NCSHPO agreed to amend section I.E.4 of the Collocation NPA, which is codified at 47 CFR, part 1, appendix B, to eliminate this inconsistency. Specifically, under this amendment, a collocation would be excluded from Section 106 review if it would not ''expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries'' (Second Amendment to Collocation NPA, Section I.E.4), provided that the collocation complies with other criteria for exclusion specified in the Collocation NPA.

3. *Paperwork Reduction Act Analysis.* The document does not contain proposed information collection(s) subject to the Paperwork Reduction Act

of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

4. *Congressional Review Act.* The Commission will not send a copy of the Second Amendment to the Collocation Agreement, appended for reference as 47 CFR part 1, appendix B, to Congress and the General Accountability Office pursuant to the Congressional Review Act (CRA) because the Second Amendment is not a rule as defined in the CRA, *see* 5 U.S.C. 804(3).

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Telecommunications.

Federal Communications Commission.

Amy Brett,

Associate Division Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Appendix B to part 1 is revised to read as follows:

Appendix B to Part 1—Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

Second Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas Executed by the Federal Communications Commission, The National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation

Whereas, the Federal Communications Commission (FCC), the Advisory Council on Historic Preservation (the Council) and the National Conference of State Historic Preservation Officers (NCSHPO) executed this Nationwide Collocation Programmatic Agreement on March 16, 2001 in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas; and,

Whereas, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and in its Wireless Infrastructure Report and Order, WT Docket No. 13–238, et al, released October 21, 2014, adopted initial measures to update and tailor the manner in which it evaluates the impact of proposed deployments on the environment and historic properties and committed to expeditiously conclude a program alternative to implement additional improvements in the Section 106 review process for small deployments that, because of their characteristics, are likely to have minimal and not adverse effects on historic properties; and,

Whereas, the Middle Class Tax Relief and Job Creation Act of 2012 (Title VI—Public Safety Communications and Electromagnetic Spectrum Auctions, Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012)) was adopted with the goal of advancing wireless broadband services, and the amended provisions in this Agreement further that goal; and,

Whereas, advances in wireless technologies since 2001 have produced systems that use smaller antennas and compact radio equipment, including those used in Distributed Antenna Systems (DAS) and small cell systems, which are a fraction of the size of traditional cell tower deployments and can be installed on utility poles, buildings, and other existing structures as collocations; and,

Whereas, the parties to this Collocation Agreement have taken into account new technologies involving use of small antennas that may often be collocated on utility poles, buildings, and other existing structures and increase the likelihood that such collocations will have minimal and not adverse effects on historic properties, and rapid deployment of such infrastructure may help meet the surging demand for wireless services, expand broadband access, support innovation and wireless opportunity, and enhance public safety—all to the benefit of consumers and the communities in which they live; and,

Whereas, the FCC, the Council, and NCSHPO have agreed that these new measures should be incorporated into this Collocation Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

Whereas, the FCC, the Council, and NCSHPO have crafted these new measures with the goal of promoting technological neutrality, with the goal of obviating the need for further amendments in the future as technologies evolve; and,

Whereas, notwithstanding the intent to draft provisions in a manner that obviates the need for future amendments, in light of the public benefits associated with rapid deployment of the facilities required to provide broadband wireless services, the FCC, the Council, and NCSHPO have agreed that changes in technology and other factors relating to the placement and operation of wireless antennas and associated equipment may necessitate further amendments to this Collocation Agreement in the future; and,

Whereas, the FCC, the Council, and NCSHPO have agreed that with respect to the amendments involving the use of small antennas, such amendments affect only the FCC's review process under Section 106 of the NHPA, and will not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012; and,

Whereas, the FCC, the Council, and NCSHPO acknowledge that federally recognized Indian tribes (Indian tribes), Native Hawaiian Organizations (NHOs), SHPO/THPOs, local governments, and members of the public make important contributions to the Section 106 review process, in accordance with Section 800.2(c) & (d) of the Council's rules, and note that the procedures for appropriate public notification and participation in connection with the Section 106 process are set forth the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA); and,

Whereas, the parties hereto agree that the amended procedures described in this amendment to the Collocation Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and,

Whereas, the FCC sought comment from Indian tribes and Native Hawaiian Organizations regarding the terms of this amendment to the Collocation Agreement by letters dated April 17, 2015, July 28, 2015, and May 12, 2016, as well as during face-to-face meetings and conference calls, including during the Section 106 Summit in conjunction with the 2015 annual conference of the National Association of Tribal Historic Preservation Officers (NATHPO); and,

Whereas, the terms of this amendment to the Collocation Agreement do not apply on ''tribal lands'' as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''); and,

Whereas, the terms of this amendment to the Collocation Agreement do not preclude Indian tribes or NHOs from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or NHOs; and,

Whereas, the execution and implementation of this amendment to the Collocation Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Collocation Agreement;

Now therefore, in accordance with Stipulation XI (as renumbered by this amendment), the FCC, the Council, and NCSHPO agree to amend the Collocation Agreement to read as follows:

Nationwide Programmatic Agreement for the Collocation Of Wireless Antennas Executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation

Whereas, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

Whereas, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 CFR 1.1307), including situations which may affect historical sites listed or eligible for listing in the National Register of Historic Places (''National Register''); and,

Whereas, Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) (''the Act'') requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

Whereas, Section 800.14(b) of the Council's regulations, ''Protection of Historic Properties'' (36 CFR 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

Whereas, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

Whereas, the FCC, the Council and the Working Group have developed this Collocation Programmatic Agreement in accordance with 36 CFR 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.B below); and,

Whereas, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

Whereas, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and,

Whereas, the execution of this Nationwide Collocation Programmatic Agreement will streamline the Section 106 review of collocation proposals and thereby reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and,

Whereas, the FCC and the Council have agreed that these measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

Whereas, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and,

Whereas, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and,

Whereas, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR 800.14(b)(2)(iii); and,

Whereas, the FCC sought comment from Indian tribes and Native Hawaiian Organizations (NHOs) regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001 and February 8, 2001; and,

Whereas, the terms of this Programmatic Agreement do not apply on ''tribal lands'' as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''); and,

Whereas, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

Whereas, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

Now therefore, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

Stipulations

The FCC, in coordination with licensees, tower companies, applicants for antenna licenses, and others deemed appropriate by the FCC, will ensure that the following measures are carried out.

I. Definitions

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

A. ''Antenna'' means an apparatus designed for the purpose of emitting radio frequency (''RF'') radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For purposes of this Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the FCC's rules.

B. ''Collocation'' means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

C. ''NPA'' is the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (47 CFR part 1, App. C).

D. ''Tower'' is any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.

E. ''Substantial increase in the size of the tower'' means:

(1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) The mounting of the proposed antenna would expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries. The current tower site is defined as the current boundaries of the

leased or owned property surrounding the tower and any access or utility easements currently related to the site.

II. Applicability

A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulations I.A and I.B, above.

B. This Nationwide Collocation Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. Collocation of Antennas on Towers Constructed on or Before March 16, 2001

A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or,

2. The tower has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or a finding of compliance with Section 106 and the NPA; or,

3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or,

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

IV. Collocation of Antennas on Towers Constructed After March 16, 2001

A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The Section 106 review process for the existing tower set forth in 36 CFR part 800 (including any applicable program alternative approved by the Council pursuant to 36 CFR 800.14) and any associated environmental reviews required by the FCC have not been completed; or,

2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or,

3. The tower as built or proposed has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a Programmatic Agreement, or otherwise in compliance with Section 106 and the NPA; or,

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

V. Collocation of Antennas on Buildings and Non-Tower Structures

A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The building or structure is over 45 years old, and the collocation does not meet the criteria established in Stipulation VI herein for collocations of small antennas; [1] or,

2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the FCC, licensee, tower company or applicant for an antenna license, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

4. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. An antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted in the interior of a building, regardless of the building's age or location in a historic district and regardless of the antenna's size, without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

(1) The building is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places; or,

(2) The collocation licensee or the owner of the building has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

C. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VI. Additional Exclusion for Collocation of Small Wireless Antennas and Associated Equipment on Buildings and Non-Tower Structures That Are Outside of Historic Districts and Are Not Historic Properties

A. A small wireless antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on an existing building or non-tower structure or in the interior of a building regardless of the building's or structure's age without such collocation being reviewed through the Section 106 process set forth in the NPA unless:

1. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

2. The building or non-tower structure is a designated National Historic Landmark; or,

3. The building or non-tower structure is listed in or eligible for listing in the National Register of Historic Places, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

4. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register; or,

[1] For purposes of this Agreement, suitable methods for determining the age of a building or structure include, but are not limited to: (1) Obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards for Historian or for Architectural Historian (36 CFR part 61); or (2) consulting public records.

5. The antennas and associated equipment exceed the volume limits specified below:

a. Each individual antenna, excluding the associated equipment (as defined in the definition of Antenna in Stipulation I.A.), that is part of the collocation must fit within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.,* one that would be the correct size to contain the equipment) that is individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, must in aggregate fit within enclosures (or if the antennas are exposed, within imaginary enclosures, *i.e.,* ones that would be the correct size to contain the equipment) that total no more than six cubic feet in volume; and,

b. All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, but excluding cable runs for the connection of power and other services, may not cumulatively exceed:

i. 28 cubic feet for collocations on all non-pole structures (including but not limited to buildings and water tanks) that can support fewer than 3 providers; or,

ii. 21 cubic feet for collocations on all pole structures (including but not limited to light poles, traffic signal poles, and utility poles) that can support fewer than 3 providers; or,

iii. 35 cubic feet for non-pole collocations that can support at least 3 providers; or,

iv. 28 cubic feet for pole collocations that can support at least 3 providers; or,

6. The depth and width of any proposed ground disturbance associated with the collocation exceeds the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project regardless of the extent of previous ground disturbance.

B. The volume of any deployed equipment that is not visible from public spaces at the ground level from 250 feet or less may be omitted from the calculation of volumetric limits cited in this Section.

C. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation VI has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VII. Additional Exclusions for Collocation of Small or Minimally Visible Wireless Antennas and Associated Equipment in Historic Districts or on Historic Properties

A. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a property listed in or eligible for listing in the National Register of Historic Places) or (2) inside or within 250 feet of the boundary of a historic district without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The property on which the equipment will be deployed is not a designated National Historic Landmark.

2. The antenna or antenna enclosure (including any existing antenna), excluding associated equipment, is the only equipment that is visible from the ground level, or from public spaces within the building (if the antenna is mounted in the interior of a building), and provided that the following conditions are met:

a. No other antennas on the building or non-tower structure are visible from the ground level, or from public spaces within the building (for an antenna mounted in the interior of a building);

b. The antenna that is part of the collocation fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure *i.e.,* one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume; and,

c. The antenna is installed using stealth techniques that match or complement the structure on which or within which it is deployed;

3. The antenna's associated equipment is not visible from:

a. The ground level anywhere in a historic district (if the antenna is located inside or within 250 feet of the boundary of a historic district); or,

b. Immediately adjacent streets or public spaces at ground level (if the antenna is on a historic property that is not in a historic district); or,

c. Public spaces within the building (if the antenna is mounted in the interior of a building).

4. The facilities (including antenna(s) and associated equipment identified in the definition of Antenna in Stipulation I.A.) are installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials;

5. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance; and

6. The collocation licensee or the owner of the building or non-tower structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a utility pole or electric transmission tower (but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) that is in active use by a utility company (as defined in Section 224 of the Communications Act) or by a cooperatively-owned, municipal, or other governmental agency and is either: (1) A historic property (including a property listed in or eligible for listing in the National Register of Historic Places); (2) located on a historic property (including a property listed in or eligible for listing in the National Register of Historic Places); or (3) located inside or within 250 feet of the boundary of a historic district, without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The utility pole or electric transmission tower on which the equipment will be deployed is not located on a designated National Historic Landmark;

2. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.,* one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

3. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume;

4. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance; and

5. The collocation licensee or the owner of the utility pole or electric transmission tower has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

C. Proposals to mount a small antenna on a traffic control structure (*i.e.,* traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the Section 106 process set forth in the NPA. These proposed collocations will be excluded from such review on a case-by-case basis, if (1) the collocation licensee or the owner of the structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the

public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing or compatible element within the historic district, under the following procedures:

1. The applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing or compatible element within the historic district.

2. The applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors.

3. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing or compatible element within the historic district.

4. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or compatible element within the historic district or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the Section 106 review process.

5. If, within the thirty day period, the SHPO either informs the applicant that the structure is not a contributing or compatible element within the historic district, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the following requirements:

a. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.,* one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

b. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

c. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

D. A small antenna mounted inside a building or non-tower structure and subject to the provisions of this Stipulation VII is to be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

E. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation VII has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VIII. Replacements of Small Wireless Antennas and Associated Equipment

A. An existing small antenna that is mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places); (2) inside or within 250 feet of the boundary of a historic district; or (3) located on or inside a building or non-tower structure that is over 45 years of age, regardless of visibility, may be replaced without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The antenna deployment being replaced has undergone Section 106 review, unless either (a) such review was not required at the time that the antenna being replaced was installed, or (b) for deployments on towers, review is not required pursuant to Stipulation III above.

2. The facility is a replacement for an existing facility, and it does not exceed the greater of:

a. The size of the existing antenna/antenna enclosure and associated equipment that is being replaced; or,

b. The following limits for the antenna and its associated equipment:

i. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.,* one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure; and,

ii. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

3. The replacement of the facilities (including antenna(s) and associated equipment as defined in Stipulation I.A.) does not damage historic materials and permits removal of such facilities without damaging historic materials; and,

4. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

B. A small antenna mounted inside a building or non-tower structure and subject to the provisions of this Stipulation VIII is to be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

IX. Reservation of Rights

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) or its implementing regulations contained in 36 CFR part 800.

X. Monitoring

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

C. Any member of the public may notify the FCC of concerns it has regarding the application of this Programmatic Agreement within a State or with regard to the review of individual undertakings covered or excluded under the terms of this Agreement. Comments shall be directed to the FCC's Federal Preservation Officer. The FCC will consider public comments and, following consultation with the SHPO, potentially affected Tribes, or the Council, as appropriate, take appropriate actions. The FCC shall notify the objector of the outcome of its actions.

XI. Amendments

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

XII. Termination

A. If the FCC determines, or if NCSHPO determines on behalf of its members, that it or they cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented or that the spirit of Section 106 is not being met by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the

other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that either are involved in such implementation or would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the **Federal Register**.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower owner and management companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

XIII. Annual Meeting of the Signatories

The signatories to this Nationwide Collocation Programmatic Agreement will meet annually on or about the anniversary of the effective date of the NPA to discuss the effectiveness of this Agreement and the NPA, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XIV. Duration of the Programmatic Agreement

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, constitutes evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800.

Federal Communications Commission

_____

Date: _____

National Conference of State Historic Preservation Officers

_____

Date: _____

Advisory Council on Historic Preservation

_____

Date: _____

[FR Doc. 2020–16542 Filed 8–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 07–42 and 17–105; FCC 20–95; FRS 16954]

Leased Commercial Access; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a tier-based leased access rate calculation as part of its Modernization of Media Regulation Initiative. The Commission finds that a simplified tier-specific rate calculation best reflects regulatory changes that have occurred in the last 20 years and will more accurately approximate the value of a particular channel, while alleviating burdens on cable operators. The Commission also finds that, although changes in the marketplace cast substantial doubt on the constitutionality of mandatory leased access, leased access requirements are contained in a specific statutory mandate from Congress, so the Commission does not eliminate its leased access rules.

DATES: Effective September 21, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, FCC 20–95, adopted on July 16, 2020 and released on July 17, 2020. This document will be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Second Report and Order, we adopt a tier-based leased access rate calculation as part of the Commission's Modernization of Media Regulation Initiative. The leased access rules, which implement statutory leased access requirements, direct cable operators to set aside channel capacity for commercial use by unaffiliated video programmers. In 2019, we proposed to modify the leased access rate formula so that rates would be calculated based on information specific to the tier on which the programming is carried. Today, we adopt this proposal, finding that a simplified tier-specific rate calculation best reflects regulatory changes that have occurred in the last 20 years [1] and will more accurately approximate the value of a particular channel, while alleviating burdens on cable operators. We also find that, although changes in the marketplace cast substantial doubt on the constitutionality of mandatory leased access, leased access requirements are contained in a specific statutory mandate from Congress, so we do not eliminate our leased access rules.

2. Congress established commercial leased access as part of the Cable Communications Policy Act of 1984 (1984 Act). According to the 1984 Act, codified at section 612 of the Communications Act of 1934, as amended (the Act), cable operators are required to set aside capacity for use by unaffiliated programmers. Under these statutory provisions, the amount of channel capacity reserved for leased access programming depends on the cable system's total activated channel capacity. Cable operators with more activated channels are required to set aside a greater number of leased access channels than those cable operators with fewer activated channels. Congress created commercial leased access to ''promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.''

3. Congress further authorized the Commission to adopt maximum reasonable rates for commercial leased access as part of the Cable Television Consumer Protection and Competition Act of 1992, and also provided that the price, terms, and conditions for leased access must be ''sufficient to assure that such use will not adversely affect the operation, financial condition, or market

[1] Specifically, the current rate formula was adopted consistent with the ''tier neutrality'' principle, but the Commission has since ceased regulation of cable programming service tier (CPST) rates as of 1999, and that principle no longer applies.

development of the cable system.'' The Commission accordingly adopted leased access rate regulations in 1993, and subsequently modified its leased access regulations in 1996 and 1997. The Commission's implementing rules, which the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld in 1998, include a formula for calculating maximum rates that cable operators could charge leased access programmers. Specifically, to permit cable operators to recover their costs and earn a profit, the Commission adopted a maximum reasonable rate formula for full-time leased access channels based on the ''average implicit fee'' that other programmers pay for carriage. Currently, for a full-time channel on a tier with a subscriber penetration over 50 percent, our rules require that an operator calculate the average implicit fee for all eligible tiers rather than just the individual tier where the channel will be placed. Although the Commission revised its commercial leased access rate rules in its *2008 Leased Access Order,* those rules never went into effect. Thus, the leased access rate rules adopted in the *1993 Rate Regulation Order,* as subsequently amended, remain in effect.

4. In the *2019 Leased Access Order,* we updated the leased access rules based on our determination that the video marketplace had changed significantly since the Commission initially adopted its leased access rules. We explained that the marketplace has become far more competitive than it was when leased access was first mandated in 1984, at which time consumers had access only to a single pay television service and cable had monopoly power. In particular, we focused on the increased availability of media platforms, including online platforms that programmers can utilize at very low cost to distribute their video programming, as well as the low demand for commercial leased access. To further the Commission's media modernization efforts, we vacated the *2008 Leased Access Order* and adopted updates and improvements to the existing leased access rules. A *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) proposed a tier-specific leased access rate formula and sought comment on whether existing leased access requirements can withstand First Amendment scrutiny in light of video programming market changes.

5. The *Second FNPRM* elicited seven comments and six replies, none of which opposed the proposed tier-specific rate formula. Commenters largely reiterated arguments that the marketplace has changed in ways that lessen the governmental interest in leased access regulations. For example, Americans for Prosperity (AFP) explains that ''great advances in technology allow households to readily access innumerable content from varied sources, as well as from internet-delivered video programming services and over-the-air broadcasters.'' Similarly, the Free State Foundation (Free State) explains that ''the video services landscape has been transformed dramatically by new technologies and other market developments, so that choice among competing providers offering a diverse array of content is now prevalent.'' Regarding the First Amendment, the record reflects a lack of consensus regarding what level of scrutiny should apply and whether the leased access rules remain constitutional.

6. *Tier-Based Fee Calculation.* We adopt our unopposed proposal to implement a simplified tier-specific leased access fee calculation. This rule change will ease burdens on cable operators while also fulfilling our statutory obligation to establish rules for determining maximum reasonable leased access rates. We believe the modifications are warranted given the significant changes to the overall rate regulation regime that have occurred since our current leased access rate rules were adopted.[2] The ''average implicit fee'' will continue to reflect the maximum rate per month that a cable operator may charge a leased access programmer for a full-time channel. Consistent with our proposal in the *Second FNPRM,* we revise our rules to provide that the average implicit fee will be calculated by first determining the total amount the operator receives in subscriber revenue per month for the programming on the tier on which the leased access channel will be placed. Next, the operator will subtract the total amount it pays in programming costs per month for that tier. Finally, the operator will divide that figure by the number of channels on that tier. The result of these calculations will be the maximum per channel rate that a cable operator can charge a leased access programmer for full-time carriage.

7. When the Commission adopted the average implicit fee calculation, it envisioned a simple scheme based on existing and easily verifiable data. Although the weighting scheme was intended to be a simple way to average the leased access rate across tiers, in practice it has proven to be confusing and time-consuming. The weighting scheme incorporated the concept of tier neutrality, which is a vestige of CPST rate regulation, which no longer exists.[3] By now basing the average implicit fee solely on the programming revenue and costs for the tier on which a leased access programmer is offered carriage, we eliminate the need for a complicated weighting scheme that considers subscriber revenue and programming costs across all tiers with subscriber penetration over 50 percent. The rate formula will now be a tier-specific calculation, thus representing a more accurate assessment of the channel's value on that particular tier. This is the same rate calculation method that previously has been in place for channels placed on tiers with less than 50 percent subscriber penetration.[4] The revised rate formula should result in cable operators using revenue and cost estimates that more closely reflect the value of the channel sought by the leased access applicant, and thus better serve the goals of the statute. Rates are likely to decrease if leased access programmers request channel capacity on less profitable tiers, whereas rates are likely to rise if programmers request channel capacity on more profitable tiers.

8. We find that a tier-specific implicit fee calculation will mitigate unnecessary burdens on cable operators by simplifying the leased access fee calculation while also fulfilling our statutory obligation to establish rules for determining maximum reasonable leased access rates. Although a few cable commenters suggest that the Commission could permit marketplace negotiations to establish the maximum reasonable rates, they also support the tier-specific implicit fee calculation that NCTA initially proposed. Considering our statutory obligation to ''establish rules for determining maximum reasonable [leased access] rates,'' we do not think Congress intended for us to rely on the marketplace to establish maximum reasonable leased access rates, even if doing so might be ''less intrusive'' on cable operators. We agree with NCTA that ''[t]ier-specific rates are

[2] As noted above, the Commission ceased regulation of CPST rates as of 1999, and thus the ''tier neutrality'' principle pursuant to which the current rate formula was adopted no longer applies.

[3] Tier neutrality requires cable operators to charge the same per channel rate regardless of the programming costs incurred on a specific tier, and that principle has no longer applied since the Commission ceased regulation of CPST rates in 1999.

[4] A mathematical representation of the revised leased access rate calculation is as follows, where T = Elected Tier, C = Channels, R = Total Tier Monthly Subscriber Revenue, K = Total Tier Monthly Programming Costs, and A = Maximum Full-time Rate Per Month: $A = (R_T - K_T)\ (1 / C_T)$.

the fairest approximation of the maximum reasonable rate,'' given that such rates will be based on the actual programming revenue and costs associated with the tier on which the leased access programmer will be carried. We note that no commenter disagrees. In addition, we expect that the tier-specific calculation will be much simpler than the current weighting scheme because it is focused solely on a specific tier, and not all tiers with subscriber penetration over 50 percent.

9. At this time, we decline to adopt any other changes to the leased access rate formula. ACA Connects is the only party that makes additional proposals in response to the *Second FNPRM,* asserting that ''additional steps should be taken to reduce administrative burdens, particularly for smaller entities.'' As explained further in the Final Regulatory Flexibility Analysis, we note that simplifying the rate formula to be based on the specific tier will benefit small cable operators, as well as other cable operators. Accordingly, no additional relief for small cable operators is necessary at this time. More specifically, ACA Connects proposes that the Commission establish a universal per channel minimum leased access rate that is presumptively reasonable or modify the rate formula to make sure that the least profitable cable operators are not forced to offer leased access at extremely low rates or even for free, thus diverting capacity that would be better used for broadband. Despite these arguments, the record does not contain any evidence to demonstrate the frequency with which the leased access rate might be extremely low or even free. With regard to a universal rate, we find that the average implicit fee is a more accurate representation of the actual value of the channel to the operator because it is based on the operator's own data.[5] Indeed, the leased access rate calculation merely reflects each cable operator's existing market conditions, it does not dictate them. Nevertheless, we note that our rules provide for waivers in unusual cases. Consistent with our current approach, we will consider the need for special relief on an individual basis in instances where significant hardship has ''adversely affect[ed] the operation, financial condition, or market development of the cable system.''[6]

10. ACA Connects also requests that the Commission ease administrative burdens by permitting cable operators to use a single set of data to respond to leased access requests for a set period of time, such as three years, rather than having to obtain data and recalculate the formula for each request. We find that using a single data set for three years would be less likely to result in calculations that accurately represent the current value of carriage. Accordingly, we do not adopt this proposal. We do, however, take the opportunity to codify the determination set forth in the *1993 Rate Regulation Order* that the average implicit fee shall be calculated annually based on contracts in effect in the previous calendar year. The Commission has previously stated that under its rules, cable operators are required to calculate the maximum rates annually based on the contracts in effect in the previous calendar year, rather than at the time of each request. Thus, in response to the request from ACA Connects, we find it is in the public interest to codify in our rules[7] the Commission's longstanding determination on this issue that the average implicit fee shall be calculated annually based on contracts in effect in the previous calendar year.[8]

11. *The First Amendment.* We agree with commenters that the constitutional foundation for the leased access regime is in substantial doubt; nonetheless, leased access rules are required pursuant to a specific statutory mandate from Congress. For example, section 612(b) of the Act specifically states that a ''cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements. . . .'' The Commission has long recognized that decisions about the constitutionality of Congressional enactments are generally outside the purview of administrative agencies. As a result, we decline to eliminate our leased access requirements and leave it to the courts to address the current constitutional status of the leased access statute, particularly given that the D.C. Circuit has previously upheld the constitutionality of the leased access statute, albeit under different marketplace conditions.

12. The *Second FNPRM* sought comment on application of the First Amendment to the Commission's rules and statutory provisions concerning full-time leased access, including in particular whether the leased access rules can continue to withstand First Amendment scrutiny in light of marketplace changes. Commenters disagree as to whether strict scrutiny or intermediate scrutiny should apply, and they also disagree as to whether the leased access rules would pass muster under the applicable level of scrutiny.[9] Strict scrutiny applies to content-based speech restrictions and requires that a statute be narrowly tailored to serve a compelling governmental interest. When the D.C. Circuit previously upheld the constitutionality of the leased access statute, it determined that the statute is content-neutral and thus subject to intermediate scrutiny, which it passes if ''it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.''[10]

13. We agree with numerous commenters who argue that marketplace changes—such as increased internet usage and availability, and competition from other multichannel video programming distributors (MVPDs) as well as online video distributors—appear to have eroded the original justification for the leased access rules: To safeguard competition and diversity in the face of cable operators' monopoly power. Free State explains that, whereas in the late 1980s and early 1990s consumers generally ''had little choice for pay-TV services other than their local cable operator,'' today ''choice among competing providers offering a diverse array of content is now prevalent'' thanks to the availability of direct broadcast satellite (DBS) providers, telephone companies providing video services, and the availability of online video providers. Commenters highlight the fact that

[5] The fact that the Commission previously adopted an interim safe harbor percentage to be used in the unrelated context of calculating universal service contributions does not alter our analysis. Universal service is an entirely separate regulatory regime with unrelated factual considerations.

[6] *See* 47 U.S.C. 532(c)(1).

[7] Because this revision conforms our rules to the language set forth in the *1993 Rate Regulation Order,* we find this change to be editorial and non-substantive. As such, we find good cause to conclude that notice and comment are unnecessary for this revision.

[8] We assume, in response to ACA Connects, that the annual calculation is performed in conjunction with an actual request.

[9] Some commenters contend that leased access no longer passes muster under intermediate scrutiny. Other commenters argue that leased access may continue to pass muster under intermediate scrutiny. Still other commenters maintain that strict scrutiny should apply, and leased access would not pass muster under it. NAB also states that the Commission ''should avoid reaching constitutional questions unnecessarily.''

[10] NCTA contends that the D.C. Circuit's rationale in *Time Warner* v. *FCC* has since been disavowed by the Supreme Court. NAB disagrees with this argument.

MVPD subscribership losses are related to increased subscribership to online streaming services. For example, NCTA explains that the internet now ''supports a broad array of platforms through which program networks and other content providers may distribute their content to viewers,'' including both streaming services and on-demand platforms.

14. Commenters assert that as a result of video marketplace changes, leased access is no longer needed to promote diversity or competition in the marketplace. These marketplace changes may alter the evaluation of the relevant governmental interest, regardless of whether strict scrutiny or intermediate scrutiny applies. Although some commenters maintain that ''cable operators do indeed still occupy a dominant position in the pay-TV marketplace,'' the record also indicates that the utility of cable leased access as a means of promoting diversity or competition in the marketplace has changed. With respect to the burden placed on cable operators by leased access requirements, NCTA argues that leased access continues to place burdens on cable operators ''by interfering with their speech; consuming capacity and resources that could be used for other purposes, content, and services that are much more highly valued by consumers; and placing cable operators at a competitive disadvantage.'' On the other hand, NAB maintains that the changes in the video marketplace have actually reduced the burdens of leased access on cable operators, for example, because their channel capacity has increased.[11]

15. We agree with those commenters that maintain that it is not the role of the Commission to adjudicate in the first instance the constitutionality of leased access requirements that have been mandated by Congress.[12] We have no need to opine on the appropriate level of constitutional scrutiny for a First Amendment analysis as is debated in the record or to decide whether leased access requirements survive any particular level of scrutiny. Finally, although the constitutionality of the leased access regime is in doubt, we express no opinion whatsoever as to the constitutionality of other carriage-related obligations placed on cable operators under the Act. We are mindful that each carriage-related provision presents unique circumstances, and that those other provisions are not at issue in the instant proceeding.

16. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to the Second Report and Order. In summary, the Second Report and Order adopts a tier-based leased access rate calculation. It also finds that, although changes in the marketplace cast substantial doubt on the constitutionality of mandatory leased access, leased access requirements are contained in a specific statutory mandate from Congress, so the Commission does not eliminate its leased access rules. The action is authorized pursuant to sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532. The types of small entities that may be affected by the action fall within the following categories: Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Cable and Other Subscription Programming, Motion Picture and Video Production, and Motion Picture and Video Distribution. The projected reporting, recordkeeping, and other compliance requirements include the modification of the leased access formula so that rates will be specific to the tier on which the programming is carried. The First Amendment discussion in the Second Report and Order would not affect any reporting, recordkeeping, or other compliance requirements. The SBA did not file comments. In considering the impact on small entities, the Commission explains that the simplified, tier-based calculation for the average implicit fee will mitigate unnecessary burdens on cable operators, including small cable operators, while also fulfilling the Commission's statutory obligation to establish rules for determining maximum reasonable leased access rates. The Commission also believes the modifications are warranted given the significant changes to the overall rate regulation regime that have occurred since our current leased access rate rules were adopted. Although a few cable commenters suggest that the Commission could permit marketplace negotiations to establish the maximum reasonable rates, they also support a tier-specific implicit fee calculation. Considering the Commission's statutory obligation to establish rules for determining maximum reasonable leased access rates, we conclude that adopting a tier-specific rate calculation is the best approach. The Second Report and Order also considers alternate proposals from ACA Connects, but it concludes that ACA's proposals are unsupported by the record and would be less accurate than the adopted approach. The Second Report and Order additionally responds to a request from ACA by modifying the leased access rules to include the Commission's prior statements that the average implicit fee shall be calculated annually based on contracts in effect in the previous calendar year.

17. *Paperwork Reduction Act.* This Second Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

18. *Ordering Clauses.* Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 303, and 612 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 532, this Second Report and Order *is hereby adopted.*

19. *It is further ordered* that part 76 of the Commission's rules, 47 CFR part 76, *is amended* as set forth below, and such rule amendments shall be effective thirty (30) days after the date of publication in the **Federal Register**.

20. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 07–42 shall be *terminated,* and its docket *closed.*

21. *It is further ordered* that the Commission *shall send* a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

[11] We need not make a conclusive determination on this issue given our finding that the question of the constitutionality of leased access is a matter generally outside the purview of the Commission.

[12] We thus disagree with commenters asserting that the Commission should decline to enforce the leased access rules because they would be found unconstitutional today.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.970 by revising paragraphs (d) and (e) to read as follows:

§ 76.970 Commercial leased access rates.

* * * * *

(d) The maximum commercial leased access rate that a cable operator may charge for full-time channel placement on any tier is the average implicit fee for full-time channel placement on that tier.

(e) The average implicit fee identified in paragraph (d) of this section shall be calculated by first calculating the total amount the operator receives in subscriber revenue per month for the programming on the tier on which the channel will be placed, and then subtracting the total amount it pays in programming costs per month for that tier (the ''total implicit fee calculation''). Next, the total implicit fee is divided by the number of channels on that tier (the ''average implicit fee calculation''). The result, the average implicit fee, is the maximum rate per month that the operator may charge the leased access programmer for a full-time channel on that tier. The license fees for affiliated channels used in determining the average implicit fee shall reflect the prevailing company prices offered in the marketplace to third parties. If a prevailing company price does not exist, the license fee for that programming shall be priced at the programmer's cost or the fair market value, whichever is lower. The average implicit fee shall be calculated annually based on contracts in effect in the previous calendar year. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (*e.g.,* billing and collection, marketing, or studio services).

* * * * *

[FR Doc. 2020–16557 Filed 8–19–20; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 85, No. 162
Thursday, August 20, 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

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2020–0068]

Establishing AWA Standards for Birds; Virtual Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notification of public meeting.

SUMMARY: We are notifying the public that the Animal and Plant Health Inspection Service will hold virtual listening sessions to receive public input on topics related to the development of regulations regarding the welfare of birds not bred for use in research.

DATES: The virtual listening sessions will be held by webinar on Tuesday, September 29, 2020, at 11 a.m. Eastern Daylight Time (EDT); Wednesday, October 7, 2020, at 2 p.m. EDT; and Thursday, October 15, 2020, at 5 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Dr. Rosemary B. Sifford, Associate Deputy Administrator, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3498; *rosemary.sifford@usda.gov.*

SUPPLEMENTARY INFORMATION: Under its regulations in title 9 of the Code of Federal Regulations (9 CFR), issued under the Animal Welfare Act, or AWA (7 U.S.C. 2131 *et seq.*), the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) enforces requirements for the humane care and treatment of certain animals that are exhibited to the public, sold for use as pets, used in research, or transported commercially.[1] Although the AWA authorizes the regulation of birds not bred for use in research, APHIS has not to this date promulgated regulations and standards for the humane care and treatment of such birds.

On January 10, 2020, the U.S. Circuit Court of Appeals for the D.C. Circuit found, in its Opinion in the case *American Anti-Vivisection Society and Avian Welfare Coalition* v. *USDA,* that the AWA requires APHIS to issue standards applicable to birds and that APHIS has not issued such standards (Case #19–5015). On remand, the U.S. District Court for the District of Columbia stayed the case on May 26, 2020, setting forth the timeline for rulemaking to establish such standards (Case # 1:18–cv–01138–TNM).

Pursuant to the AWA, the D.C. Circuit Opinion, and the Stay, we intend to extend enforcement of the AWA to include birds other than those bred for use in research. However, before we consider what regulations and standards are appropriate for regulating such birds, we believe it is important to seek public input from stakeholders and other interested persons.

We are therefore scheduling a series of virtual listening sessions to gather information that will help us in developing regulations and standards that ensure the humane care and treatment of birds consistent with the AWA. Due to the COVID–19 pandemic, the listening sessions will be conducted virtually, by webinar.

The regulations in 9 CFR 2.1 and 2.25 provide licensing and registration requirements for dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers. Section 2.1 also exempts certain entities from licensing, including retail pet stores that sell non-dangerous, pet-type animals, including birds, at retail only. In order to help us develop regulations for birds that support both stakeholder needs and animal welfare, during the listening sessions we will seek public input on the following questions:

- Should we revise or add exemptions for certain dealers, exhibitors, operators of auction sales, and carriers and intermediate handlers of birds not bred for use in research? If so, what should those exemptions be? Please provide supporting data if possible.
- Are there thresholds beyond which an entity should not be required to be licensed? For example, we are aware that there are many entities who breed small numbers of birds; if we should exempt those entities, what exemption criteria should we use?
- Are there certain species which should be exempt?
- Are there appropriate performance-based standards we could establish across a wide variety of species of birds? Can we use classes of birds to set performance-based standards appropriate for the class? If so, what might these classes look like?
- How do bird breeders avoid interfering with nesting and breeding or other biological activities of birds? How can we ensure that housing, feeding, or inspection requirements do not interfere with these activities?

The listening sessions will be held on Tuesday, September 29, 2020, at 11 a.m. Eastern Daylight Time (EDT); Wednesday, October 7, 2020, at 2 p.m. EDT; and Thursday, October 15, 2020, at 5 p.m. EDT. Participants will need to register in advance in order to participate in the listening sessions. Registration instructions and updated session information can be accessed on the APHIS Animal Care News and Information web page at *https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/aw-news,* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. We also encourage interested persons to subscribe to APHIS' Stakeholder Registry to receive updated information by email about the upcoming listening sessions. You can find the link for subscribing to the Stakeholder Registry by scrolling down the APHIS Animal Care News and Information web page.

Done in Washington, DC, this 13th day of August 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–18134 Filed 8–19–20; 8:45 am]

BILLING CODE 3410–34–P

[1] Animals used for agricultural purposes are not regulated under the AWA. *See* 7 U.S.C. 2132(g)(defining ''animal'').

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116475–19]

RIN 1545–BP46

Rollover Rules for Qualified Plan Loan Offset Amounts

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations relating to amendments made to section 402(c) of the Internal Revenue Code (Code) by section 13613 of the Tax Cuts and Jobs Act, Public Law 115–97 (131 Stat. 2054) (TCJA). Section 13613 of TCJA provides an extended rollover period for a qualified plan loan offset, which is a type of plan loan offset. These regulations affect participants, beneficiaries, sponsors, and administrators of qualified employer plans.

DATES: Written or electronic comments and requests for a public hearing must be received by October 5, 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–116475–19) 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 received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to CC:PA:LPD:PR (REG–116475–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed amendments to the regulations, Naomi Lehr at (202) 317–4102, Vernon Carter at (202) 317–6799, or Pamela Kinard at (202) 317–6000; concerning submissions of comments and requests for a hearing, Regina Johnson at (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to 26 CFR part 1, by adding § 1.402(c)–3 to the Income Tax Regulations solely to reflect changes to section 402(c) of the Code, as amended by section 13613 of TCJA. On December 20, 2019, the Further Consolidated Appropriations Act of 2020, Public Law 116–94 (133 Stat. 2534) (the Act), was enacted. Section 114 of Division O of the Act, titled ''Setting Every Community Up for Retirement Enhancement Act of 2019'' (SECURE Act), amended section 401(a)(9) of the Code by changing the required beginning date applicable to section 401(a) plans and other eligible retirement plans described in section 402(c)(8). The Treasury Department and IRS anticipate providing separate guidance on section 114 of the SECURE Act, including amending § 1.402(c)–2 to reflect changes made by the SECURE Act and to add new level designations for each paragraph in the questions and answers to satisfy **Federal Register** requirements. It is anticipated that the proposed § 1.402(c)–3 will be combined with § 1.402(c)–2 in connection with that project (including replacing Q&–9 of § 1.402(c)–2 with paragraph (a) of proposed § 1.402(c)–3).

1. Plan Loans, Eligible Rollover Distributions, and Plan Loan Offset Amounts

Section 72(p)(1) provides that if, during any taxable year, a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan (as defined in section 72(p)(4)(A)),[1] such amount shall be treated as having been received by the individual as a distribution from the plan. For certain plan loans, section 72(p)(2) provides an exception to the general treatment of loans as distributions under section 72(p)(1).

For the exception under section 72(p)(2) to apply so that a plan loan is not treated as a distribution under section 72(p)(1) for the taxable year in which the loan is received, the loan generally must satisfy three requirements:

(1) The loan, by its terms, must satisfy the limits on loan amounts, as described in section 72(p)(2)(A);

(2) The loan, by its terms, generally must be repayable within 5 years, as described in section 72(p)(2)(B); and

(3) The loan must require substantially level amortization over the term of the loan, as described in section 72(p)(2)(C).

Section 401(a)(31) requires that a plan qualified under section 401(a) provide for the direct transfer of eligible rollover distributions. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(1), 403(b)(10), and 457(d)(1)(C).

Sections 402(c)(3) and 408(d)(3) provide that any amount distributed from a qualified plan or individual retirement account or annuity (IRA) will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B).

Sections 402(c)(3)(B) and 408(d)(3)(I) provide that the Secretary may waive the 60-day rollover requirement ''where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.'' See generally Rev. Proc. 2016–47, 2016–37 I.R.B. 346, which sets forth a self-certification procedure that taxpayers may use in certain circumstances to claim a waiver of the 60-day deadline for completing a rollover under section 402(c)(3)(B) or 408(d)(3)(I), and Rev. Proc. 2020–4, 2020–1 I.R.B. 148, which sets forth procedures that taxpayers may use to request a waiver of the 60-day rollover deadline by submitting a request for a private letter ruling.[2]

Section 1.402(c)–2, Q&A–3(a), provides that, unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee described in § 1.402(c)–2, Q&A–12(a)) of all or any portion of the balance to the credit of the employee in a qualified plan. Section 1.402(c)–2, Q&A–3(b), provides that certain distributions (for example, required minimum distributions under section 401(a)(9)) are not eligible rollover distributions.

[1] Under section 72(p)(4), a qualified employer plan means a qualified plan, a section 403(a) annuity plan, a section 403(b) plan, and any governmental plan.

[2] Note that the 60-day rollover deadline can also be extended to provide temporary relief during a disaster or an emergency response. For example, in response to the COVID–19 pandemic, Notice 2020–23, 2020–18 I.R.B. 742, extended the 60-day rollover deadline to July 15, 2020, for distributions made between April 1, 2020, and July 14, 2020.

Section 1.402(c)–2, Q&A–9(a), provides that a distribution of a plan loan offset amount (as defined in § 1.402(c)–2, Q&A–9(b)) is an eligible rollover distribution if it satisfies § 1.402(c)–2, Q&A–3. Thus, an amount not exceeding the plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period described in section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Section 1.402(c)–2, Q&A–9(b), provides that a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing the loan, the employee's accrued benefit is reduced (offset) in order to repay the loan. This may occur when, for example, the terms governing a plan loan require that, in the event of an employee's termination of employment or request for a distribution, the loan is to be repaid immediately or treated as in default. A plan loan offset may also occur when, under the terms of the plan loan, the loan is canceled, accelerated, or treated as if it is in default (for example, if the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). See also § 1.72(p)–1, Q&A–13(a)(2). Because a plan loan offset is an actual distribution for purposes of the Code, not a deemed distribution under section 72(p), a plan loan offset cannot occur prior to a distributable event. See generally § 1.72(p)–1, Q&A–13(b).

2. Qualified Plan Loan Offset Amounts

Section 13613 of TCJA amended section 402(c)(3) of the Code to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts (as defined in section 402(c)(3)(C)(ii)).[3] Any portion of a QPLO amount (up to the entire QPLO amount) may be rolled over into an eligible retirement plan by the individual's tax filing due date (including extensions) for the taxable year in which the offset occurs.

A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of:

(1) The termination of the qualified employer plan, or

(2) The failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee.

In addition, section 402(c)(3)(C)(iv) provides that the extended rollover period will not apply ''to any plan loan offset amount unless such plan loan offset amount relates to a loan to which section 72(p)(1) does not apply by reason of section 72(p)(2).''

Section 301.9100–2(b) of the regulations provides rules for automatic six-month extensions to make regulatory or statutory elections. Under this rule, a taxpayer will receive an automatic extension of 6 months from the due date of a return, excluding extensions, to make elections that otherwise must be made by the due date of the return plus extensions, provided that:

(1) The taxpayer's return was timely filed for the year the election should have been made; and

(2) The taxpayer takes appropriate corrective action within the six-month period.

Section 301.9100–2(b) further provides that paragraph (b) does not apply to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

Explanation of Provisions

1. In General

These proposed regulations add § 1.402(c)–3 to take into account changes to the rollover rules made by section 13613 of TCJA with respect to QPLO amounts. As an initial matter, the proposed regulations confirm that a QPLO is a type of plan loan offset; accordingly, most of the general rules relating to plan loan offset amounts apply to QPLO amounts. For example, the rule that a plan loan offset amount is an eligible rollover distribution applies to a QPLO amount. In addition, the rules in § 1.401(a)(31)–1, Q&A–16 (guidance concerning the offering of a direct rollover of a plan loan offset amount), and § 31.3405(c)–1, Q&A–11 (guidance concerning special withholding rules with respect to plan loan offset amounts), applicable to plan loan offset amounts in general, apply to QPLO amounts. The proposed regulations provide examples to illustrate the interaction of the special rules for QPLOs with the general rules for plan loan offsets.

2. Rollover Period for Plan Loan Offset Amounts, Including QPLO Amounts

Consistent with § 1.402(c)–2, Q&A–9, the proposed regulations provide that a distribution of a plan loan offset amount that is an eligible rollover distribution and *not* a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in section 402(c)(8)(B)) within the 60-day period set forth in section 402(c)(3)(A). While a plan loan offset generally is subject to this 60-day rollover period, there are special rules for the waiver of the 60-day rollover deadline. For further discussion of the special rules, see the *Background* section of this preamble.

Consistent with the amended provisions of section 402(c)(3)(C), the proposed regulations provide that a distribution of a plan loan offset amount that is an eligible rollover distribution and a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan through the period ending on the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan. Thus, a taxpayer with an eligible rollover distribution that is a QPLO amount may roll over any portion of the distribution to an eligible retirement plan, including another qualified retirement plan (if that plan permits) or an IRA, by the taxpayer's deadline for filing income taxes for the year of the distribution, including extensions.

If a taxpayer to whom a QPLO amount is distributed satisfies the conditions in § 301.9100–2(b), the taxpayer will have an extended period past his or her tax filing due date in which to complete a rollover of the QPLO amount, even if the taxpayer does not request an extension to file his or her income tax return but instead files the return by the unextended tax filing due date. For example, if, on June 1, 2020, Taxpayer A has an eligible rollover distribution of $10,000 that is a QPLO amount, she may be able to roll over the $10,000 amount as late as October 15, 2021. Pursuant to § 301.9100–2(b), this automatic six-month extension applies if Taxpayer A timely files her tax return by April 15, 2021 (the due date of her return), rolls over the QPLO amount within the six-month period ending on October 15, 2021, and amends her return by October 15, 2021, as necessary to reflect the

[3] In addition to TCJA, other statutory provisions may extend the period to roll over a plan loan offset. For example, section 2202(a) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (2020) (CARES Act), permits an individual to receive from an eligible retirement plan up to $100,000 for a coronavirus-related distribution (which may include a plan loan offset that otherwise meets the requirements to be a coronavirus-related distribution). A qualified individual with a coronavirus-related distribution (which may be included in gross income ratably over the 3-year period beginning with the taxable year of the distribution) may recontribute up to the amount of the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made. For further information relating to the interaction of section 2202 of the CARES Act and plan loan offsets, see Notice 2020–50, 2020–28 I.R.B. 35.

rollover. See the further discussion of § 301.9100–2(b) in the *Background* section of this preamble.

3. Definitions of Plan Loan Offset Amount, QPLO Amount, and Qualified Employer Plan

Consistent with § 1.402(c)–2, Q&A–9(b), the proposed regulations provide that a plan loan offset amount is the amount by which, under plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the employee's accrued benefit). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

Section 1.402(c)–3(a)(2)(iii)(B) of the proposed regulations defines a QPLO amount as a plan loan offset amount that satisfies two requirements. First, the plan loan offset amount must be treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee. Second, the plan loan offset amount must relate to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

The proposed regulations define a qualified employer plan, for purposes of the QPLO amount definition, as a qualified employer plan as defined in section 72(p)(4). For a discussion of the definition of a qualified employer plan, see the *Background* section of this preamble.

4. Special Rules for QPLO Determinations

The proposed regulations provide several special rules for purposes of determining whether a plan loan offset amount is a QPLO amount. First, the proposed regulations provide that whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under § 1.401(k)–1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

Second, the proposed regulations provide that a plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the plan loan repayment terms because of severance from employment if the plan loan offset:

(1) Relates to a failure to meet the repayment terms of the plan loan, and

(2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

Whether a plan loan offset amount is a QPLO amount is relevant to plan administrators because those administrators are responsible for reporting whether a distribution is a plan loan offset amount or a QPLO amount on Form 1099–R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,* and furnishing that form to the taxpayer. The Instructions to the 2020 Form 1099–R provide that if an employee's accrued benefit is offset to repay a loan (a plan loan offset amount), the administrator should report the distribution as an actual distribution and not use Code L (for deemed distributions) in box 7. For a QPLO amount, the instructions to the 2020 Form 1099–R provide that the administrator should enter Code M (for QPLO amounts) in box 7. The Treasury Department and the IRS anticipate that the proposed 12-month rule will assist plan administrators in identifying QPLO amounts by providing a bright-line rule for determining whether a plan loan offset amount following a severance from employment is a QPLO amount.

Proposed Applicability Date

These regulations are proposed to apply to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers, however, may rely on these proposed regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020 and before the date these regulations are published as final regulations in the **Federal Register**.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *https://www.irs.gov.*

Special Analyses

These proposed regulations are 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.

In addition, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the proposed regulations would reflect the statutory changes to section 402(c) made by section 13613 of TCJA. The proposed regulations would reflect the extended rollover period for QPLO amounts, as amended by TCJA. Specifically, the proposed regulations would reflect the statute in a manner that (i) is consistent with the statutory language, (ii) provides certain clarifications, and (iii) eases and facilitates plan administration. Although the proposed regulations might affect a substantial number of individuals, the economic impact of the proposed regulations is not expected to be significant. The regulations do not impose any new compliance burdens on taxpayers and are not expected to result in any economically meaningful changes in behavior.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be 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, time, and place for the public hearing will be

published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B. 1, 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 authors of these regulations are Naomi Lehr and Pamela R Kinard of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), although other persons in the IRS and the Treasury Department 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 1.402(c)–3 is added to read as follows:

§ 1.402 (c)–3 Eligible rollover distributions; Qualified plan loan offsets.

(a)(1) *Q–1* What special rollover rules apply to a plan loan offset amount (including a qualified plan loan offset amount)?

(2) *A–1*—(i) *In general*—(A) *Eligible rollover distribution.* A distribution of a plan loan offset amount, as defined in paragraph (a)(2)(ii)(A) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph (a)(2)(ii)(B) of this section), is an eligible rollover distribution if it satisfies § 1.402(c)–2, Q&A–3 and 4.

(B) *Other rules relating to plan loan offset amounts.* See § 1.401(a)(31)–1, Q&A–16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also § 31.3405(c)–1, Q&A–11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(ii) *Rollover period for a plan loan offset amount*—(A) *Plan loan offset amount that is not a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and not a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in § 1.402(c)–2, Q&A–2) within the 60-day period set forth in section 402(c)(3)(A).

(B) *Plan loan offset amount that is a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(iii) *Definitions*—(A) *Plan loan offset amount.* For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(B) *Qualified plan loan offset amount.* For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(*1*) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(*2*) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

(C) *Qualified employer plan.* For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(iv) *Special rules for qualified plan loan offset amounts*—(A) *Definition of severance from employment.* For purposes of paragraph (a)(2)(iii)(B)(*1*) of this section, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under § 1.401(k)–1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(B) *Offset because of severance from employment.* A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(*1*) Relates to a failure to meet the repayment terms of the plan loan, and

(*2*) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(v) *Examples.* The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (a) and in §§ 1.401(a)(31)–1, Q&A–16, and 31.3405(c)–1, Q&A–11, of this chapter. For purposes of these examples, each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(A) *Example 1*—(*1*) In 2020, Employee A has an account balance of $10,000 in Plan Y, of which $3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2020. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(II), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2020 (within the 12-month period beginning on the date that Employee A severed from employment), Employee A's

outstanding loan is offset against the account balance.

(*2*) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying $7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the $3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to $3,000) that is an eligible rollover distribution. However, under § 1.401(a)(31)–1, Q&A–16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the $3,000 plan loan offset amount.

(*3*) No withholding is required under section 3405(c) on account of the distribution of the $3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(*4*) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(B) *Example 2*—(*1*) The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2021, at which time Employee A does not make the loan installment payment due on January 1, 2021. In accordance with § 1.72(p)–1, Q&A–10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid $3,000 loan balance against Employee A's account balance on July 1, 2021 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(*2*) The conclusion is the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that the $3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the $3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(C) *Example 3*—(*1*) The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2020, by the amount of the $3,000 unpaid loan balance.

(*2*) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(D) *Example 4*—(*1*) The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that Employee A elects to receive a cash distribution of the account balance that remains after the $3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(*2*) The amount of the distribution received by Employee A is $10,000 (not $3,000). Because the amount of the $3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of $2,000 (20 percent of $10,000) is required under section 3405(c). The $2,000 is required to be withheld from the $7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of $5,000.

(*3*) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on the Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to $7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(E) *Example 5*—(*1*) The facts are the same as in paragraph (a)(2)(v)(D) of this section (*Example 4*), except that the $7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(*2*) No withholding is required under section 3405(c) because the distribution consists solely of the $3,000 plan loan offset amount and the $7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(*3*) Employee A may roll over up to the $7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(F) *Example 6*—(*1*) Employee B, who is age 40, has an account balance in Plan Z. Plan Z provides for no after-tax employee contributions. In 2022, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(*2*) Employee B fails to make an installment payment due on April 1, 2023, or any other monthly payments thereafter. In accordance with § 1.72(p)–1, Q&A–10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2023). Employee B does not make a plan loan installment payment during the cure period. On September 30, 2023, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to § 1.402(c)–2, Q&A4(d), the deemed distribution is not an eligible rollover distribution.

(*3*) Because Employee B has not severed from employment or

experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

(G) *Example 7*—(*1*) The facts are the same as in in paragraph (a)(2)(v)(F) of this section (*Example 6*), except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(*2*) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (a)(2)(iii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(b)(1) *Q–2* When are the rules in this § 1.402(c)–3 applicable to plan loan offset amounts, including qualified plan loan offset amounts?

(2) *A–2 Applicability date.* The rules provided in paragraph (a) of this section are applicable to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the adoption of these rules as final regulations in the **Federal Register**.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–16564 Filed 8–17–20; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 750

[Docket ID: USN–2018–HQ–0012]

RIN 0703–AB22

General Claims Regulations

AGENCY: Department of the Navy, Department of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates and consolidates the Department of the Navy (DON) regulations concerning General Claims Regulations, and the processes and procedures to be used for filing specific claims against and in favor of the DON. Upon completion of this consolidation, the obsolete parts will be removed from the CFR.

DATES: Consideration will be given to all comments received by September 21, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this document. The general policy is for submissions to be made available for public viewing at *http://www.regulations.gov* without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Russell, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue SE, Washington Navy Yard, DC 20374, telephone: 202–685–4600.

SUPPLEMENTARY INFORMATION:

Purpose of the Proposed Rule

The revision clarifies the rule for public use and consolidates DON claims information into one part.

Revisions Implemented by This Rule

This rule consolidates 32 CFR parts 751, 752, 755, 756, and 757 and their underlying subparts into 32 CFR part 750. Primary revisions are deletion of unnecessary information. Although there are no substantive changes, many of the sub-parts were clarified to allow a better understanding of the claims process.

Legal Authority for This Program

The Military Personnel and Civilian Employees' Claims Act (PCA) is codified at 31 U.S.C. 3721. Claims for Redress of injuries to property by service members are codified at Article 139 of the Uniform Code of Military Justice, 10 U.S.C. 939. Additional claims statutes are codified as follows: The Federal Claims Collection Act (FCCA): 31 U.S.C. 3711; Third Party Payers' Act (TPPA), 10 U.S.C. 1095; and Medical Care Recovery Act (MCRA), 42 U.S.C. 2651(a). DON's General Claims Regulations for implementing the Federal Tort Claims Act (FTCA): 28 U.S.C. 1346(b), 2671–2672, and 2674–2680; Military Claims Act (MCA), 10 U.S.C. 2733; and the Non-Scope Claims Act (NSCA), 10 U.S.C. 2737.

Regulatory History

The DON last updated 32 CFR parts 750 and 751 on October 15, 2008; part 752 on October 3, 2007; and parts 756 and 757 on September 19, 2007. The internal Navy document, JAG Instruction 5890.1A, ''Administrative Processing and Consideration of Claims on Behalf and Against the United States'' (available at *https://www.jag.navy.mil/library/instructions/5890_1a.pdf*), was originally promulgated on January 17, 1991, and updated in February 1992. The JAG Instruction was slightly revised in 2005 with changes to the rule in 2007.

Regulatory Analyses

Regulatory Planning and Review Executive Orders 12866, 13563, and 13771

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation

issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review;'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

Congressional Review Act (5 U.S.C. 801, *et seq.***)**

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will not impose any impacts on any entities. This means that there will be no economic impacts on any entities. Therefore, the DoD under 5 U.S.C. 605 certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140M. This rule will not mandate any requirements for State, local, or tribal governments or the private sector.

Collection of Information

It has been determined this regulation does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates 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 proposed rule does not have federalism implications that warrant the preparation of a federalism assessment in accordance with Executive Order 13132.

List of Subjects in 32 CFR Part 750

Claims, Government employees, Health care, Military law, Military personnel, Vessels.

Accordingly, 32 CFR part 750 is proposed to be revised to read as follows:

PART 750—GENERAL CLAIMS REGULATIONS

Subpart A—General Provision for Claims

Sec.

750.1 Scope of subpart A.
750.2 Statutory authority.
750.3 Claims: In general.
750.4 Claims: Proper claimants.
750.5 Claims: Presentment.
750.6 Claims: Responsibility.
750.7 Claims: Settlement and release.
750.8 Claims: Payment.
750.9 Claims: Denial.
750.10 Claims: Single service responsibility.

Subpart B—Claims Under the Federal Tort Claims Act (FTCA)

750.11 Scope of subpart B.
750.12 Statutory authority.
750.13 Exclusiveness of remedy.
750.14 Definitions.
750.15 Scope of liability.
750.16 Statute of limitations.
750.17 Delegations of adjudicating authority.
750.18 The administrative claim.
750.19 Information and supporting documents.
750.20 Damages.
750.21 Amendment of the claim.
750.22 Settlement and payment.
750.23 Denial of the claim.
750.24 Reconsideration.
750.25 Suits under the Federal Tort Claims Act.
750.26 Attorney fees.

Subpart C—Claims Under the Military Claims Act (MCA)

750.27 Scope of subpart C.
750.28 Statutory authority.
750.29 Claims payable.
750.30 Claims not payable.
750.31 Statute of limitations.
750.32 Filing the claim.
750.33 Applicable law.
750.34 Measure of damages for property claims.
750.35 Measure of damages in injury or death cases.
750.36 Delegations of adjudicating authority.
750.37 Advance payments.
750.38 Final disposition.
750.39 Appeal.
750.40 Cross-servicing.
750.41 Payments related to certain medical or legal malpractice claims.
750.42 Attorney fees.

Subpart D—Claims Under the Foreign Claims Act (FCA)

750.43 Scope of subpart D.
750.44 Statutory authority.
750.45 Scope of liability.
750.46 Statute of limitations.
750.47 Filing a claim.
750.48 The administrative claim.
750.49 Damages.
750.50 Foreign Claims Commissions.
750.51 Processing claims.
750.52 Action on forwarded claims.
750.53 Reconsideration, appeal, and suit.
750.54 Payment.

Subpart E—Claims Under the Nonscope Claims Act (NSCA)

750.55 Scope of subpart E.
750.56 Statutory authority.
750.57 Definitions.
750.58 Claim procedures.
750.59 Statute of limitations.
750.60 Officials with authority to settle.
750.61 Scope of liability.
750.62 Claims not payable.
750.63 Measure of damages.

Subpart F—Claims Under the Personnel Claims Act (PCA)

750.64 Scope of subpart F.
750.65 Statutory authority.
750.66 Adjudication authority.
750.67 Proper claimants.
750.68 Claims payable.
750.69 Claims not payable.
750.70 Statute of limitations.
750.71 Filing a claim.
750.72 Computation of payment.
750.73 Notice of decision.
750.74 Reconsideration.
750.74 Carrier recovery claims.

Subpart G—Admiralty Tort Claims

750.76 Scope of subpart G.
750.77 Statutory authority.
750.78 Organization.
750.79 Claims against the Navy.
750.80 Affirmative claims.
750.81 Salvage.

Subpart H—Claims for Property Damage Under Article 139, Uniform Code of Military Justice

750.82 Scope of subpart H.
750.83 Statutory authority.
750.84 Claims not cognizable.
750.85 Limitation on claims.
750.86 Complaint by the injured party and investigation.
750.87 Action where offenders are members of one command.
750.88 Action where offenders are members of different commands.
750.89 Reconsideration and appeal.

Subpart I—Claims Involving Non-Appropriated Fund (NAFI) Activities and Their Employees

750.90 Scope of subpart I.
750.91 Statutory authority.
750.92 Definitions.

750.93 Participation in insurance programs.
750.94 Responsibility.
750.95 Negotiation.
750.96 Payment.
750.97 Denial.
750.98 Claims by employees.

Subpart J—Affirmative Claims Regulations (Property Damage Claims)

750.99 Scope of subpart J.
750.100 Statutory authority.
750.101 Claims that may be collected.
750.102 Assertion of claims and collection procedures.
750.103 Waiver, compromise, and referral of claims.

Subpart K—Affirmative Claims Regulations (Medical Care Recovery Act and Claims Asserted Pursuant to the Third Party Payers Act)

750.104 Scope of subpart K.
750.105 Statutory authority.
750.106 Responsibility.
750.107 Claims asserted.
750.108 Assertion of claims.

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 10 U.S.C. 939, 5013, 5148, and 7621–7623; 3 CFR, 1984 Comp., p. 201; Article 139, UCMJ; E.O. 11476; 3 CFR, 1969 Comp., p. 132.

Subpart A—General Provisions for Claims

§ 750.1 Scope of subpart A.

(a) *General.* (1) The Judge Advocate General of the Navy is responsible for the administration and supervision of the resolution of claims arising under the Federal Tort Claims Act (subpart B of this part), the Military Claims Act (subpart C of this part), the Foreign Claims Act and the International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements (subpart D of this part), the Nonscope Claims Act (subpart E of this part), the Personnel Claims Act (subpart F of this part), Admiralty tort claims (subpart G of this part), the Federal Claims Collection Act (subpart J of this part), and the Medical Care Recovery Act and Claims asserted pursuant to the Third Party Payers Act (subpart K of this part).

(2) The Director, Claims and Tort Litigation is the manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising under the acts listed above (except admiralty claims) and is responsible to the Judge Advocate General for the management of that system. The claims system consists of the Claims and Tort Litigation Division of the Office of the Judge Advocate General (Code 15) and three subordinate units: The Tort Claims Unit (TCU), Norfolk, Virginia; the Personnel Claims Unit (PCU), Norfolk, Virginia; and three Medical Care Recovery Units (MCRUs) in Norfolk, Virginia; San Diego, California; and Pensacola, Florida.

(3) The Director, Admiralty and Maritime Law is the manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising in admiralty.

(b) This subpart delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this subpart conflict with the specific provisions of any subsequent section, the specific provisions govern.

(c) Additional guidance on the processing and adjudication of claims can be found in JAG Instruction 5800.7 series (JAGMAN) and JAGINST 5890.1 series [which may be retrieved at the official website of the United States Navy Judge Advocate General's Corps at *https://www.jag.navy.mil*].

§ 750.2 Statutory authority.

(a) *Authority applicable to entire part:* 5 U.S.C. 301, 5 U.S.C. 552, 10 U.S.C. 5013, and 5148.

(b) *History:* 57 FR 4722, Feb. 7, 1992; 72 FR 53417, Sept. 19, 2007, as confirmed at 73 FR 60948, Oct. 15, 2008.

§ 750.3 Claims: In general.

(a) *Claims against the United States.* Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, payment issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

(b) *Claims in favor of the United States.* Potential claims in favor of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued.

(c) *Assistance to claimants.* Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims should be referred to the responsible claims unit. The unit will provide claims forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims unit employees may provide advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim.

§ 750.4 Claims: Proper claimants.

(a) *Damage to property cases.* A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. ''Owner'' includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(b) *Personal injury and death cases.* A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased's estate or survivor where authorized by State law.

(c) *Subrogation.* A subrogor and a subrogee may file claims jointly or separately. A medical expense subrogee may pursue a claim when permitted under applicable state law.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.5 Claims: Presentment.

(a) *Written demand.* A claim shall be submitted by presenting a written statement with the amount of the claim expressed in a sum certain, and, as far as possible, describing the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95, shall be used whenever practical for claims based in tort. Personnel Claims Act claims for loss and damage that occurred during a DoD contracted move (Household goods) shall be submitted electronically utilizing the USTRANSCOM approved claims management system. All other Personnel Claims Act claims shall be submitted in writing on the DD Form 1842 and 1844 [both forms are available at the website of the United States Navy

Judge Advocate General's Corps at *https://www.jag.navy.mil/organization/code_15.htm*]. The claim and all other papers requiring the signature of the claimant shall be signed by the proper claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment. When more than one person has a claim arising from the same incident, each person shall file a claim separately.

(b) *Submission of claims.* Claims should be submitted to the appropriate claims unit (see subparts for addresses), or to the Office of the Judge Advocate General, Claims and Tort Litigation Division, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

§ 750.6 Claims: Responsibility.

(a) *Determining the sufficiency of the claim.* Once received, each claim will be reviewed and a determination of its sufficiency made. A claim is deemed sufficient if it presents a written statement, signed by the claimant, stating the amount of the claim in a sum certain and describing the facts and circumstances in enough detail to allow the Navy to identify the incident so that an investigation can be commenced. If the claim is not sufficient as received, it shall be immediately returned to the party who submitted it along with an explanation of the insufficiency. This does not constitute denial of the claim. The claim shall not be considered ''presented'' until it is received in proper form.

(b) *Adjudicating the claim.* The responsible unit shall evaluate every claim promptly and, where liability is established or payment deemed appropriate, attempt to settle claims for amounts within its adjudicating authority. Negotiation at settlement figures above a unit's payment limits may be attempted if the claimant is informed that the final decision on the claim will be made at a higher level.

§ 750.7 Claims: Settlement and release.

(a) *Fully and partially approved claims.* When a claim is approved for payment in the amount claimed, a settlement agreement may not be necessary. When a claim based in tort is approved for payment in a lesser amount than that claimed, the claimant must indicate in writing a willingness to accept the offered amount in full settlement and final satisfaction of the claim. No payment will be made until a signed settlement agreement has been received. PCA claims do not require a settlement agreement.

(b) *Release.* (1) Acceptance by the claimant of an award or settlement made by the Secretary of the Navy or designees, or the Attorney General or designees, is final upon acceptance by the claimant. Acceptance is a complete release by claimant of any claim against the United States by reason of the same subject manner. Claimant's acceptance of an advance payment does not have the same effect.

(2) In the case of claims based in tort, the claimant's acceptance of an award or settlement made under the provisions governing the administrative settlement of Federal tort claims or the civil action provisions of 28 U.S.C. 1346(b) also constitutes a complete release of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.8 Claims: Payment.

Claims approved for payment shall be expeditiously forwarded to the appropriate payment authority for payment.

§ 750.9 Claims: Denial.

The final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative. The denial notification shall include a statement notifying the claimant of the right to appeal or request reconsideration of the decision.

§ 750.10 Claims: Single service responsibility.

(a) DoD Instruction (DoDI) 5515.08 (series), ''Assignment of Claims Responsibility'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/551508_2016.pdf*) assigns ''single-service claims responsibility'' to individual military departments for processing claims in specified foreign countries. Claims arising in unassigned countries will be processed and adjudicated by the Service of the service member whose actions resulted in the claim.

(b) U.S. forces afloat cases under $2,500.00. Notwithstanding the single service assignments above, DON may settle claims under $2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

Subpart B—Claims Under the Federal Tort Claims Act (FTCA)

§ 750.11 Scope of subpart B.

This subpart provides information regarding the administrative processing and consideration of claims against the United States under the FTCA. The FTCA is a limited waiver of sovereign immunity. Under the FTCA, an individual can seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of a Federal employee acting within the scope of employment. The FTCA also provides for compensation for injuries caused by certain intentional, wrongful conduct. The liability of the United States is determined in accordance with the law of the State where the act or omission occurred.

§ 750.12 Statutory authority.

The statutory provisions of the FTCA are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney General's regulations conflict, the Attorney General's regulations prevail.

§ 750.13 Exclusiveness of remedy.

(a) The Federal Employees Liability Reform and Tort Compensation Act of 1988, Public Law 100–694 (amending 28 U.S.C. 2679(b) and 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all employees of the Government acting within the scope of their employment will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts nor to allegations of violations of statutes specifically authorizing suits against individuals.

(b) Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct within the scope of their employment gives rise to claims against the Government. Department of Defense (DoD) health care providers are specifically protected by 10 U.S.C. 1089, the Gonzalez Act. DoD attorneys are specifically protected by 10 U.S.C. 1054.

§ 750.14 Definitions.

(a) *Negligent conduct.* Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under similar circumstances. Negligent

conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government.

(b) *Intentional torts.* Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An ''investigative or law enforcement officer'' is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(c) *Government employees.* (1) ''Employee of the Government,'' defined at 28 U.S.C. 2671, includes officers or employees of any Federal agency, members of the U.S. military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) ''Government contractors'' (also referred to as independent contractors) are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of ''Federal agency,'' found at 28 U.S.C. 2671, specifically excludes ''any contractor with the United States,'' the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions.

They are:

(i) Where the thing or service contracted for is deemed to be an ''inherently dangerous activity'';

(ii) Where a nondelegable duty in the employer has been created by law; or

(iii) Where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner.

(3) Employees of nonappropriated-fund activities. Nonappropriated-fund (NAF) activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be ''arms'' of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund activity not located in a foreign country acting within the scope of employment is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

(d) *Scope of employment.* ''Scope of employment'' is defined by the law of respondeat superior (master and servant) of the place where the act or omission occurred. Although 28 U.S.C. 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found ''in the line of duty,'' yet not meet the criteria for a finding of ''within the scope of employment'' under the law of the place where the act or omission occurred.

§ 750.15 Scope of liability.

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country.

(b) *Exclusions from liability.* Statutes and case law have established categories of exclusions from FTCA liability.

(1) *Statutory exclusions.* Title 28 U.S.C. 2680 lists claims not cognizable under the FTCA. They include:

(i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under subpart F of this part;

(iii) Claims arising from certain intentional torts enumerated in 28 U.S.C. 2680(h); and

(iv) Claims arising from the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(2) *Additional claims not payable.* Although not expressly statutorily excepted, the following types of claims will not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty;

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations (subpart E of this part);

(iii) Any claim by employees of nonappropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated under subpart H of this part;

(iv) Any claim for personal injury or death covered by the Federal Employees' Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

(vi) That portion of any claim for personal injury or property damage caused by the negligence or fault of a Government contractor to the extent such contractor may have assumed liability under the terms of the contract;

(vii) Any claim against the DON by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

§ 750.16 Statute of limitations.

An administrative claim against the United States under the FTCA must be presented in writing within 2 years after the claim accrues. Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

§ 750.17 Delegations of adjudicating authority.

(a) *Settlement authority.* (1) The Judge Advocate General; the Deputy Judge Advocate General; the Assistant Judge Advocate General (Civil Law); the Director, Claims and Tort Litigation; and the Head, Tort Claims Branch, Claims and Tort Litigation, have delegated authority to settle FTCA claims up to $500,000. Any settlement, including aggregate settlements (*i.e.,* all claims arising from a single incident) in excess of OJAG's settlement authority ($500,000) require approval and written authorization from the Department of Justice—Torts Branch.

(2) Individuals with settlement authority under paragraph (a)(1) of this section may delegate all or part of their settlement authority. Such delegation shall be in writing.

(b) *Appeal authority.* Adjudicating authorities have the same authority as delegated on paragraph (a) of this section to act on appeals.

§ 750.18 The administrative claim.

(a) *Proper claimant.* See § 750.4 of this part.

(b) *Claim presented by agent or legal representative.* A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of the individual's authority to file a claim on behalf of the claimant.

(c) *Proper claim.* A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete.

(d) *Presentment.* A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. In such cases, a lead agency will be designated.

§ 750.19 Information and supporting documents.

(a) *Proper documentation.* Depending on the type of claim, claimants may be required to submit information, as follows:

(1) *Death.* (i) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(ii) Decedent's employment or occupation at time of death, including monthly or yearly earnings and the duration of last employment;

(iii) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors, including identification of survivors dependent for support upon decedent at the time of death;

(iv) Degree of support provided by decedent to each survivor at time of death;

(v) Decedent's general physical and mental condition before death;

(vi) Itemized bills for medical and burial expenses; and

(vii) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between injury and death.

(2) *Personal injury.* (i) A written report by attending physician or dentist on the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by any Federal agency. Upon written request, a copy of the report of the examining physician shall be provided;

(ii) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(iii) A statement of expected expenses for future treatment;

(iv) If a claim is made for lost wages, a written statement from the employer itemizing actual time and wages lost; and

(v) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost.

(3) *Property damage.* (i) Proof of ownership;

(ii) A detailed statement of the amount claimed for each item of property;

(iii) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs; and

(iv) A statement listing date of purchase, purchase price, and salvage value where repair is not economical.

(b) *Failure to submit necessary documentation.* If claimant fails to provide sufficient supporting documentation, claimant should be notified of the deficiency. If after a reasonable period of time the information is still not provided, the appropriate adjudicating authority should deny the claim.

§ 750.20 Damages.

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs.

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including TRICARE payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101–800) must be considered.

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentment of the claim or on intervening facts relating to the amount of the claim.

§ 750.21 Amendment of the claim.

Proper claim may be amended at any time prior to settlement, denial, or the filing of suit. An amendment must be submitted in writing and must be signed by the claimant or duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under § 750.24 may be amended. Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentment of an amendment.

§ 750.22 Settlement and payment.

(a) *Settlement agreement.* A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

(1) Settled for less than the full amount claimed, or

(2) The claim was not presented on a Standard Form 95.

(b) *Contents.* Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or

his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorney fees.

(c) *Payment of the claim.* Pursuant to 28 U.S.C. 2672 and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of $500,000.00 may be effected only with the prior written approval of the Attorney General or designee.

§ 750.23 Denial of the claim.

Final denial of an administrative claim shall be in writing and shall be sent to the claimant, his duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial may include the reasons for the denial. The notification shall include a statement informing the claimant of his right to file suit in the appropriate Federal district court not later than 6 months after the date of the mailing of the notification.

§ 750.24 Reconsideration.

(a) *Request.* Prior to the commencement of suit and prior to the expiration of the 6-month period for filing suit, a claimant or his duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request for reconsideration is presented on the date it is received by the DON.

(b) *Proper basis.* A request for reconsideration shall set forth claimant's reasons for the request and shall include any supplemental supporting evidence or information. Any writing communicating a desire for reconsideration that reasonably appears to have been presented solely for the purpose of extending the statutory period for filing suit, shall not be treated as a request for reconsideration. Claimant or claimant's authorized representative shall be notified promptly that the writing is not considered a proper request for reconsideration.

(c) *Effect of presentment of request.* The presentment of a proper request for reconsideration starts a new 6-month period for the DON to act on the request to reconsider. The claimant may not file suit until the expiration of the new 6-month period, or until after the date of mailing of the final denial of the request. Final denial of a request for reconsideration shall be accomplished in the manner prescribed in § 750.23.

§ 750.25 Suits Under the Federal Tort Claims Act.

(a) *Time limit for filing suit.* A civil action is barred unless suit is filed against the United States not later than 6 months after the date of mailing of notice of final denial of the claim. The failure of DON to make final disposition of a claim within 6 months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim.

(b) *Venue.* Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred.

(c) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA.

(d) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA.

§ 750.26 Attorney fees.

Attorney fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award.

Subpart C—Claims Under the Military Claims Act (MCA)

§ 750.27 Scope of subpart C.

(a) *General.* This section prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage, loss, or destruction of property under the MCA:

(1) Caused by military personnel or civilian employees of the DON (hereinafter DON personnel). For the purposes of this section, DON personnel include all military personnel of the Navy and Marine Corps, volunteer workers, and others serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON. DON personnel does not include DON contractors or their employees; or

(2) Incident to noncombat activities of the DON. Claims for personal injury or death of a member of the Armed Forces or Coast Guard, or civilian officer or employee of the U.S. Government whose injury or death is incident to service, however, are not payable.

(b) *Territorial limitation.* There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act, the claim shall be processed under that statute.

(c) *Suit.* The MCA authorizes the administrative settlement and payment of certain claims. The United States has not consented to be sued.

§ 750.28 Statutory authority.

10 U.S.C. 2733, as amended, commonly referred to as the MCA.

§ 750.29 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under this provision when:

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment; or

(2) Incident to noncombat activities of the DON. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the U.S. Government has historically assumed a broad liability, even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Activities incident to combat, whether or not in time of war, and use of DON personnel during civil disturbances are excluded.

(b) *Specific claims payable.* Claims payable by the DON under the MCA shall include, but not be limited to:

(1) *Registered or insured mail.* Claims for damage to, loss, or destruction, even if by criminal acts, of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that to which the claimant would be entitled from the Postal

Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees;

(2) *Property bailed to the DON.* Claims for damage to or loss of personal property bailed to the DON under an express or implied agreement are payable under the MCA, even though legally enforceable against the U.S. Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims;

(3) *Real property.* Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims;

(4) *Property of U.S. military personnel.* Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in § 750.29(a) (1) and (2), occurring incident to service, not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA;

(5) *Health care and Legal Assistance Providers.* Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements, or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See § 750.41.

§ 750.30 Claims not payable.

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or his agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by the law.

(b) Any claim resulting from action by the enemy or resulting directly or indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:

(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

(2) Foreign Claims Act. 10 U.S.C. 2734.

(3) 10 U.S.C. 7622, relating to admiralty claims. See subpart G of this part.

(4) Federal Tort Claims Act. 28 U.S.C. 2671, 2672, and 2674–2680.

(5) International Agreements Claims Act. 10 U.S.C. 2734a and 2734b.

(6) Federal Employees' Compensation Act. 5 U.S.C. 8101–8150.

(7) Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 901–950.

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.29(b)(1) and (2)].

(f) Any claim for rent of real or personal property [except as provided in § 750.29(b) (1) and (2)].

(g) Any claim involving infringement of patents.

(h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.

(i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.

(j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service.

(k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.

(l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.

(m) Any claim based solely on compassionate grounds.

(n) Any claim to which the exceptions in 28 U.S.C. 2680 apply.

§ 750.31 Statute of limitations.

Claims against DON under the MCA must be presented in writing within 2 years after they accrue. In computing the 2 year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, an MCA claim, on good cause shown, may be presented within 2 years after the war or armed conflict is terminated. For the purposes of the MCA, the date of termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President.

§ 750.32 Filing the claim.

(a) *Who may file.* Under the MCA, specifically, the following are proper claimants:

(1) U.S. citizens and inhabitants;

(2) U.S. military personnel and civilian employees, except not for personal injury or death incident to service;

(3) Persons in foreign countries who are not inhabitants;

(4) States and their political subdivisions (including agencies);

(5) Prisoners of war for personal property, but not personal injury; and

(6) Subrogees, to the extent they paid the claim.

(b) *Who may not file.* (1) Inhabitants of foreign nations for loss or injury occurring in the country they inhabit; and

(2) U.S. Government agencies and departments.

(c) *Where to file.* The claim should be submitted by the claimant to the Office of the Judge Advocate General of the Navy, Claims and Tort Litigation (Code 15), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066, or to Tort Claims Unit Norfolk, 9620 Maryland Avenue, Ste. 205, Norfolk, VA 23434. Alternatively, the claim may be submitted to the commanding officer of the naval activity involved, if it is known, or to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred.

(d) *Claim form.* A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain and sufficient information so as to allow an investigation to commence. A Standard Form 95 is preferred. A claim should be substantiated as described in § 750.19 of this part in order to be paid.

(e) *Amendment of claim.* A proper claim may be amended by the claimant at any time prior to final denial or payment of the claim. An amendment shall be submitted in writing and signed by the claimant or a duly authorized agent or legal representative.

§ 750.33 Applicable law.

(a) *Claims arising within the United States or its territories, commonwealth, or possessions.* The law of the place

where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant's right of recovery.

(b) *Claims arising within foreign countries.* (1) Where the claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability of the United States will be assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Apply the law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant to determine the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, apply traditional rules of contributory negligence. Apply foreign rules and regulations on operation of motor vehicles (rules of the road) to the extent those rules are not specifically superseded or preempted by U.S. Armed Forces traffic regulations.

(c) *Principles applicable to all MCA claims.* (1) ''Scope of employment'' is determined in accordance with Federal law. Reported FTCA cases provide guidance on this determination;

(2) Claims for emotional distress will be considered only from the injured person or members of the injured person's immediate family. Claims from the injured person's immediate family will be considered only if such family member was within the ''zone of danger'' (*i.e.,* immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress; and

(3) Claims under the MCA do not include the principles of absolute (strict) liability and punitive damages.

§ 750.34 Measure of damages for property claims.

(a) Where the property damage arises in the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the place where the incident occurred.

(b) Where the property damage arises overseas, determine the measure of damages under general principles of American tort law, stated as follows:

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to substantially restore the property to the condition that existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs. The amount of any net depreciation in the value of the property shall be added to such gross cost of repairs if such adjustments are sufficiently substantial in amount to warrant consideration. Estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, for such period reasonably necessary for repairs, as long as idle property of the claimant was not employed as a substitute. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but not obtained and used by the claimant, loss of use is normally not payable.

§ 750.35 Measure of damages in injury or death cases.

(a) *Injury or death arising in the United States.* When the injury or death arises within the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the location where the injury arises.

(b) *Injury or death arising in a foreign country.* When the injury or death arises in a foreign country and is otherwise cognizable and meritorious under this provision, damages will be determined in accordance with general principles of American tort law. The following is provided as guidance.

(1) Measure of damages for overseas personal injury claims. Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, compensation for lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) Wrongful death claims arising in foreign countries.

(i) Allowable compensation includes that in paragraph (b)(1) of this section, burial expenses, loss of support and services, loss of companionship, comfort, society, protection, and consortium, and loss of training, guidance, education, and nurturing, as applicable.

(ii) The claim may be presented by or on behalf of the decedent's spouse, parent, child, or dependent relative. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually.

§ 750.36 Delegations of adjudicating authority.

(a) *Settlement authority.* (1) The Secretary of the Navy may settle or deny claims in any amount. The Secretary may pay the first $100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304.

(2) The Judge Advocate General has delegated authority to settle claims for $100,000.00 or less.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Director, Claims and Tort Litigation, and Head, Tort Claims Branch, Claims and Tort Litigation, have delegated authority to settle claims for $25,000.00 or less, and have denial authority in any amount.

(4) Individuals with settlement authority under paragraph (a)(3) of this section may delegate all or part of their settlement authority. Such delegation must be in writing.

(b) *Appellate authority.* Adjudicating authorities have the same authority as delegated in paragraph (a) of this section to act upon appeals. No appellate authority below the Secretary of the Navy may deny an appeal of a claim it had previously denied.

§ 750.37 Advance payments.

(a) *Scope.* This paragraph applies exclusively to the payment of amounts not to exceed $100,000.00 under 10 U.S.C. 2736 in advance of submission of a claim.

(b) *Statutory authority.* Title 10 U.S.C. 2736 authorizes the Secretary of the

Navy or designee to pay an amount not in excess of $100,000.00 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the MCA (10 U.S.C. 2733). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

(c) *Officials with authority to make advance payments.* (1) The Secretary of the Navy has authority to make advance payments up to $100,000.00.

(2) The Judge Advocate General has delegated authority to make advance payments up to $100,000.00.

(3) The Director, Claims and Tort Litigation and the Head, Tort Claims Branch, Claims and Tort Litigation have delegated authority to make advance payments up to $25,000.00.

(d) *Conditions for advance payments.* Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA;

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 U.S.C. 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss:

(i) Was caused by a member or employee of the DON acting within the scope of employment; or

(ii) Occurred ''incident to noncombat activities'' of the DON as defined in § 750.29(a)(2).

§ 750.38 Final disposition.

(a) *Claimant to be notified.* The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

(b) *Payment.* Claims approved for payment require a settlement agreement, signed by the claimant, in every case in which the MCA claim is settled for less than the full amount claimed or the claim was not presented on an SF95. The payment voucher will be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. If the Secretary of the Navy considers that an MCA claim in excess of $100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and § 750.27 of this part, he may make a partial payment of $100,000.00 and refer the excess to the Comptroller General for payment from appropriations provided therefore.

(c) *Final denial.* A final denial, in whole or in part, of any MCA claim shall be in writing and sent to the claimant, or his attorney or legal representative, by certified or registered mail, return receipt requested. The notification of denial may include a statement of the reason or reasons for denial and that the claimant may appeal. The notification shall also inform the claimant:

(1) The title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim.

(2) No form is prescribed for the appeal, but the grounds for appeal should be set forth fully.

(3) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

§ 750.39 Appeal.

(a) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal shall be in writing and state the grounds relied upon. An appeal is not an adversary proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

(b) Upon receipt, the adjudicating authority examines the appeal, determines whether the appeal complies with this regulation, and reviews the claims investigative file to ensure it is complete. The claim, with the complete investigative file and a memorandum of law, will be forwarded to the appellate authority for action. If the evidence in the file, including information submitted by the claimant with the appeal, indicates the appeal should be approved, the adjudicating authority may treat the appeal as a request for reconsideration.

(c) Processing of the appeal may be delayed pending further efforts by the adjudicating authority to settle the claim. Where the adjudicating authority does not reach a final agreement on an appealed claim, it shall send the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The appellate authority shall notify the claimant in writing of the determination on appeal; that such determination constitutes the final administrative action on the claim; and there is no right to sue under the MCA.

§ 750.40 Cross-servicing.

(a) *Single service claims responsibility.* See § 750.10 for information about single-service claims responsibility under DoDI 5515.08 of 11 Nov 2006.

(b) *Claims settlement procedures.* Where a single service has been assigned a country or area claims responsibility, that service will settle claims cognizable under the MCA under the regulations of that service. The forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

§ 750.41 Payments related to certain medical or legal malpractice claims.

(a) *General.* Requests for reimbursement/indemnification of costs, settlements, and judgments cognizable under 10 U.S.C. 1089(f) [for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists)] or 10 U.S.C. 1054(f) [for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff] while acting as DON personnel will be paid if:

(1) The alleged negligent or wrongful actions or omissions arose in connection with either providing health care functions or legal services and within the scope of employment; and

(2) Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance as requested; and cooperate in defending the action on the merits.

(b) *Requests for indemnification.* All requests for indemnification for personal liability of DON personnel for acts or omissions arising out of assigned duties shall be forwarded to the Judge Advocate General for action.

§ 750.42 Attorney fees.

Attorney fees not in excess of 20 percent of any settlement may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. These fee limitations shall be incorporated in any settlement agreement secured from a claimant.

Subpart D—Claims Under the Foreign Claims Act (FCA)

§ 750.43 Scope of subpart D.

This section provides information regarding the administrative processing of claims against the United States under the Foreign Claims Act (FCA). Foreign claims are demands for payment against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death occurring outside the United States caused either by the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of these forces in foreign countries. The statutory purpose of the FCA is to ''promote and maintain friendly relations through the prompt settlement of meritorious claims'' in foreign countries.

§ 750.44 Statutory authority.

(a) The statutory provisions of the Foreign Claims Act (FCA) are at 10 U.S.C. 2734. The FCA authorizes filing, investigating, processing, and settling foreign claims under such regulations as the service Secretary shall prescribe.

(b) The regulations implementing the FCA are separate and distinct from the procedures governing implementation of the International Agreement Claims Act (IACA), 10 U.S.C. 2734a and 2734b.

§ 750.45 Scope of liability.

(a) *General.* The Foreign Claims Act and its implementing regulations should be broadly construed to carry out the statutory purpose. The United States generally accepts responsibility for damage, injury, or death to local inhabitants caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or by the noncombat activities of our armed forces in foreign countries. Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or even criminal.

(b) *Claims Payable.* For a claim to be payable under the FCA, both the claimant and the incident giving rise to the claim must be covered by the statute (10 U.S.C. 2734).

(1) *Covered claimants.* The FCA applies only to inhabitants of foreign countries who are defined as persons, corporations, or other Government or business entities, whose usual place of abode or activity is in a foreign country. The claimant need not be an inhabitant of the particular country in which the claim arose. Examples of covered claimants include foreign nationals residing in a foreign country; foreign nationals visiting or traveling in a foreign country where they do not reside; U.S. citizens residing in a foreign country if they are inhabitants of a foreign country and are not there as U.S. Service members or civilian employees (or their sponsored dependents) or as U.S. civilian contractors performing work pursuant to an agreement with the U.S. Government; a corporation or other organization doing business in a foreign country on a permanent basis, even if organized under U.S. law, provided that the corporation or organization is not providing work pursuant to a contract with the U.S. Government; and foreign governments and their political subdivisions, including the equivalents of State, county, and city governments, unless excluded by waiver provisions of an international agreement.

(2) *Covered incidents.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property may be paid under these regulations if the incident occurred outside the U.S. and was caused by either the negligent or wrongful act or omission of military members or civilian employees of the U.S. Armed Forces or caused by the non-combat activities of these forces.

(3) *Scope of Employment.* As a general rule, scope of employment of the service member or civilian employee that allegedly caused the loss is immaterial. If, however, a claim arises from the act of a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien, scope of employment is a prerequisite to United States responsibility. Claims arising from the operation of a U.S. Armed Forces vehicle by a U.S. employee who is an indigenous person (local hire), prisoner of war, or interned enemy alien are cognizable and may be paid if local law imposes liability on the owner of the vehicle under the circumstances.

(c) *Claims Not Payable.* (1) Claims of insurers and other subrogees.

(2) Claims of sponsored dependents accompanying members and civilian employees of the U.S. Armed Forces, or U.S. national civilians employed by either the U.S. Government or a civilian contractor performing under an agreement or contract with the U.S. Government.

(3) Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with U.S. Armed Forces, or as a result of the actions of a member or civilian employee of the U.S. Armed Forces, acting within the scope of employment, unless a treaty specifically provides for recovery.

(4) Claims of civilian employees of the U.S., including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

(5) Claims of national governments or their political subdivisions engaging in combat with the United States or its allies.

(6) Claims of a national or a corporation controlled by a national of a country engaging in combat with the United States or its allies, unless it is determined that the claimant is friendly.

(7) Claims resulting from combat activities, except that claims arising from an accident or malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.

(8) Claims previously paid or denied.

(9) Claims purely contractual in nature.

(10) Claims involving private contractual and domestic obligations of individuals.

(11) Claims based solely on compassionate grounds.

(12) Claims for paternity or illegitimacy.

(13) Claims payable under other Federal statutes.

(14) Claims for damage caused by naval vessels, unless payment is specifically authorized by the Office of the Judge Advocate General of the Navy (Code 11) in accordance with JAGINST 5800.7F, Chapter XI.

§ 750.46 Statute of limitations.

An FCA claim must be presented in writing to the appropriate U.S. military authorities within 2 years of the date it accrues. A claim accrues when the claimant discovers or reasonably should have discovered the personal injury or property damage giving rise to the claim. To compute the statutory time period, exclude the day the claim accrued and include the day the claim was filed.

§ 750.47 Filing a claim.

(a) *Presentation of the Claim.* An FCA claim may be presented to the Office of the Judge Advocate General, Tort Claims Unit (TCU) Norfolk, 9620 Maryland Ave, Suite 205, Norfolk, VA 23511–2949. In the alternative, the claim may be presented to any U.S. authority or to foreign government authorities if authorized under a Status of Forces Agreement (SOFA) or other applicable treaty or agreement. Claims shall be promptly transferred to the appropriate authorities for processing (see paragraph (b) of this section).

(b) *Appropriate Authorities*—(1) *General.* The commanding officer of the organization or individual(s) whose activities gave rise to the claim has authority to process claims under these regulations, subject to the restrictions of any SOFA provisions or DODI 5515.18 (series) which assigns single-service claims responsibility. A commander who receives a claim that is not under his cognizance shall forward the claim promptly to the appropriate authority and shall provide assistance necessary to investigate and adjudicate the claim.

(2) *RLSO EURAFSWA.* The Commanding Officer RLSO EURAFSWA has authority to process all claims under the Foreign Claims Act arising in their Area of Responsibility. The Commanding Officer RLSO EURAFSWA is authorized to pay any claim regardless of the amount claimed when payment does not exceed $50,000.00 and has unlimited denial authority.

(3) *International agreements.* Article VIII of the NATO SOFA and similar provisions of SOFAs with individual foreign countries may restrict the use of the FCA by authorizing foreign government officials to process claims that would otherwise be cognizable under the FCA. Therefore, consult the pertinent directives of the area commander to ensure proper processing.

(4) *Single-service claims responsibility.* DoDI 5515.08 (series) assigns single-service claims responsibility to individual military departments for processing claims in specified foreign countries. It also authorizes the Navy to settle claims for less than $2,500 arising in foreign ports visited by U.S. forces afloat, including those arising in countries assigned to the Departments of the Army and the Air Force. If a claim arises in a country not specifically assigned by either of these references, the military service component of the employee who caused the damage/injury is responsible for adjudication. Claims arising out of DON activities in countries assigned to the Army and the Air Force must be forwarded promptly to the appropriate military department and may not be processed by DON entities.

(5) *Claims under admiralty jurisdiction.* Admiralty claims arising in foreign countries may be adjudicated under the FCA provided that the claim is not otherwise cognizable under applicable admiralty statutes and regulations. In particular, the reciprocity provisions of the Public Vessels Act (46 U.S.C. 781 and 785) must be met. Prior authorization by the Judge Advocate General (OJAG Code 11) is required.

§ 750.48 The administrative claim.

A proper claim must be in writing and filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it must set forth the same basic information required by Standard Form 95.

(a) *Proper signature.* The claim may be signed by either the injured party or an authorized agent. A claim signed by an agent or legal representative will be filed in the name of the claimant, show the title or legal capacity of the person signing, and be accompanied by evidence of their authority to sign the claim on behalf of the claimant.

(b) *Sufficiently detailed.* The claim must describe the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm so as to allow the DON to investigate.

(c) *Sum certain.* A proper claim must include a demand for a specific and definite sum of money damages for property damage, personal injury, or death alleged to have occurred as a result of the incident.

(d) *Substantiation.* See subpart B, § 750.19 for a detailed discussion of the supporting documentation required to substantiate a tort claim presented against the United States under any of the claims statutes. Supporting documentation requirements will vary according to the type of claim presented (*i.e.,* property damage, personal injury, or wrongful death).

(e) *Amending the claim.* A claim may be amended in writing at any time prior to final settlement or denial and must be signed by the claimant or an authorized agent.

§ 750.49 Damages.

(a) *General.* The local laws, standards, and customs, of the country where the incident occurred control when computing damages for personal injury, death, or damage to property.

(b) *Compensation.* An appropriate award is generally limited to reasonable compensation for the injury, death, or property damage, or loss only and does not extend to payment of punitive damages, interests, costs, attorneys fees, or any other such charges, regardless of whether they are allowed by local laws, standards, or customs. In cases of personal injury or death, compensation may include medical expenses, pain and suffering, burial expenses, loss of society and companionship, and lost income. In cases of permanent disability, compensation may also include diminished earning capacity and costs of medical care in the future. In cases of property damage, compensation mayinclude cost of repair, cost of replacement or diminished value, and loss of use of the property.

(c) *Comparative fault.* A claimant's negligence or wrongful act contributing to the injury, death, or damage that is the basis of the claim may bar the claim entirely or diminish the claim proportionately.

§ 750.50 Foreign Claims Commissions.

(a) *Purpose.* The purpose of a Foreign Claims Commission (FCC) is to settle meritorious claims fairly and promptly. An FCC shall deny or pay (in full or in part) all claims in accordance with its adjudicating authority or, when required under these regulations, forward adjudication recommendations to appropriate higher authorities.

(b) *Authority to appoint.* (1) All commanding officers of the Navy and Marine Corps have authority to appoint an FCC, unless restricted by a competent superior commander.

(2) For the purpose of the FCA and these regulations, the following officers are considered commanding officers: The Judge Advocate General of the Navy; Commanding Officer, RLSO EURAFSWA; Chiefs of Naval Missions (including Chiefs of the Naval Section of Military Missions); Chiefs of Military Assistance Advisory Groups (including chiefs of the naval section of such groups); and naval attachés.

(c) *Composition of the FCC.* An FCC shall be composed of either one or three members. Members shall be commissioned officers of the Navy or

Marine Corps of sufficient grade and experience to carry out the purpose of the Commission. Whenever possible, at least one member of the Commission shall be a judge advocate. For detailed discussion of the composition of an FCC, the qualification of its members, and the various levels of adjudicating authority held by each type of Commission (ranging from $5,000 to $20,000 depending on the composition of the Commission), see JAGINST 5800.7F, Chapter VIII (paragraph 0815).

§ 750.51 Processing claims.

(a) *Action by the Appointing Authority.* The cognizant commanding officer [see § 750.47(b)(1)] is the appointing authority for the FCC that will adjudicate the claim. The staff judge advocate for the cognizant commanding officer is responsible for providing advice, guidance, and review to the commanding officer, the FCC, and claims investigating officer on the policies and procedures in these regulations. The appointing authority shall convene an appropriate investigation or obtain the report of investigation if one has already been conducted, refer the claim with the investigative report to the FCC for adjudication, and take action or forward it as appropriate.

(b) *Action by the Claims Investigating Officer.* There is no formal procedure for conducting an investigation of a foreign claim. A transcript of witness testimony is not required; a written summary of the substance of any statement is adequate. The formal rules of evidence do not apply, and any relevant evidence may be received to establish the essential facts of the incident. A written report of the investigation shall be submitted to the appointing authority as soon as practicable.

(c) *Action by the FCC.* The FCC will review the claim and the investigation. If appropriate, the FCC will negotiate with the claimant for settlement of the claim within the limits of the FCC's adjudicating authority. The FCC will deny or pay the claim, in full or in part, within the limits of the FCC's denial or payment authority ($20,000 max). When an FCC recommends payment or denial of a claim in excess of its denial or payment authority, the original report and all related documents shall be forwarded to the appointing authority for retention with a copy forwarded by the appointing authority to OJAG Code 15 for further action.

§ 750.52 Action on forwarded claims.

When the FCC recommends payment or denial of a claim in excess of the FCC's authority, the following officers may approve or disapprove the recommendation and pay the claim, in whole or in part, or return the claim with instructions to the appointing authority or the FCC:

(a) *Claims up to $50,000.00.* The Deputy Judge Advocate General of the Navy, the Assistant Judge Advocate General (Civil Law), the Division Director (Claims and Tort Litigation) and for claims arising in his area of responsibility, the Commanding Officer, RLSO EURAFSWA. These officials have unlimited denial authority.

(b) *Claims from $50,000.00 to $100,000.00.* The Judge Advocate General of the Navy.

(c) *Claims in excess of $100,000.00.* The Secretary of the Navy.

§ 750.53 Reconsideration, appeal, and suit.

(a) *Reconsideration.* (1) A claim may be reconsidered when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or based on evidence subsequently received. The request for reconsideration must be received by the FCC within 60 days of the date of the denial letter unless good cause is shown.

(2) Claimant's request for reconsideration should indicate the legal or factual basis asserted as grounds for relief.

(3) The claim may be reconsidered by the original FCC, a successor FCC, or a newly appointed FCC upon written request from the claimant, upon the original FCC's initiative, or upon direction by a superior officer authorized to take action on the claim.

(4) If the FCC concludes that the original action was incorrect, it will modify the decision or forward a supplemental recommendation through the appointing authority for action. If the FCC concludes that the original action was correct, it will affirm the decision, and forward a memorandum for information through the appointing authority.

(5) When action on reconsideration has been completed and approved, the appointing authority shall notify the claimant that such action is final and conclusive by law.

(b) *Appeal.* There is no right of appeal under this statute.

(c) *Suit.* The United States has not consented to be sued under this statute.

§ 750.54 Payment.

(a) *Release.* A settlement agreement and release shall be obtained from the claimant when payment of an award is accepted. The settlement amount shall be set forth in U.S. Dollars to be paid in local currency at the currency exchange rate in effect at the time of payment. If payment will be made by electronic wire transfer, the necessary banking and routing information should be included on the settlement agreement.

(b) *Advance Payments.* Advance payments may be paid under this section.

(c) *Currency.* Due to Federal currency restrictions, all payments under this chapter shall be made in the local currency of the country in which the claim arose or in the currency of the country where the claimant resides at the time of such payment.

Subpart E—Claims Under the Nonscope Claims Act (NSCA)

§ 750.55 Scope of subpart E.

This section provides information on payment of claims against the United States, not payable under any other statute, for damages caused by the act or omission, negligent, wrongful, or otherwise involving fault, of DON personnel acting outside the scope of their employment or by latent defects in certain Government equipment.

§ 750.56 Statutory authority.

Title 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed $1,000.00 of any claim against the United States not cognizable under any other provision of law for damage, loss, or destruction of property or for personal injury or death caused by military personnel or a civilian official or employee of a military department incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation. There is no right to sue. There are no territorial limitations and the Act has worldwide application.

§ 750.57 Definitions.

(a) *Civilian official or employee.* Any civilian employee of the DON paid from appropriated funds at the time of the incident.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land.

(c) *Government installation.* Any Federal facility having fixed boundaries and owned or controlled by the U.S. Government. It includes both military bases and nonmilitary installations.

§ 750.58 Claim procedures.

(a) The general provisions of subpart A of this part shall apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be

processed under 10 U.S.C. 2737 and this section.

(b) A claim is presented when the DON receives from a claimant or the claimant's duly authorized agent, written notification of a nonscope claim incident accompanied by a demand for money damages in a sum certain.

(c) A claimant may amend a claim at any time prior to final action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

(d) Claims submitted under the provisions of the FTCA or MCA shall be considered automatically for an award under this section when payment would otherwise be barred because the DON personnel were not in the scope of their employment at the time of the incident. If a tender of payment under this section is not accepted by the claimant in full satisfaction of the claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute under which it was submitted.

(e) Damages caused by latent defects of ordinary, commercial type, Government equipment that were not payable under the MCA, Foreign Claims Act, or FTCA are payable under this section.

(f) Nonscope claims for damages caused by local national DON employees overseas are also payable under this section if the injury was caused by the use of Government equipment.

(g) Payment may not be made on a nonscope claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement.

(h) Payment for nonscope claims adjudicated by field commands will be affected through their local disbursing office by use of funds obtained from the Judge Advocate General.

(i) If a nonscope claim is denied, the claimant shall be informed of reasons in writing and advised he may appeal in writing to the Secretary of the Navy (Judge Advocate General) provided the appeal is received within 30 days of the notice of denial. The provisions of § 750.38(c) of subpart C also apply to denials of nonscope claims.

§ 750.59 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act or omission for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was presented.

§ 750.60 Officials with authority to settle.

The Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General, Civil Law; Director, Claims and Tort Litigation; and Head, Tort Claims Branch, Claims and Tort Litigation may settle a nonscope claim.

§ 750.61 Scope of liability.

(a) Subject to the exceptions in § 750.50 of specific claims not payable, the United States shall not pay more than $1,000.00 for a claim against the United States, not cognizable under any other provision of law, except Article 139, UCMJ.

(b) Article 139, UCMJ, 10 U.S.C. 939, is not preemptive. The prohibition in 10 U.S.C. 2737 on paying claims ''not cognizable under any other provisions of law'' applies only to law authorizing claims against the United States. Article 139 authorizes claims against service members. See subpart H of this part.

§ 750.62 Claims not payable.

(a) A claim for damage, loss, or destruction of property or the personal injury or death caused wholly or partly by a negligent or wrongful act of the claimant or his agent or employee.

(b) A claim, or any part thereof, that is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(c) A subrogated claim.

§ 750.63 Measure of damages.

Generally, the measure-of-damage provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with §§ 750.34 and 750.35 of subpart C, except damages for personal injury or death under this section shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.

Subpart F—Claims Under the Personnel Claims Act (PCA)

§ 750.64 Scope of subpart F.

(a) This subpart describes the procedures and substantive bases for administrative settlement of claims submitted by Department of the Navy (DON) personnel and civilian employees under the Military Personnel and Civilian Employees' Claims Act (PCA), 31 U.S.C. 3721, and for the administrative pursuit by DON of recovery from carriers, contractors, or insurers responsible for loss, damage or destruction of such personal property.

(b) The PCA is a gratuitous payment statute that Congress intended to help lessen the hardships of military life by providing limited compensation for certain types of property losses. The PCA authorizes payment of claims for the fair market value (FMV) of personal property lost, damaged or destroyed incident to service. This limited compensation is not a substitute for private insurance. Intangible property and consequential and incidental damages are not considered personal property and are not payable under the statute. ''Fair market value'' is the price that an item would sell for from a retailer who routinely sells the product minus the depreciation based upon its age or, if the item cannot be purchased, what it cost to replace on the open market, given its age and condition.

(c) The PCA and the provisions of this enclosure preempt payment under any other claims statute. Claims not cognizable under the PCA may, however, be cognizable under another claims statute.

§ 750.65 Statutory authority.

(a) 31 U.S.C. 3721, The Military Personnel and Civilian Employees' Claims Act (PCA).

(b) 10 U.S.C. 2636a (Full Replacement Value).

(c) 10 U.S.C. 2740 (Gap Legislation).

(d) 31 U.S.C. 3711—3720e, The Federal Claims Collection Act.

(e) 49 U.S.C. 14706, The Carmack Amendment to the Interstate Commerce Act.

§ 750.66 Adjudicating authority.

(a) Responsibility for adjudicating claims under the PCA and asserting and settling claims against carriers, contractors, or insurers rests with the Personnel Claims Unit (PCU) located in Norfolk, Virginia.

(b) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Director, Claims and Tort Litigation (OJAG Code 15), and the Head, Affirmative and Personnel Claims Branch (OJAG Code 15) have been delegated authority to adjudicate claims against the DON for $100,000.00 or less and denial authority in any amount. Any individual who has been personally designated by the Director, Claims and Tort Litigation, may adjudicate claims up to $40,000.00 and may deny claims in any amount.

§ 750.67 Proper claimants.

The definition of a proper claimant is based on a claimant's status at the time the claim accrued, even if the member or employee has separated from Federal

service at the time the claim is filed. The following are proper claimants:

(a) Navy and Marine Corps active duty members and reservists on active duty or active duty for training at the time the claim accrued;

(b) Civilian employees of the Navy and Marines who are paid from appropriated funds;

(c) Non-appropriated Fund Instrumentality (NAFI) employees whose salaries are paid from non-appropriated funds;

(d) Department of Defense (DoD) Education Activity (DoDEA) teachers; and

(e) Authorized agents or legal representatives of the claimant, who provide a Power of Attorney and certain relatives of a deceased claimant.

§ 750.68 Claims payable.

(a) Claims for loss of property are compensable if the loss was incident to service and possession of the property was reasonable and useful under the circumstances.

(1) Claims may be payable for loss of property at assigned quarters or other authorized places, *i.e.,* non-household goods (non-HHG) claims, if caused by theft, vandalism, fire, flood, or other unusual occurrence.

(2) Claims may also be payable for the loss of property incurred during transportation or storage under orders and at Government expense, *i.e.,* household goods (HHG) claims.

§ 750.69 Claims not payable.

(a) Any part of the loss that was caused in any part by the negligence or wrongful act of the claimant.

(b) Any part of the loss that is payable by any available insurance, except for the loss of HHG shipped or stored at Government expense pursuant to the Full Replacement Act. In this case, the claimant would first file a claim with the Transportation Service Provider (TSP) in accordance with the contract requirements. In cases where a catastrophic event occurs during transit, and the loss exceeds the TSP's maximum liability, the member must then pursue through any available insurance before filing a PCA claim.

(c) Any claim presented more than two years from the date of accrual.

§ 750.70 Statute of limitations.

A claim must be filed within two years from the date it accrues unless it accrues during armed conflict and good cause is shown, in which case the time limitation may be extended until the armed conflict is terminated. A claim accrues on the day the claimant knows or should know of the loss—either the day of the incident or in the case of HHG claims, the date of delivery.

§ 750.71 Filing a claim.

(a) Non-HHG claims as well as HHG claims not electronically filed in the USTRANSCOM-managed claims filing system should be submitted on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) accompanied by DD Form 1844 (Schedule of Property). However, any writing will be accepted and considered as long as it substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant or by a person with appropriate power of attorney (POA) from a proper claimant. The claim must be submitted to the PCU at the address, email, or facsimile number indicated at the U.S. Navy Judge Advocate General's Corps website at *https://www.jag.navy.mil/organization/code_15.htm.*

(b) HHG Claims electronically filed in a USTRANSCOM-managed claims filing system can be transferred to the PCU electronically by selecting the ''transfer to MCO option available in the system.

(c) If a HHG claim is received by a PCU within nine months after the date of delivery, and the member has not first filed with the TSP, the PCU will transmit the claim to the TSP in order to ensure the member meets the requirements to qualify for FRV, unless the claimant directs otherwise.

§ 750.72 Computation of payment.

The military services publish an Allowance List-Depreciation Guide (ALDG) that specifies rates of depreciation and maximum payments applicable to categories of property that governs all PCU payments. For HHG, the value of a loss is first determined consistent with the ALDG and then adjusted to reflect payments, repairs, or replacement by TSPs or insurance companies, or lost potential recoveries except in very limited cases involving HHG shipments where the PCU may pay Full Replacement Value (FRV).

§ 750.73 Notice of decision.

Upon adjudication, the claimant will be notified in writing of the amount authorized and of the right to request reconsideration of the decision.

§ 750.74 Reconsideration.

A request for reconsideration must be submitted to the original adjudicating authority within six months from the date the claimant received the initial claim adjudication.

§ 750.75 Carrier recovery claims.

For Naval and Marine Corps personnel whose PCA claims for HHGs lost or damaged during shipment were adjudicated and compensated by the PCU, assertion of a claim against the carrier to recover the amount paid is the responsibility of the PCU unless the shipment was arranged by the Department of State (DOS). In those moves, recovery is the responsibility of DOS. Recovery efforts will be in accordance with the Defense Personal Property Program Claims and Liability Business Rules.

Subpart G—Admiralty Tort Claims

§ 750.76 Scope of subpart G.

This part applies to admiralty tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy for which the Navy has assumed an obligation to respond for damage. Affirmative claims by the United States for damage caused by a vessel or floating object to Navy property are covered under this part.

§ 750.77 Statutory authority.

28 U.S.C. 1333; 46 U.S.C. 740; 10 U.S.C. 7621–7623; 32 CFR 700.105 and 700.331.

§ 750.78 Organization.

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed $ 15,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623).

(b) *Admiralty and Maritime Law Division of the Office of the Judge Advocate General.* The Navy's admiralty tort claims are processed and adjudicated in the Admiralty and Maritime Law Division of the Office of the Judge Advocate General. All correspondence with the Admiralty and Maritime Law Division should be addressed to the Office of the Judge Advocate General (Code 11), 1322

Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

(c) *Mission and policy.* The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty tort claims.* As indicated in paragraphs (a) through (c) of this section, the Admiralty and Maritime Law Division primarily handles admiralty tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty contract claims.* Admiralty contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of DoD cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores.* Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts.* Admiralty tort claims, such as collision, personal injury, and death claims, are dealt with by the Admiralty and Maritime Law Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty and Maritime Law Division and the Office of Counsel, MSC, as to how the incident should be handled.

§ 750.79 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 8822 provides settlement authority for damage caused by a vessel in the naval service or by other property under the jurisdiction of the DON; compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or damage caused by a maritime tort committed by any agent or employee of the DON or by property under the jurisdiction of the DON. The limit on the Secretary's settlement authority is payment of $15,000,000. A claim which is settled for an amount over $15,000,000 is certified to Congress for payment. Section 8822 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $1,000,000. Under the Secretary's delegation, settlements not exceeding $300,000 may be effected by the Judge Advocate General. Under the Secretary's delegation, settlements not exceeding $250,000 may be effected by the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over $300,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 8822 are paid out of annual DoD appropriations.

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

§ 750.80 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 8823, and is the reciprocal of 10 U.S.C. 8822 referred to in § 750.79.

(b) *Scope.* 10 U.S.C. 8823 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the DON or for which the DON has assumed an obligation to respond. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words ''or floating object'' were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the ''res'' or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416).

(d) *Litigation.* 10 U.S.C. 8823 does not apply to any claim where suit is filed. If the Admiralty and Maritime Law Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint

against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

§ 750.81 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the DON, or for salvage services rendered by the DON. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 8822. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 8703. Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command, SUPSALV—00CL, 1333 Isaac Hull Ave. SE, Stop 1070, Washington Navy Yard, DC 20376–1070. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 8704.

Subpart H—Claims for Property Damage Under Article 139, Uniform Code of Military Justice

§ 750.82 Scope of subpart G.

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

§ 750.83 Statutory authority.

10 U.S.C. 939, commonly referred to as Uniform Code of Military Justice, Article 139: Redress of injuries to property.

§ 750.84 Claims not cognizable.

The following claims are not cognizable under this subpart:

(a) Claims resulting from simple negligence;

(b) Claims of subrogees;

(c) Claims for personal injury or death;

(d) Claims arising from acts or omissions within the scope of employment of the offender; and

(e) Claims for reimbursement for damage, loss, or destruction of Government property.

§ 750.85 Limitation on claims.

(a) *Time limitations.* A claim must be submitted within 90 days of the incident giving rise to it.

(b) *Acts of property owner.* When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or damage of the property, assessments will not be made against members of the naval service in excess of the amount for which they are found to be directly responsible, *i.e.,* comparative responsibility for the loss will be the standard for determining financial responsibility.

(c) *Only direct damages considered.* Assessment will be made only for direct physical damages to the property. Indirect, remote, or inconsequential damage will not be considered.

§ 750.86 Complaint by the injured party and investigation.

(a) A claim shall contain a statement setting forth the amount of the claim, the facts and circumstances surrounding the claim, and any other information that will assist in the investigation and resolution of the matter. When there is more than one complaint resulting from a single incident, each claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized representative or agent.

(b) Where a complaint is received by a commanding officer to whose command the alleged offenders do not report, he shall forward the claim and other pertinent information about the matter to the member's commanding officer. Where the command of the alleged offenders cannot be determined, the claim and supporting materials shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, for action.

(c) Once a complaint is received, the responsible commanding officer will convene an investigation into the circumstances surrounding the claim, gather all relevant information about the matter (answering the who, what, where, when, why, and how questions), and make findings and opinions, as appropriate, about the validity of the claim under Article 139, UCMJ, and these regulations. The investigation shall determine the amount of damage suffered by the property owner.

(d) The investigation shall make recommendations about the amount to be assessed against the pay of the responsible parties. If more than one person is found responsible, recommendations shall be made about the assessments against all individuals.

§ 750.87 Action where offenders are members of one command.

(a) *Action by commanding officer.* The commanding officer shall ensure the alleged offenders are shown the investigative report and are advised they have 20 days within which to submit a statement or additional information on the incident. If the member declines to submit information, he shall so state in writing within the 20-day period. The commanding officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of the command. If the commanding officer finds the claim payable under these regulations, he shall fix the amount to be assessed against the offenders.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no further review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial convening authority, the investigation and the commanding officer's action thereon shall be forwarded to the officer exercising general court-martial jurisdiction (OEGCMJ) over the command for review and action on the claim. That officer's action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

(c) *Charge against pay.* Where the amount does not exceed $5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against

the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds $5,000.00, the claim, the investigation, and the commanding officer's recommendation shall be forwarded for review prior to checkage to Headquarters, U.S. Marine Corps (JCA) or the Judge Advocate General, as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of basic pay, as defined in paragraph 126h(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

§ 750.88 Action where offenders are members of different commands.

(a) *Action by common superior.* The investigative report shall be forwarded to the common superior exercising general court-martial jurisdiction over the commands to which the alleged offenders are assigned. That officer shall ensure the alleged offenders are shown the investigative report and permitted to comment on it, should they desire, before action is taken on the claim. That officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of his command. If the claim is found payable under these regulations, he shall fix the amount to be assessed against the offenders and direct the appropriate commanding officers to take action accordingly.

(b) *Forwarding to the Secretary of the Navy (JAG).* Where it is not practical or possible to carry out the procedure set forth in subpart A, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

§ 750.89 Reconsideration and appeal.

(a) *Reconsideration.* The OEGCMJ may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCMJ contemplates acting favorably on the request, he will provide all individuals interested in the claim with notice and an opportunity to respond. The basis for any change will be noted in the OEGCMJ's decision.

(b) *Appeal.* In claims involving $5,000.00 or less, a claimant or member who has been assessed pecuniary liability may appeal the decision to the OEGCMJ. An appeal must be submitted within 5 days of the receipt of the OEGCMJ's decision. Appeals will be forwarded, via the OEGCMJ, to the Judge Advocate General or Headquarters, U.S. Marine Corps (JCA), as appropriate, for review and final action. In the event of an appeal, the imposition of the OEGCMJ's decision will be held in abeyance pending final action by the Judge Advocate General or Headquarters, U.S. Marine Corps (JCA). If it appears that good cause exists that would make it impracticable for an appeal to be submitted within 5 days, the OEGCMJ may, in his discretion, grant an extension of time, as appropriate. His decision on extensions is final and non-appealable.

Subpart I—Claims Involving Non-Appropriated Fund (NAFI) Activities and Their Employees

§ 750.90 Scope of subpart I.

This part explains how to process claims for and against the United States for property damage, personal injury, or death arising out of the operation of non-appropriated fund activities (NAFI). A NAFI is a Federal agency within the meaning of the FTCA if the NAFI is charged with an essential function of the DON and if the degree of control and supervision by the Navy is more than casual or perfunctory.

§ 750.91 Statutory authority.

To the extent sovereign immunity is waived by the FTCA, 28 U.S.C. 1346(b), 2671–2672, 2674–2680, the United States remains ultimately liable for payment of NAFI claims under the FTCA. DoD Directive 5515.6, ''Processing Claims Arising out of Operations of Nonappropriated Fund Activities'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/551506p.pdf*) establishes policy governing the administrative processing of claims arising out of the operation of non-appropriated fund activities.

§ 750.92 Definitions.

(a) *Non-appropriated-fund instrumentality (NAFI).* An instrumentality of the Federal Government established to generate and administer non-appropriated funds for programs and services contributing to the mental and physical well-being of DoD personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) *Non-appropriated funds.* Funds generated through the use and patronage of NAFI's, not including funds appropriated by Congress.

(c) *Employees of NAFIs.* Personnel employed by NAFIs whose salaries are paid from non-appropriated funds.

§ 750.93 Participation in insurance programs.

(a) Unlike all other tort claims against the Government (which are paid by the United States Treasury using appropriated funds), NAFI claims are paid by the NAFI whose employee caused the damage. Accordingly, some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Commander, Naval Supply Systems Command determine whether NAFI's within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

(b) The Marine Corps requires mandatory participation in the Morale, Welfare and Recreation (MWR) Composite Insurance Program by the following operations: MWR operations and retail services, food and hospitality, recreation; and special NAFI activities including flying clubs, rod and gun clubs, Inter-service Rifle Fund, Marine Corps Marathon and Dependent Cafeteria Fund. The following organizations may also participate in the MWR Composite Insurance Program, if desired: Child welfare centers, billeting funds, chapel funds, and civilian welfare funds.

(c) When the operations of a NAFI result in property damage or personal injury, the NAFI's insurance carrier, if any, should be given immediate written notification. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

§ 750.94 Responsibility.

TCU Norfolk has cognizance over all DON claims. Accordingly, TCU Norfolk has primary responsibility for the negotiation and settlement of NAFI claims. Those NAFI's which carry third party insurance or are self-insured [*e.g.,* Navy Exchange Service Command (NEXCOM) and Marine Corps Community Services (MCCS)] are authorized to settle and pay their own

claims. All other NAFI claims are adjudicated by TCU Norfolk and forwarded to the cognizant NAFI's headquarters for payment. Only TCU Norfolk has the authority to deny a NAFI claim.

§ 750.95 Negotiation.

(a) *General.* Claims from NAFIs should be processed primarily through procedures, regulations, and statutes applicable to similar appropriated fund activity claims.

(b) *When the NAFI is insured.* When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The TCU Norfolk shall monitor the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining that someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the negotiations should be referred directly to the Judge Advocate General (Claims and Tort Litigation) for appropriate action. If requested by the insurer or TPA, the TCU Norfolk may conduct negotiations. If TCU Norfolk negotiates a final settlement, however, request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not necessary.

(c) *When the NAFI is not insured.* When there is no private commercial insurer and the NAFI has made no independent arrangements for negotiations, the TCU Norfolk is responsible for conducting negotiations. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the NAFI for payment from non-appropriated funds.

§ 750.96 Payment.

(a) *Claims that can be settled for less than $1,500.00.* A claim not covered by insurance (or not paid by the insurer) that can be settled for $1,500.00 or less, may be adjudicated by the TCU Norfolk or single-service authority and forwarded to the commanding officer of the activity concerned or designee for payment out of funds available to the commanding officer. The TCU Norfolk or single-service authority will obtain the required release from the claimant.

(b) *Claims that cannot be settled for less than $1,500.00.* A claim negotiated by the Navy, not covered by insurance, that is for more than $1,500.00 will be forwarded to the cognizant non-appropriated fund (NAF) headquarters command for payment from its non-appropriated funds.

(c) *When payment is possible under another statute.* In some cases, neither the NAFI nor its insurer may be legally responsible. In those instances when there is no negligence, and payment is authorized under some other statute, such as the Foreign Claims Act, 10 U.S.C. 2734–2736, the claim may be considered for payment from appropriated funds or may be referred to the TCU Norfolk for appropriate action.

(d) *Other claims.* A NAFI's private insurance policy is usually not available to cover losses that result from some act or omission of a mere participant in a non-appropriated fund activity. In the event the NAFI declines to pay the claim, the file shall be forwarded to the TCU Norfolk for determination.

§ 750.97 Denial.

Denial of a NAFI claim will begin the six-month limitation on filing suit against the United States for claims filed under the FTCA. If a claim is denied, it will be in writing and in accordance with subparts A and B of part 750 of this chapter, as appropriate. TCU Norfolk should not deny claims that have initially been processed and negotiated by a non-appropriated fund activity, its insurer, or TPA, until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend the claim in court.

§ 750.98 Claims by employees.

(a) *Property.* Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with subparts A or B of this part, as appropriate. The claims will then be forwarded to the appropriate NAFI for payment from non-appropriated funds.

(b) *Personal injury or death*—(1) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or foreign nationals employed within the United States.* Compensation is provided by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901–950) for employees of NAFIs who have suffered injury or death arising out of, and in the course of, their employment (5 U.S.C. 8171). That Act is the exclusive basis for Government liability for such injuries or deaths that are covered (5 U.S.C. 8173). A claim should first be made under that Act if there is a substantial possibility the injury or death is covered under the Act's provisions.

(2) *Personal injury or death of foreign nationals employed outside of the continental United States.* Employees who are not citizens or permanent residents, and who are employed outside the continental United States, may be protected by private insurance of the NAFI or by other arrangements. When a non-appropriated fund activity has elected not to obtain insurance coverage or to make other arrangements, compensation is separately provided by Federal statute, military regulations, and agreements with foreign countries. See 5 U.S.C. 8172, DoD 1401.1–M, Personnel Policy Manual for Non-appropriated Fund Instrumentalities and BUPERSINST 5300.10A, NAF Personnel Manual.

Subpart J—Affirmative Claims Regulations (Property Damage Claims)

§ 750.99 Scope of subpart J.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts.

The regulations published in 31 CFR chapter IX control the collection and settlement of affirmative claims. This section supplements the material contained in those regulations. Where this section conflicts with the materials and procedure published in 31 CFR chapter IX, the latter controls.

§ 750.100 Statutory authority.

(a) *General.* All affirmative claims for damage to or loss of Government property in favor of the United States are processed in accordance with the Federal Collections Claims Act (31 U.S.C. 3711), as amended by the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (25 October 1982), Public Law 101–552, 104 Stat. 2736 (15 November 1990) and the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (26 April 1996).

(b) *Statute of limitations.* Subject to specific provisions in other statutes, there is a general 3-year statute of limitations on affirmative Government tort claims pursuant to 28 U.S.C. 2415(b).

§ 750.101 Claims that may be collected.

(a) *Against responsible third parties for damage to Government property, or the property of non-appropriated fund activities.* Generally, the Government does not seek payment from service members and Government employees for damages caused by their simple negligence while acting within the scope of their employment. Exceptions to this general policy will be made when the incident involves aggravating circumstances.

(b) *For money paid or reimbursed by the government for damage to a rental car in accordance with the Joint Travel Regulations (1 Mar 2018), Chapter 2, para. 020209.* Collection action shall be taken against third parties liable in tort. Collection action shall not be taken against Government personnel who rented the vehicle.

(c) *Other claims.* Any other claim for money or property in favor of the United States cognizable under the Federal Claims Collections Act not specifically listed in this section.

§ 750.102 Assertion of claims and collection procedures.

(a) *General.* The controlling procedures for administrative collection of claims are established in 31 CFR part 901.

(b) *Officials authorized to pursue claims.* The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; and the Director, Claims and Tort Litigation are authorized to pursue and collect all affirmative claims in favor of the United States, except in countries where another service has single service responsibility in accordance with DoDI 5515.08 (series).

(c) *Dollar limitations.* All of the officers listed in paragraph (b) of this section are authorized to compromise and terminate collection action on affirmative claims of $100,000.00 or less.

(d) *Determining liability.* Liability must be determined in accordance with the law of the place in which the damage occurred, including the applicable traffic laws, elements of tort, and possible defenses.

(e) *Assertion of a claim.* Assertion of the claim is accomplished in accordance with 31 CFR part 901 by mailing to the tortfeasor a ''Notice of Claim.'' The notice is to be mailed certified mail, return receipt requested, and should include the following information:

(1) Reference to the statutory right to collect;

(2) A demand for payment or restoration;

(3) A description of damage and estimate of repair;

(4) A description of the incident, including date and place; and

(5) The name, phone number, and office address of the claims personnel to contact.

(f) *Full payment.* When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to ''United States Treasury.'' The check or money order shall then be forwarded to the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual. For collections for damages to real property, the collection is credited to the account available for the repair or replacement of the real property at the time of recovery. For damages to personal property, the money is returned to the general treasury.

(g) *Installment payments.* In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Installment payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50.00 per month should be accepted only if justified on the grounds of financial hardship or for some other reasonable cause. In all installment arrangements, a confession of judgment note setting out a repayment schedule should be executed. See 31 CFR 901.8 for specific procedures.

(h) *Damage to nonappropriated-fund instrumentality (NAFI) property.* Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the nonappropriated-fund activity for deposit with that activity. In those situations where the recovery involves damage to both NAFI-owned property and other Government property (*e.g.,* destruction of an exchange building resulting in damage to both the building and the exchange-owned property inside), recovery for the exchange-owned property shall be forwarded to the NAFI. Recovery for building damage shall be deposited in accordance with § 750.102(f).

(i) *Damage to industrial-commercial property.* When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual.

(j) *Replacement in kind or repair.* The responsible party, or insurer, may want to repair or replace in kind damaged property. The commanding officer or officer in charge of the activity sustaining the loss is authorized to accept repair or replacement if, in his discretion, it is considered to be in the best interests of the United States.

(k) *Release.* A release of the claim shall be executed when all repairs have been completed to the Government's satisfaction, and/or when all repair bills have been paid. If repair or replacement is made, a notation shall be made in any investigation or claims file.

§ 750.103 Waiver, compromise, and referral of claims.

(a) *Officials authorized to compromise claims.* The officers identified in § 750.89(b) may collect the full amount on all claims, and may compromise, execute releases or terminate collection action on all claims of $20,000.00 or less. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue recovery efforts.

(b) *Claims over $100,000.00.* Claims in excess of $100,000.00 may not be compromised for less than the full amount or collection action terminated without approval from the DOJ.

Subpart K—Affirmative Claims Regulations (Medical Care Recovery Act and Claims Asserted Pursuant to the Third Party Payers Act)

§ 750.104 Scope of subpart K.

(a) This part describes the assertion and collection of claims for medical care against third parties who are legally liable for the injury or disease, as well as collection through insurance companies.

(b) The DON is entitled to recover the costs of medical care furnished to Navy and Marine Corps active duty personnel, retirees or their dependents, or any other person when appropriate, and third-party tort or contract liability exists for payment for medical expenses resulting from the injury or disease. Claims are asserted for treatment provided at a military treatment facility (MTF) or paid for by the DON at a facility that does not belong to the Federal Government.

§ 750.105 Statutory authority.

(a) The Medical Care Recovery Act (MCRA), 42 U.S.C. 2651–2653, as amended by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, 10 U.S.C. 1075, 110 Stat. 2422, authorizes the Government to recover the reasonable value of treatment provided to an eligible beneficiary from any third party who is legally liable for the injury or disease.

(b) The Third Party Payers Act (TPPA), 10 U.S.C. 1095 and 10 U.S.C. 1095b, allows for the collection of the costs of medical care to eligible beneficiaries from a third party, such as an insurance company.

(c) 10 U.S.C. 1079a (CHAMPUS: Treatment of refunds and other amounts collected) authorizes the recovery of medical care costs expended to eligible beneficiaries.

§ 750.106 Responsibility.

Responsibility for investigating, asserting, and collecting DON MCRA/TPPA claims or, if required, properly forwarding claims to other Federal departments or agencies rests with Claims and Tort Litigation Division's Medical Care Recovery Units (MCRUs) located in Norfolk, VA; San Diego, CA; and Pensacola, FL, and Regional Legal Service Office Europe, Africa, and Southwest Asia (RLSO EURAFSWA) for MCRA/TPPA claims arising in their area of responsibility. All other claims arising overseas and outside the RLSO EURAFSWA will be asserted by either MCRU Norfolk or MCRU San Diego depending upon the country of origin.

§ 750.107 Claims asserted.

(a) The MCRA creates an independent cause of action for the United States and the Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the injured party (IP) to properly file and/or serve a complaint on the third party, that may prevent the IP from recovering damages, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the IP. In creating an independent right for the Government, the MCRA prevents a release given by the IP to a third party from affecting the Government's claim.

(b) When recovery under the MCRA is not possible because no third-party tort liability exists, the TPPA provides the Government an alternate means for recovery. Under the TPPA, claims are asserted by the United States as a third party beneficiary of an insurance contract of the IP. This includes but is not limited to:

(1) Medical Payments Coverage in an automobile or homeowner's policy;

(2) Uninsured/Underinsured Coverage in an automobile policy;

(3) No-fault coverage in an automobile policy; and

(4) On-the-job injury compensable under a worker's employment contract at the job.

(c) Determination of Amount Asserted.

(1) *MTF costs.* The costs of care provided by the MTF are based on Diagnostic Related Group (DRG) rates or a Relative Value Unit (RVU). Rates are established by the Office of Management and Budget (OMB) and/or the DOD and published annually in the **Federal Register**. The MCRU must ensure all MTF bills include only expenses related to the injury and include all charges for care provided by or paid for by the MTF.

(2) *Defense Health Agency (DHA) costs.* The costs of care provided by DHA are the actual amount that DHA paid even if this amount exceeds the amount that the civilian hospital billed DHA.

(d) The DON will not assert claims against the following:

(1) Any department, agency or instrumentality of the United States, including self-insured NAF activities but not private associations (*e.g.,* flying clubs or equestrian clubs);

(2) Against a service member, a dependent family member of a service member, or an employee of the United States who is injured as a result of his/her own willful or negligent acts or the willful or negligent acts of others (the United States does assert claims, however, against insurance policies that cover the IP);

(3) The employer of a merchant seaman who receives medical care in a Federal facility pursuant to 42 U.S.C. 249; and

(4) For care provided to a veteran by the VA when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided a member before transfer to a VA hospital or in those instances where TRICARE pays a VA hospital directly.

§ 750.108 Assertion of claims.

(a) The MCRUs will promptly assert claims by mailing a notice of claim or demand for payment to identified third-party tortfeasors and/or their insurers or to the insurer for any third party beneficiary coverage. The notice of claim or demand will outline the facts and cite the applicable Federal statutes.

(b) The MCRU will attempt to coordinate collection of the claim with any action brought by the IP.

(1) When the IP is represented by counsel, the MCRU will request to have the IP's attorney agree in writing to protect the Government's interests.

(2) 5 U.S.C. 3106 prohibits the payment of a fee for assertion or collection of the Government's claim. As such, attorney's fees and costs will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the IP is not pursuing a claim or has expressly refused to include the Government's claim, the MCRU will pursue independent collection.

(c) Waiver or compromise of the claim may be appropriate when the IP, his attorney, or a lien resolution group files a written request and it is determined that collection of the full amount of the claim would result in undue hardship to the IP.

(1) In assessing undue hardship, the following factors shall be considered: Permanent disability or disfigurement; lost earning capacity; out-of-pocket expenses; financial status; amount of settlement or award from a third-party tortfeasor or contract insurer; and any other factors that objectively indicate that fairness requires waiver.

(2) Only the Department of Justice may authorize the compromise or waiver of a MCRA/TPPA claim in excess of $300,000.00. The Director and the Head, Affirmative and Personnel Claims Branch, Claims and Tort Litigation (OJAG Code 15) may authorize the compromise or waiver of a MCRA/TPPA claim up to $300,000.00. The Director and the Head, Affirmative and Personnel Claims Branch, may further delegate authority to personnel in the MCRUs.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–15408 Filed 8–19–20; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[EPA–HQ–OPP–2019–0701; FRL–10009–23]

RIN 2070–AK56

Notification of Submission to the Secretary of Agriculture; Pesticides; Proposal To Add Chitosan to the List of Active Ingredients Permitted in Exempted Minimum Risk Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture

(USDA) a draft regulatory document concerning ''Pesticides; Addition of Chitosan to the List of Active Ingredients Allowed in Exempted Minimum Risk Pesticides Products.'' The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0701, is available at *http://www.regulations.gov*. 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: Anne Overstreet, Deputy Director, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20460–0001; telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(A) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft proposed rule at least 60 days before signing it in proposed form for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft proposed rule within 30 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA and the EPA Administrator's response to those comments with the proposed rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 30 days after receiving the draft proposed rule, the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 152

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

Dated: August 7, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–17698 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2019–0508; FRL–10002–27]

RIN 2070–AK54

Notification of Submission to the Secretary of Agriculture; Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived From Newer Technologies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the U.S. Department of Agriculture (USDA) a draft regulatory document concerning ''Pesticides; Exemptions of Certain Plant-Incorporated Protectants (PIPs) Derived from Newer Technologies.'' The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0508, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20460–0001; telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(A) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft proposed rule at least 60 days before signing it in proposed form for publication in the **Federal Register**. The draft proposed rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft proposed rule within 30 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA and EPA Administrator's response to those comments with the proposed rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 30 days after receiving the draft proposed rule, the EPA Administrator may sign the proposed rule for publication in the **Federal Register** any time after the 30-day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Plant-incorporated protectants, Reporting and recordkeeping requirements.

Dated: July 31, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–17158 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1

RIN 0991–AC17

Department of Health and Human Services Good Guidance Practices

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to issue regulations governing the agency's release and maintenance of guidance documents. These regulations would help to ensure that the public receives appropriate notice of new guidance and that the Department's guidance does not impose obligations on regulated parties that are not already reflected in duly enacted statutes or regulations lawfully promulgated under them.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 11:59 p.m. on September 16, 2020.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted electronically at *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Brenna Jenny, Department of Health and Human Services, 200 Independence, Avenue SW, Room 713F, Washington, DC 20201. Email: *Good.Guidance@hhs.gov*. Telephone: (202) 690–7741.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. Before or after the close of the comment period, the Department of Health and Human Services will post all timely submitted comments on *http://www.regulations.gov*. Follow the search instructions on that website to view public comments.

I. Statutory and Regulatory Background

Subject to certain exceptions, the Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* mandates that rules imposing new obligations on regulated parties must go through notice-and-comment rulemaking. *See, e.g., Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 (1979). This is true regardless of whether agencies frame these rules as sub-regulatory guidance. *See, e.g., Iowa League of Cities* v. *E.P.A.,* 711 F.3d 844, 875 (8th Cir. 2013); *Gen. Elec. Co.* v. *E.P.A.,* 290 F.3d 377, 385 (D.C. Cir. 2002). The APA's procedural requirements sound in notions of good governance. *See, e.g., Smiley* v. *Citibank, N.A.,* 517 U.S. 735, 741 (1996). Agencies can generally issue interpretive rules and statements of policy without conducting notice-and-comment rulemaking,[1] although such sub-regulatory guidance lacks the force and effect of law and cannot bind regulated parties. *See, e.g., Shalala* v. *Guernsey Mem'l Hosp.,* 514 U.S. 87, 99 (1995).

II. Summary of Proposed Good Guidance Practices Regulations

To promote the appropriate issuance and use of guidance documents, and consistent with the requirements of Executive Order 13891 of October 9, 2019, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' 84 FR 55235 (Oct. 15, 2019), the United States Department of Health and Human Services (''HHS'' or ''the Department'') is proposing to issue regulations that set forth good guidance practices that would apply to all divisions of HHS other than the Food and Drug Administration (''FDA''). FDA currently operates under a set of good guidance practices regulations, see 21 CFR 10.115, as required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(h), but no other division within HHS operates under a similar set of regulations. FDA will also be proposing amendments to its good guidance practices regulations, which would revise the requirements at 21 CFR 10.115 to incorporate the directives of Executive Order 13891. The requirements in this HHS proposed rule, if finalized, would be promulgated at 45 CFR part 1, which is currently unassigned.

This proposed good guidance practices rule is one component of the Department's broader regulatory reform initiative. The proposed rule is designed to increase accountability, improve the fairness of guidance issued by the Department, guard against unlawful regulation through guidance, and safeguard the important principles underlying the United States administrative law system.

[1] *But see Azar* v. *Allina Health Services,* 139 S. Ct. 1804 (2019).

A. Scope (§ 1.1)

HHS proposes that the requirements to be established pursuant to this proposed rule would apply to all guidance documents issued by all components of the Department, except for FDA, which has its own good guidance practices regulations that it is in the process of amending to conform, as appropriate, to the requirements of Executive Order 13891.

B. Definitions (§ 1.2)

Guidance Document

This proposed rule, if finalized, would apply to guidance documents (including those deemed ''significant'') issued by the Department, other than guidance documents issued by FDA. HHS proposes to define ''guidance document'' as any Department statement of general applicability which is intended to have future effect on the behavior of regulated parties and which sets forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation. The contents of a transmission, rather than its format, dictates whether it would constitute a guidance document; guidance would not need to be in the form of a formal written document to constitute a ''guidance document'' under this proposed rule. Rather, guidance may come in a variety of forms, including, but not limited to, letters, memoranda, circulars, bulletins, advisories, and preambles and may include video, audio, and Web-based formats. *See* OMB Bulletin 07–02, ''Agency Good Guidance Practices,'' 72 FR 3432, 3434 (January 25, 2007). The hallmark of guidance is that it includes statements of general applicability intended to govern the future behavior of regulated parties. Thus, agency releases of technical or scientific information would not constitute guidance unless also accompanied by a policy on or related to that technical or scientific information that is intended to affect the future behavior of regulated parties. This proposed rule would not require HHS to justify the quality of information; regulated parties and other stakeholders should use existing mechanisms to address the quality of information contained in documents issued by HHS. Materials directed at government employees or agency contractors, rather than regulated parties would also not constitute guidance within the meaning of this proposed rule. Similarly, most agency statements communicating news updates about the agency would not constitute guidance. Agency statements of specific

applicability—such as advisory or legal opinions directed to particular parties about circumstance-specific questions; notices regarding particular locations, facilities, or products; and correspondence with individual persons or entities, including congressional correspondence or notices of violation—would also not be ''guidance.''

Certain categories of documents would be excluded from the term guidance document under the proposed rule: Rules promulgated pursuant to notice and comment under 5 U.S.C. 553 or similar statutory provisions; rules exempt from rulemaking requirements under 5 U.S.C. 553(a); rules of agency organization, procedure, or practice; decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions; internal guidance directed to the Department or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; internal executive branch legal advice or legal opinions addressed to executive branch officials; legal briefs and other court filings; grant solicitations and awards; or contract solicitations and awards.

Whether a document would be exempt as a rule of agency organization, procedure, or practice is a functional test. Documents that are designed to shape the behavior of the Department would be exempt; documents designed to shape the behavior of regulated parties would be considered guidance if they also set forth a policy on a statutory, regulatory, or technical or scientific issue, or an interpretation of a statute or regulation.

Pre-enforcement rulings, which are formal written communications applying the law to a specific set of facts (as opposed to making statements of general applicability) would also not constitute guidance documents under the proposed rule. Examples include letter rulings, advisory opinions, and no-action letters. But material embedded within an advisory opinion or similar letter that otherwise satisfies the definition of ''guidance document'' would still be guidance for purposes of this rule. If a document addressed to specific individuals nonetheless contains a statement of general applicability setting forth a relevant policy or interpretation that is intended to have future effect by guiding the conduct of other regulated parties, then the document would be a guidance document.

Consistent with its existing responsibilities, the HHS Office of the General Counsel (''OGC''), after discussing with senior officials within the Department, would make the legal determination of whether a document is excluded from the term ''guidance document'' and whether a purported guidance document is, in fact, a legislative rule that must go through notice-and-comment rulemaking. OGC would continue to determine whether the contents of certain guidance relating to Medicare should nonetheless go through notice-and-comment rulemaking as a result of the Supreme Court's decision in *Azar* v. *Allina Health Services,* 139 S. Ct. 1804 (2019). Such guidance documents would still need to meet all applicable requirements in this part.

Significant Guidance Document

HHS proposes to define ''significant guidance document''; additional procedural requirements, as set forth below, would apply to a significant guidance document. HHS proposes to define the term as a guidance document that is likely to lead to an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866, ''Regulatory Planning and Review.'' To calculate whether a guidance document is likely to have an annual effect on the economy of $100 million or more, HHS would be required to assess the benefits, costs, or transfer impacts imposed by that guidance document; as part of this analysis, any benefit, cost or transfer occurring in any consecutive twelve-month period would be compared against the $100 million threshold. Future cost savings would not be used to offset upfront costs. In performing these analyses, HHS would recognize that guidance documents are not legally binding and, therefore, not all regulated parties would necessarily conform their behavior to the recommendations set forth in the guidance, and furthermore, that the benefits, costs, and transfers may have been accounted for when HHS issued an underlying regulation, if any.

HHS operates from the principle that actions imposing significant benefits, costs, or transfer impacts on regulated parties must comply with heightened procedural requirements. However, it anticipates that only a subset of guidance documents would satisfy this proposed rule's definition of a significant guidance document. This is because to qualify as guidance, as opposed to a legislative rule, a document must reflect, implement, interpret, or describe a legal obligation imposed by a pre-existing, external source or advise the public prospectively of the manner in which the agency intends to exercise a discretionary power. It is HHS's presumption that a guidance document that HHS deems significant is actually a legislative rule that must go through notice-and-comment rulemaking. HHS shall make all initial decisions as to whether a guidance document is significant, and OMB shall make all final determinations. If a significance determination requires a legal conclusion, OMB cannot reach legal conclusions on behalf of HHS.

Issued

HHS proposes to define ''issued'' to mean distribution of information to the public that HHS initiated or sponsored. But if a document directed solely to Department employees must be made publicly available under law or agency disclosure policies, for example posted on an agency website as the result of multiple requests under the Freedom of Information Act, the document would not be considered to be issued under this proposed rule.

Guidance Repository

HHS proposes to define ''guidance repository'' to mean an online electronic database containing or linking to guidance documents. It further proposes that the Department's primary guidance repository can link to subsidiary guidance repositories.

C. Requirements for Department Issuance and Use of Guidance Documents (§ 1.3)

The proposed rule reiterates the application of existing legal principles to HHS's guidance: Unless otherwise authorized by statute, HHS may not issue any guidance document that establishes legal obligations not reflected in duly enacted statutes or regulations lawfully promulgated under them, and may not use any guidance document for purposes of requiring persons or entities outside HHS to take any action or to refrain from taking any action beyond what is already required by the terms of an applicable statute or regulation.

The proposed rule would also create a process for issuing guidance that formalizes guardrails designed to ensure

that guidance documents are appropriately issued and used. If the proposed rule is finalized, following the effective date, each guidance document issued by HHS, or any of its components, would be required specifically to state that it is a ''guidance'' document and use the following language, unless the guidance is authorized by law to be binding: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.'' No guidance document issued by HHS would be able to direct parties outside the Federal government to take or refrain from taking action, except when restating—with citations to statutes, regulations, or binding judicial precedent—mandates contained in a statute or regulation.

HHS proposes to require that each guidance document issued by it or any component after the effective date of this rule, if finalized, must also include the following information: (1) The activities to which and the persons to whom the guidance applies; (2) the date HHS issued the guidance document; (3) a unique agency identifier; (4) a statement indicating whether the guidance document replaces or revises a previously issued guidance document and, if so, identifying the guidance document that it replaces or revises; (5) a citation to the statutory provision(s) and/or regulation(s) (in Code of Federal Regulations format) that the guidance document is interpreting or applying; and (6) a short summary of the subject matter covered in the guidance document. For guidance documents issued before the implementation date of this rule, HHS would not retrospectively revise those guidance documents to include the information listed in this paragraph. Any guidance document issued in conjunction with one or more other agencies would nonetheless be required to comply with all requirements that would be applicable if the guidance document were issued solely by HHS.

HHS is proposing to apply additional procedures to significant guidance documents. Under the proposed rule, HHS would submit all significant guidance documents to the Office of Information and Regulatory Affairs (OIRA) for review under Executive Order 12866 prior to issuance. Significant guidance documents would be required to comply with applicable requirements for significant regulatory actions, as set forth in executive orders, except that only economically significant guidance documents would require a separate Regulatory Impact Analysis. The Secretary, on a non-delegable basis, would have to approve any significant guidance document before the Department issues it.

HHS also proposes that, prior to issuing any significant guidance document, HHS must also offer a public notice and comment period of at least 30 days. HHS would be required to publish a public notice in both the **Federal Register** and the guidance repository. This notice would list the end of the comment period, provide information about where the public may access a copy of the proposed significant guidance document, and include how written comments may be submitted on the proposed significant guidance document and an internet website where those comments may be reviewed by the public. When issuing the significant guidance document, HHS would be required to review all comments received and publish an easily accessible public response to major concerns raised. *Cf., e.g., City of Portland, Oregon* v. *E.P.A.,* 507 F.3d 706, 715 (DC Cir. 2007).

Under the proposed rule, HHS could elect not to conduct a comment period if it were to find that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Secretary, as the individual approving the significant guidance document, would be required to make this finding, and the significant guidance document would have to incorporate the finding and a brief statement of reasons in support of such finding. In addition, a significant guidance document could be exempted from any other requirement otherwise applicable to significant guidance documents if the Secretary of HHS and the Administrator of OIRA were to agree that exigency, safety, health, or other compelling cause warrants the exemption.

Also under the proposed rule, HHS would seek from OIRA, as appropriate, categorical determinations that classes of guidance presumptively do not qualify as significant. Any guidance satisfying such a categorical exemption presumptively need not comply with the requirements of § 1.3(b), but would need to comply with all other requirements applicable to guidance documents. OIRA may request to review guidance documents within a categorical exemption and may nonetheless conclude that a guidance document that is presumptively not significant is in fact significant.

HHS seeks comments on the proposed process for issuing guidance documents, as well as the proposed additional requirements for issuing significant guidance documents, including, for example, whether under this proposed rule the Secretary should have the limited authority to delegate approval of guidance documents to the Deputy Secretary; whether the Secretary should be required to approve guidance documents that fall into a broader or narrower category than significant guidance documents prior to publication; and the process for soliciting and responding to public comments.

D. Guidance Repository (§ 1.4)

HHS proposes to make its guidance documents available to the public through the internet. The Department would establish a guidance repository on its website at *www.hhs.gov/guidance*. By November 2, 2020, the Department would be required to have posted to the guidance repository all guidance documents in effect that were issued by any component of the Department. The guidance repository would be required to be fully text searchable.

Under this proposal, any web page in the guidance repository that contains guidance documents would clearly indicate that any guidance document previously issued by the Department would no longer be in effect and would be considered rescinded, if it is not included in the guidance repository by November 2, 2020. All web pages in the guidance repository containing guidance documents would also state that the guidance documents contained therein ''lack the force and effect of law, except as authorized by law or as specifically incorporated into a contract'' and ''the Department may not cite, use, or rely on any guidance that is not posted on the guidance repository, except to establish historical facts.''

If the Department would desire to reinstate a rescinded guidance document not posted to the guidance repository by November 2, 2020, the Department would be able to do so only by following all requirements applicable to newly issued guidance documents.

If this proposed rule is finalized, guidance documents issued after the effective date of the final regulation would be required to comply with all applicable requirements in section 1.3. HHS would be required to post a new or amended guidance document to the guidance repository within three business days of the date on which that guidance document was issued. For significant guidance documents issued

after the effective date of the final regulation, HHS would be required to post proposed versions of significant guidance documents to the guidance repository as part of the notice-and-comment process. The Department shall clearly indicate the end of each significant guidance document's comment period and the mechanisms by which members of the public may submit comments on the proposed significant guidance document. The Department would also be required to post online all HHS responses to major public comments.

HHS seeks comments on all proposed aspects of the guidance repository.

E. Procedure to Petition for Review of Guidance (§ 1.5)

Regulated parties should have an opportunity for administrative and judicial review of whether a guidance document inappropriately creates new obligations or is being used by HHS to create new obligations. Under the proposed rule, any interested party would be able to petition HHS to withdraw or modify any particular guidance document. Such petitions would include requests to determine whether

- A guidance document, no matter how styled, imposes binding obligations on parties beyond what is required by the terms of applicable statutes and/or regulations.
- An HHS component is using a guidance document to create additional legal obligations beyond what is required by the terms of applicable statutes and/or regulations.
- HHS is improperly exempting a guidance document from the procedures set forth in this proposed rule.

As part of this petition process proposed under this proposed rule, the interested party would be able to ask HHS to remedy the deficiency relating to the use or contents of the guidance document by modifying or withdrawing the guidance document.[2]

Petitions under this proposed section would be addressed to HHS in writing. The guidance repository would include clear instructions to members of the public regarding how to petition for review of guidance, including how such petitions can be submitted and an HHS office responsible for coordinating such requests.

To facilitate transparency and avoid duplication of work, under the proposed rule, HHS would publish all responses to petitions for guidance review in a designated section of its online guidance repository. If HHS were to receive multiple similar petitions within a short time period, it would be able to aggregate those petitions and respond to them in a single response, so long as all petitions were responded to within the appropriate time period. Under the proposed rule, HHS would respond to all petitions within 90 business days of the date on which the petition was received. The time period to respond would be suspended if HHS were to need to request additional information from the person who submitted the petition or to consult with other stakeholders. Under the proposed rule, HHS's response to any such petition would be considered final agency action reviewable in court, because it would mark the consummation of HHS's decision-making process and legal consequences flow from the response to the petition. *See, e.g., Appalachian Power Co.* v. *E.P.A.,* 208 F.3d 1015, 1022 (D.C. Cir. 2000). OGC and the departmental division that authored the challenged guidance would be responsible for responding to all petitions received on the guidance document.

HHS seeks comments on the proposed procedure to allow interested parties to petition the Department.

III. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits. A Regulatory Impact Analysis must be prepared for major rules with economically significant effects. The Department has determined that this rulemaking is not a significant regulatory action under these Executive orders. As such, the Department does not anticipate that this rulemaking will impose measurable costs on regulated parties. This proposed rule describes proposed agency processes for issuing guidance and responding to petitions regarding guidance that allegedly is inappropriate or is being used inappropriately. The Department proposes to adopt these procedures as part of its regulatory reform initiative. Implementation of this proposed rule would require HHS expenditures to create and maintain the guidance repository, along with employing a new process for the review of significant guidance documents and for the review of guidance documents which are the subject of a petition for review. The Department expects benefits to accrue as a result of the streamlined and clarified process of issuing guidance documents, in addition to positive consequences flowing from improved agency decision making. If this proposed rule is finalized, the Department anticipates that the public, and, in particular, regulated parties, would benefit from greater efficiencies and more transparency in how the Department operates and regulates.

B. Executive Order 13771

This proposed rule is expected to be neither a regulatory nor a deregulatory action under E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' because this rule is estimated to impose no more than *de minimis* costs on regulated entities.

C. Regulatory Flexibility Act

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis, unless the agency determines that the proposed rule will not have a significant impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a) and 605(b). The Department considers a proposed or final rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least five percent of small entities. The Department anticipates that, if finalized, this proposed rule would allow small entities to operate more efficiently, by increasing the transparency of government regulation. As a result, the Department has determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small entities.

D. Executive Order 13132 (Federalism)

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has federalism implications. The Department has determined that this proposed rule would not impose such costs or have any federalism implications.

[2] However, an interested party could not use this process to seek changes based on the quality of the information contained in a document; there are other processes to address the quality of information contained in HHS issuances.

E. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320, appendix A.1), the Department has reviewed this proposed rule and has determined that it proposes no new collections of information.

List of Subjects in 45 CFR Part 1

Guidance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR, subtitle A, subchapter A, by adding part 1 to read as follows:

PART 1—GOOD GUIDANCE PRACTICES

Sec.
1.1 Scope.
1.2 Definitions.
1.3 Requirements for Department issuance and use of guidance documents.
1.4 Guidance repository.
1.5 Procedure to petition for review of guidance.

Authority: 42 U.S.C. 1302, 5 U.S.C. 301, 551 *et seq.*

§ 1.1 Scope.

This part shall apply to guidance documents issued by all components of the Department, except the Food and Drug Administration, for which all requirements at 21 U.S.C. 371(h) and 21 CFR 10.115 shall continue to apply.

§ 1.2 Definitions.

The following definitions apply to this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Guidance document means any Department statement of general applicability, intended to have future effect on the behavior of regulated parties and which sets forth a policy on a statutory, regulatory, or technical or scientific issue or an interpretation of a statute or regulation. The term ''guidance document'' does not include rules promulgated pursuant to notice and comment under 5 U.S.C. 553, or similar statutory provisions; rules exempt from rulemaking requirements under 5 U.S.C. 553(a); rules of agency organization, procedure, or practice; decisions of agency adjudications under 5 U.S.C. 554, or similar statutory provisions; internal guidance directed to the Department or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; internal executive branch legal advice or legal opinions addressed to executive branch officials; legal briefs and other court filings; grant solicitations and awards; or contract solicitations and awards. Pre-enforcement rulings, *i.e.,* communications with a person that interpret or apply the law to a specific set of facts, such as letter rulings, advisory opinions, no-action letters, and notices of noncompliance, do not constitute guidance documents. If, however, the Department issues such a document that on its face is directed to a particular party, but the content of the document is designed to guide the conduct of other regulated parties, such a document would qualify as guidance.

Guidance repository means an online database containing or linking to guidance documents.

Issued means the Department initiated or sponsored distribution of information to the public. ''Issued'' does not include distribution intended to be limited to government employees or agency contractors, or distribution required under law or agency disclosure policies.

Significant guidance document means a guidance document that may reasonably be anticipated to lead to an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866. The term ''significant guidance document'' does not include the categories of documents exempted in writing by the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'').

§ 1.3 Requirements for Department issuance and use of guidance documents.

(a) *Guidance documents.* (1) Under the Administrative Procedure Act, the Department may not issue any guidance document that establishes a legal obligation that is not reflected in a duly enacted statute or in a regulation lawfully promulgated under a statute.

(2) The Department may not use any guidance document for purposes of requiring a person or entity outside the Department to take any action, or refrain from taking any action, beyond what is required by the terms of an applicable statute or regulation.

(3) Each guidance document issued by the Department must:

(i) Identify itself as ''guidance'' (by using the term ''guidance'') and include the following language, unless the guidance is authorized by law to be binding: ''The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.'';

(ii) Not direct parties outside the Federal Government to take or refrain from taking action, except when restating—with citations to statutes, regulations, or binding judicial precedent—clear mandates contained in a statute or regulation; and

(iii) Include the following information:

(A) The activities to which and the persons to whom the document applies;

(B) The date of issuance;

(C) Unique agency identifier;

(D) Whether the guidance document replaces or revises a previously issued guidance document and, if so, identify the guidance document that it replaces or revises;

(E) Citation to the statutory provision(s) and/or regulation(s) (in Code of Federal Regulations format) that the guidance document is interpreting or applying; and

(F) A short summary of the subject matter covered in the guidance document.

(b) *Significant guidance documents.* (1) Before the Department issues any significant guidance document, it must be approved, on a non-delegable basis, by the Secretary.

(2) Before issuing any significant guidance document, the Department must:

(i) Submit the significant guidance document to OIRA for review under Executive Order 12866 prior to issuance.

(ii) Provide at least a 30-day public notice and comment period on the proposed significant guidance document, unless the Department for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment are impracticable, unnecessary, or contrary to the public interest. If no such good cause exists, the public notice (which must be published in the **Federal Register** and posted in the guidance repository) shall include all of the following information:

(A) Information as to where the public may access a copy of the proposed significant guidance document;

(B) Information as to where written comments may be sent, and an internet website where those comments may be reviewed by the public; and

(C) The time period during which comments will be accepted.

(iii) Publish a public response to the major concerns raised during the comment period.

(3) Significant guidance documents must comply with applicable requirements for significant regulatory actions, as set forth in Executive orders, except that only economically significant guidance documents require a separate Regulatory Impact Analysis.

(4) A significant guidance document may be exempted from any requirement otherwise applicable to significant guidance documents if the Secretary and the Administrator of OIRA agree that exigency, safety, health, or other compelling cause warrants the exemption. The Secretary must make this finding, and the significant guidance document must incorporate the finding and a brief statement of reasons in support.

(5) The Department shall seek from OIRA, as appropriate, categorical determinations that classes of guidance presumptively do not qualify as significant. Any guidance satisfying such a categorical exemption presumptively need not comply with the requirements of this paragraph (b), but must comply with all other requirements applicable to guidance documents. OIRA may determine that a particular guidance document within a categorical exemption is nonetheless significant.

§ 1.4 Guidance repository.

(a) *Existing guidance.* By [*date 60 days after effective date of the final rule*] the Department shall maintain a guidance repository on its website at *www.hhs.gov/guidance*.

(1) The guidance repository shall be fully text searchable and contain or link to all guidance documents in effect that have been issued by any component of the Department.

(2) If the Department does not include a guidance document in the guidance repository by November 2, 2020, the guidance document shall be considered rescinded.

(3) Any web page in the guidance repository that contains or links to guidance documents must state:

(i) That the guidance documents contained therein:

(A) ''Lack the force and effect of law, except as authorized by law or as specifically incorporated into a contract.''; and

(B) ''The Department may not cite, use, or rely on any guidance that is not posted on the guidance repository, except to establish historical facts.''

(ii) That any guidance document previously issued by the Department is no longer in effect, and will be considered rescinded, if it is not included in the guidance repository.

(4) If the Department wishes to reinstate a rescinded guidance document, the Department may do so only by complying with all of the requirements applicable to guidance documents issued after [effective date of the final rule].

(b) *Guidance issued after [effective date of the final rule].* (1) For all guidance documents issued after [effective date of the final rule], the Department must post each guidance document to the Department's guidance repository within three business days of the date on which that guidance document was issued.

(2) For significant guidance documents issued after [effective date of the final rule], the Department shall post proposed new significant guidance to the guidance repository as part of the notice-and-comment process.

(i) The posting shall clearly indicate the end of each significant guidance document's comment period and provide a means for members of the public to submit comments.

(ii) The Department shall also post online all responses to major public comments.

§ 1.5 Procedure to petition for review of guidance.

(a) Any interested party may petition the Department to withdraw or modify any particular guidance document. Such petitions may include requests to determine whether:

(1) A guidance document, no matter how styled, imposes binding obligations on parties beyond what is required by the terms of applicable statutes and/or regulations;

(2) A component of the Department is using a guidance document to create additional legal obligations beyond what is required by the terms of applicable statutes and/or regulations; or

(3) The Department is improperly exempting a guidance document from the requirements set forth in this part.

(b) As part of a petition under this section, an interested party may ask that the Department modify or withdraw any guidance document in effect at the time of the petition.

(c) Petitions under this section must be addressed to the Department in writing. The Department's guidance repository must include clear instructions to members of the public regarding how to petition for review of guidance, including how such petition can be submitted, and an office at the Department responsible for coordinating such requests.

(d) The Department must respond to all petitions no later than 90 business days after receipt of the petition. The applicable time period for responding is suspended from the time the Department:

(1) Requests additional information from the requestor, until the Department receives the additional information; or

(2) Notifies the requestor of the need to consult with other stakeholders, including but not limited to the Department of Justice or the Department's Office of Inspector General, until the Department completes consultation with other stakeholders.

(e) The Department will publish all responses to petitions under this section to a designated web page on its guidance repository.

Dated: August 14, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–18208 Filed 8–17–20; 4:15 pm]

BILLING CODE 4150–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 19–193, 17–105; Report No. 3154; FRS 16953]

Petitions for Reconsideration of Action in Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration have been filed in the Commission's proceeding by Foundation for a Beautiful Life; and by Todd Urick and Paul Bame (previously commenting under ''LPFM/NCE Community-Radio Engineer Advocates'' or ''LPFM Advocates''), along with Peter Gray (KFZR–LP), Makeda Dread Cheatom (KVIB–LP), Brad Johnson (KGIG–LP), David Stepanyuk (KIEV–LP), and Andy Hansen-Smith (KCFZ–LP).

DATES: Oppositions to the Petition must be filed on or before September 4, 2020. Replies to an opposition must be filed on or before September 14, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW,

Washington, DC 20554. Submissions should be filed in the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.*

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Attorney, Media Bureau, Audio Division, (202) 418–2785, *Irene.Bleiweiss@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3154, released July 21, 2020. The full text may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5.U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Subject: Amendment of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative, MB Docket Nos. 19–193, 17–105, Report and Order, FCC 20–53, published at 85 FR 35567, June 11, 2020.

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–16558 Filed 8–19–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 85, No. 162

Thursday, August 20, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Disposal of Mineral Materials.

DATES: Comments must be received in writing on or before October 19, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Bradford Campbell, Geologist, USDA Forest Service, Minerals and Geology Management, 26 Fort Missoula Road, Missoula, MT 59804.

Comments also may be submitted via facsimile to 303–275–5122 or by email to: *bradford.campbell@usda.gov.*

The public may inspect comments received at the USDA Forest Service Rocky Mountain Region, Minerals and Geology Management, 1617 Cole Boulevard, Lakewood, CO 80401 during normal business hours.

FOR FURTHER INFORMATION CONTACT: Bradford Campbell, Geologist, Minerals and Geology Management Staff, *bradford.campbell@usda.gov* or 406–329–3523.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Disposal of Mineral Materials.

OMB Number: 0596–0081.

Expiration Date of Approval: December 31, 2020.

Type of Request: Renewal of a currently approved collection.

Abstract: The Mineral Materials Act of 1947, as amended, and the Multiple Use Mining Act of 1955, as amended, authorize the Secretary of Agriculture to permit disposal of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the USDA Forest Service.

Individuals, organizations, companies, or corporations interested in mining mineral materials on National Forest System lands may contact their local Forest Service office to inquire about mining mineral materials opportunities, to learn about areas on which such activities are permitted, and to request form FS–2800–9 (Contract of Sale for Minerals Materials). Interested parties are asked to provide information that includes the purchaser's name and address, the location and dimensions of the area to be mined, the kind of material that will be mined, the quantity of material to be mined, the sales price of the mined material, the payment schedule, the amount of the bond, and the period of the contract.

The collected information enables the Forest Service to document planned operations, to prescribe the terms and conditions the agency deems necessary to protect surface resources, and to affect a binding contract agreement. Forest Service employees will evaluate the collected information to ensure that entities applying to mine mineral materials are financially accountable and will conduct their activities in accordance with the mineral regulations of Title 36, Code of Federal Regulations, Part 228, Subpart C (36 CFR part 228).

If this information is not collected, the Forest Service would be unable to comply with Federal regulations to mine mineral materials, and operations could cause undue damage to surface resources.

Estimate of Annual Burden: 2.5 hours.

Type of Respondents: Mineral materials operators.

Estimated Annual Number of Respondents: 2,626.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,565 hours.

Estimated annual number of respondents is based on the average number of respondents in 2014 through 2016. This number is lower than previous renewal estimates, thus the estimated total annual burden on respondents is lower than the most recent renewal.

Comment is invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Jacqueline Emanuel,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–18194 Filed 8–19–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Washington Office; Fire and Aviation Management; Nationwide Aerial Application of Fire Retardant on National Forest System Land SEIS

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The USDA Forest Service is preparing a programmatic Supplemental Environmental Impact Statement (SEIS) for the Nationwide Aerial Application of Fire Retardant on National Forest System Land. The direction in the SEIS

will apply to use of aerially delivered fire retardant on all National Forest System land. The responsible official for this action is the Deputy Chief of the National Forest System.

DATES: The draft Supplemental EIS is expected September 2020 and the final EIS is expected September 2021.

FOR FURTHER INFORMATION CONTACT: Laura Conway (Natural Resource Specialist) by email at *laura.conway@usda.gov* or by phone at 406–329–3956, between 8:00 a.m. and 4:30 p.m., Mountain Time, Monday through Friday. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The overall purpose in the Aerial Application of Fire Retardant on National Forest System Land Environmental Impact Statement has not changed. Adopting the proposed action would give the Forest Service the ability to reduce future wildfire intensities and rates of spread under certain circumstances until ground forces can safely take suppression action over the duration of an incident. High fire intensities and rates of spread greatly reduce the ability of ground-based firefighters to safely fight wildland fires. In addition, the remote locations and rugged topography associated with many wildland fires can delay the deployment of ground forces for suppression. In some situations, firefighters need the ability to quickly reduce rates of spread and intensities of wildland fires, often in remote locations, until ground forces can safely take suppression action or until a wildfire is contained or controlled. The purpose of Supplementing the Environmental Impact Statement is to address new information and changed conditions since the signed decision in 2011.

Proposed Action

This proposal would allow aerially applied fire retardants, included now or in the future on the Forest Service Qualified Products List, to be used on National Forest System lands. The current Qualified Products List can be found at the following website: *https://www.fs.fed.us/rm/fire/wfcs/index.htm.* The proposal would protect resources and continue to improve the documentation of retardant effects through reporting, monitoring, and application coordination. Aerial retardant drops are not allowed in mapped avoidance areas for Endangered Species Act Threatened, Endangered, Proposed, or Candidate species; mapped avoidance areas for certain Regional Forester Sensitive Species; or in waterways or their buffers, mapped or not, where water is present; or avoidance areas mapped by the local unit. This national direction is mandatory and would be implemented in all cases except where human life or public safety are threatened and retardant use in the avoidance area could be reasonably expected to alleviate the fire threat. When an application occurs inside avoidance areas for any reason, hereafter referred to as an intrusion, it would be reported, assessed for impacts, monitored, and remediated as necessary. Also included is direction to better protect important heritage, cultural, and tribal resources and sacred sites based on site specific recommendations.

This alternative includes the following components: Aircraft Operational Guidance; Avoidance Area Mapping Requirements; Annual Coordination and Reporting and Monitoring Requirements; and Procedures for environmental clearance when there are additions to the Qualified Products List.

Aircraft Operational Guidance

Operational guidance helps ensure that retardant drops are not made within waterways or mapped avoidance areas.

Whenever practical, as determined by the agency administrator and incident commander, the Forest Service will use water, other suppressants, or less toxic qualified fire retardants in areas occupied by Endangered Species Act Threatened, Endangered, Candidate or Proposed species or their designated critical habitats, or habitats for Regional Forester Sensitive Species. Some of these species and habitats require that only water be used to protect their habitat and populations; these habitats and populations have been mapped as avoidance areas. Incident commanders and pilots are required to avoid aerial application of fire retardant in mapped avoidance areas for designated species and habitat, or within the prescribed buffers on either side of waterways with water present.

These guidelines shall not require pilots to fly in a manner that endangers their aircraft or other aircraft or structures, or that compromises the safety of ground personnel or the public.

- *Operational guidance to ensure retardant drops are not made within prescribed buffers on either side of waterways or within mapped avoidance areas for species:*

Medium/Heavy Airtankers, Single Engine Airtankers, and Helicopters: When approaching mapped avoidance areas, waterways, or riparian vegetation visible to the pilot, the pilot will terminate the application of retardant approximately 300 feet before reaching the mapped avoidance area or waterway. When flying over a mapped avoidance area waterway, or riparian vegetation, the pilot will wait one second after crossing the far border of an avoidance area or bank of a waterway before applying retardant. Pilots will make adjustments for airspeed and ambient conditions such as wind to avoid the application of retardant within the prescribed buffer zone or mapped avoidance areas.

- *Protection of cultural resources, including historic properties, traditional cultural resources, and sacred sites:*

These resources cannot be mapped using a national protocol or addressed with a standard prescription that would apply to all instances. Therefore, they will be given case-by-case consideration when ordering the aerial application of fire retardant. As necessary, incident commanders would consider the effects of aerial applications on known or suspected historic properties, any identified traditional cultural resources, and sacred sites. Cultural resources specialists, archaeologists, and tribal liaisons would assist in the consideration of effects and alternatives for protection.

Avoidance Areas Mapping Requirements

Identified avoidance areas are:

- *Aquatic Avoidance Areas:*
  - Waterways and their buffers (including but not limited to perennial streams, intermittent streams, lakes, ponds, identified springs, reservoirs, vernal pools, and riparian vegetation) where water is present at the time of retardant application.
  - Aquatic buffer zones shall be no less than 300 feet on either side of a waterway.
- *Endangered Species Act Threatened, Endangered, Proposed, and Candidate Species and Regional Forester Sensitive Species Avoidance Areas:*
  - Where aerial application of fire retardant may affect one or more federally listed threatened, Endangered, Proposed or Candidate plant or animal species or critical habitat, specify avoidance areas to minimize impacts.
  - Where aerial application of fire retardant may impact certain Regional Forester Sensitive Species or their

habitat, specify avoidance areas to minimize impacts.

○ Mapping of waterways that are dry at the time of retardant application is not required, but may be included in avoidance areas where there is a potential for downstream indirect effects to occur.

○ Avoidance Areas may be adjusted for local conditions. Adjustments related to Endangered Species Act threatened, Endangered, Proposed, and Candidate species will be coordinated with the local offices of the United States Department of Interior Fish and Wildlife Service and National Oceanic and Atmospheric Administration National Marine Fisheries Service, hereinafter referred to as the Services.

All forests and grasslands would review and update maps annually, following current national mapping protocols.

Annual Coordination

The Forest Service would coordinate annually with:

- Local services offices;
- Aviation managers and pilots; and
- Cooperators/other agencies.

Coordination would ensure requirements of the provisions of the proposal are met, maintain relationships, and allow resolutions of problems at the lowest level. Guidance on coordination meetings would be provided in an implementation guide.

Reporting and Monitoring Requirements

The Forest Service would maintain a database for reporting intrusions of aerially applied fire retardant into avoidance areas. Intrusion reporting requirements would be described in an implementation guide, including requirements of upward reporting to the Services for an intrusion report into an avoidance area for a Threatened, Endangered, Proposed, or Candidate species or critical habitat. Annually, the Forest Service would provide summary reports of retardant use and intrusions, as well as a listing of intrusions and a summary of observations and actions for each intrusion.

If a retardant drop occurs on a cultural resource, a traditional cultural property, or a sacred site, then the site condition would be assessed by a qualified archaeologist and reported to the State Historic Preservation Officer and, if appropriate, tribal representatives including the Tribal Historic Preservation Officer. If the affected resource is a sacred site, or a traditional cultural property, then tribal notification and consultation would be required as part of the determination of effects. If the effect is found to be adverse, then the agency would consult with the tribe to determine an appropriate course of action to mitigate or resolve the adverse effect.

Procedures when there are Additions to the Qualified Products List

Private companies submit retardants to the Forest Service for qualification. New products or new formulations of existing products must meet the Forest Service specification for long-term retardant (United States Department of Agriculture, Forest Service, Specification 5100–304d Long-term Retardant, Wildland Firefighting, posted January 7, 2020 at: *https://www.fs.fed.us/rm/fire/wfcs/ret.htm*) before they are included on the Qualified Products List. Any retardant that meets the specifications and is added to the Qualified Products List is included in this proposal. In addition, Endangered Species Act requirements will be met as follows:

- Products or new formulations that have the same or similar constituents as evaluated in the biological assessment and biological opinions, and do not exceed the upper limits of those components do not require additional consultation. The Services will be notified of additions to the Qualified Products list.

- Products or new formulations that do not meet the above criteria will result in re-initiation of consultation with the Services. The product is not eligible for the Qualified Products List until all required tests and consultation are completed.

Responsible Official

The responsible official will be Chris French, Deputy Chief, Forest System.

Nature of Decision To Be Made

The decision to be made is whether to continue aerial application of fire retardant, and if so, whether to do so under the proposed action or any potential alternatives.

Authority: 36 CFR 220.5.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–17651 Filed 8–19–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; National Visitor Use Monitoring

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, National Visitor Use Monitoring (0596–0110).

DATES: Comments must be received in writing on or before October 19, 2020 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Donald B.K. English, Recreation, Heritage, and Volunteer Resources, Mailstop 1125, Forest Service, USDA, 1400 Independence Ave. SW, Washington, DC 20250–1125.

Comments also may be submitted via facsimile to 202–205–1145 or by email to: *don.english@usda.gov.* The public may request copies of comments received by emailing Dr. English.

FOR FURTHER INFORMATION CONTACT: Dr. Donald B.K. English, Recreation, Heritage, and Volunteer Resources staff, at 202–205–9595. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: National Visitor Use Monitoring.

OMB Number: 0596–0110.

Expiration Date of Approval: August 31, 2017.

Type of Request: Extension with revision.

Abstract: The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two of the items the Forest Service must measure are: (1) The number of visits that occur on the National Forest System lands for recreation and other purposes, and (2) the views and satisfaction levels of recreational visitors to National Forest System lands about the services, facilities, and settings. The Agency receives requests for this kind of information from a variety of organizations, including

Congressional staffs, newspapers, magazines, and recreational trade organizations.

The data from this collection provides vital information for strategic planning efforts, decisions regarding allocation of resources, and revisions of land and resource management plans for national forests. It provides managers with reliable estimates of the number of recreational visitors to a national forest, activities of those visitors (including outdoor physical activities), customer satisfaction, and visitor values. The knowledge gained from this effort helps identify recreational markets as well as the economic contributions visitors' spending has on economic areas around forest lands. For the Forest Service, the collection is designed for a five-year cycle of coverage across all national forests. Conducting the collection less frequently puts information updates out of cycle with forest planning and other data preparation and reporting activities.

At recreation sites or access points, agency personnel or contractors will conduct onsite interviews of visitors as they complete their visit. Interviewers will ask about the purpose and length of the visit, the trip origin, activities, annual visitation rates, trip-related spending patterns, use of recreation facilities, satisfaction with agency services and facilities, and the composition of the visiting party. Primary analysis of the information for the Forest Service and partnering agencies will be performed by Forest Service staff in the Washington Office and by scientists in one or more of the agency's research stations.

Estimate of Annual Burden: 9 minutes (average).

Type of Respondents: Visitors to lands and waters managed by the US Forest Service.

Estimated Annual Number of Respondents: 45,000.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 6,400 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–18305 Filed 8–19–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Florida Advisory Committee (Committee) will hold a series of meetings via teleconference on Monday, September 14, and Wednesday, September 30, 2020 at 2:00 p.m. Eastern Time. The Committee will review and finalize its report to the Commission on voting rights in the state.

DATES: The meetings will be held on:

- Monday, September 14, 2020 at 2:00 p.m. Eastern Time.
- Wednesday, September 30, 2020 at 2:00 p.m. Eastern Time.

Public Call Information: Dial: 866–248–8441, Confirmation Code: 6763717.

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

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 confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl4AAA* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Florida Voting Rights
Public Comment
Adjournment

Dated: August 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–18221 Filed 8–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Quarterly Services Survey

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and

other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Quarterly Services Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 19, 2020.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference Quarterly Services Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2020–0022, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kathryn Nelson, U.S. Census Bureau, Economic Indicators Division, 301–763–7052 or *Kathryn.L.Nelson@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a revision of the current Office of Management and Budget (OMB) clearance of the Quarterly Services Survey (QSS). The QSS covers employer firms with establishments located in the United States and classified in select service industries as defined by the North American Industry Classification System (NAICS). The QSS coverage currently includes all or parts of the following NAICS sectors: Utilities (excluding government owned); transportation and warehousing (except rail transportation and postal); information; finance and insurance (except funds, trusts, and other financial vehicles); real estate and rental and leasing; professional, scientific, and technical services (except offices of notaries); administrative and support and waste management and remediation services; educational services (except elementary and secondary schools, junior colleges, and colleges, universities, and professional schools); health care and social assistance; arts, entertainment, and recreation; accommodation; and other services (except public administration). The primary estimates produced from the QSS are quarterly estimates of total operating revenue and the percentage of revenue by source. The survey also produces estimates of total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. For hospitals, the survey produces estimates of the number of inpatient days and discharges, and for select industries in the arts, entertainment, and recreation sector, the survey produces estimates of admissions revenue.

Firms are selected for the QSS using a stratified design with strata defined by industry, tax status, and estimated size based on annual revenue. The sample consists of approximately 19,500 firms and is a subsample of firms from the larger Service Annual Survey (OMB# 0607–0422). Each quarter the QSS sample is updated to reflect the addition of new businesses and the removal of firms that have gone out-of-business.

The Bureau of Economic Analysis uses the survey results as input to its quarterly Gross Domestic Product (GDP) and GDP by industry estimates. The estimates provide the Federal Reserve Board and Council of Economic advisors with timely information to assess current economic performance. The Centers for Medicare and Medicaid Services use the QSS estimates to develop hospital-spending estimates for the National Accounts. Other government and private stakeholders also benefit from a better understanding of important cyclical components of the U.S. service economy.

Starting in 2021, we may ask for additional data on the electronic instrument on a temporary basis to address a new module of business expectations. This request will not be added to the paper forms. Respondents will be asked for forecasts with two different time horizons—a single point estimate one quarter ahead and a one year ahead estimate with five points and corresponding probabilities. For the 2021 Quarter 1 reporting period, QSS respondents would see questions similar, but possibly not identical, to the following drafted questions:

- What is the approximate expected dollar value of revenue you would anticipate for this firm during the quarter ending June 30, 2021?
- Looking ahead to the quarter ending March 31, 2022, what is the approximate dollar value of revenue you would anticipate for this firm during that quarter and what likelihood do you assign to that value?

Leading indicators and forward-looking measures such as forecasts and projections are highly valued for their ability to help decision-makers, businesses, and individuals plan and adjust policies if necessary. Responses to these questions will provide a better understanding of business uncertainty and insight on future business activity. Initially, this pilot collection will request data for four consecutive quarters with the possibility of continuing collection for an additional four quarters.

II. Method of Collection

We will collect this information by internet, mail, and telephone follow-up. A significant number of QSS respondents receive an initial email with their username and authentication code for submission by internet. The remaining respondents are either mailed only their username and authentication code for submission by internet or mailed a full form. Respondents that report via the internet in any given quarter now have the option to choose how they want to receive forms in the future, *i.e.* email or mailed form. It should be noted that we phased out the use of facsimiles.

III. Data

OMB Control Number: 0607–0907.

Form Number(s): QSS–1A, QSS–1E, QSS–1PA, QSS–1PE, QSS–2A, QSS–2E, QSS–3A, QSS–3E, QSS–3SA, QSS–3SE, QSS–4A, QSS–4E, QSS–4FA, QSS–4FE, QSS–4SA, QSS–4SE, QSS–5A, QSS–5E.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 19,500 respondents filing a total of 90,000 reports a year. (Some respondents file more than one report quarterly).

Estimated Time Per Response: 20 minutes: QSS–1A, QSS–1E, QSS–1PA, QSS–1PE, QSS–2A, QSS–2E, QSS–3A, QSS–3E, QSS–3SA, QSS–3SE, QSS–5A, QSS–5E. 15 minutes: QSS–4A, QSS–4E,

QSS–4FA, QSS–4FE, QSS–4SA, QSS–4SE.

Estimated Total Annual Burden Hours: 26,800 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 131 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–18312 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Census Scientific Advisory Committee; Public Virtual Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC or Committee). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including decennial, economic, field operations, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committee's website at *http://www.census.gov/cac* for the CSAC meeting information, including the agenda, and how to join the meeting.

DATES: The virtual meeting will be held on:

- Thursday, September 17, 2020, from 11:00 a.m. to 5:00 p.m. EDT, and
- Friday, September 18, 2020, from 11:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held via the WebEx platform at the following presentation links:

- September 17, 2020—*https://census.webex.com/census/onstage/g.php?MTID=ed9200a9944118dd156f0d5c8af5b57ba.*
- September 18, 2020—*https://census.webex.com/census/onstage/g.php?MTID=eed27bea4fe2b7d5b52b48b9fba6df099.*

For audio, please call the following number: 1–888–946–7616. When prompted, please use the following Password (CSAC) and Participant Code: 8708263.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, U.S. Census Bureau, Room 2K128F, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director, Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10). The purpose of the meeting is to:

1. Provide and update members on scientific and technical activities; and
2. address Census Bureau program needs and objectives.

All meetings are open to the public. A brief period will be set aside during the virtual meeting for public comments on September 18, 2020. However, individuals with extensive questions or statements must submit them in writing to *shana.j.banks@census.gov,* (subject line ''2020 CSAC Fall Virtual Meeting Public Comment'').

Steven D. Dillingham, Director, Bureau of the Census approved the publication of this notice in the **Federal Register**.

Dated: August 14, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–18195 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–815, A–570–873]

Ferrovanadium From the Republic of South Africa and the People's Republic of China: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on ferrovanadium from the Republic of South Africa (South Africa) and the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2020, the ITC instituted,[1] and Commerce initiated,[2] the third five-year (sunset) reviews of the AD orders on ferrovanadium from South Africa and China,[3] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined, pursuant to sections 751(c) and 752(c) of the Act, that revocation of the *Orders* on ferrovanadium from South Africa and China would be likely to lead to the continuation or recurrence of dumping. Commerce also notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.[4]

On August 13, 2020, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The scope of the *Orders* covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded.

Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, Commerce's written description of the scope of these orders remains dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and (d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[6]

Dated: August 13, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–18287 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ferrovanadium from China and South Africa; Institution of Five-Year Reviews,* 85 FR 122 (January 2, 2020).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020).

[3] *See Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa,* 68 FR 4169 (January 28, 2003); *see also Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium From the People's Republic of China,* 68 FR 4168 (January 28, 2003) (collectively, *Orders*).

[4] *See Ferrovanadium From the Republic of South Africa and the People's Republic of China: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 85 FR 26667 (May 5, 2020), and accompanying Issues and Decision Memorandum.

[5] *See Ferrovanadium from the Republic of South Africa and the People's Republic of China (Inv. Nos. 731–TA–986 and 731–TA–987 (Review)),* 85 FR 49394 (August 13, 2020); *see also Ferrovanadium from the Republic of South Africa and the People's Republic of China (Inv. Nos. 731–TA–986 and 731–TA–987 (Review)),* USITC Pub. 5099 (August 2020).

[6] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–880]

Barium Carbonate From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on barium carbonate from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

APPLICABLE DATE: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2003, Commerce published its AD order on barium carbonate from China.[1] On January 2, 2020, the ITC instituted,[2] and Commerce initiated,[3] the third sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930 as amended (the Act). As a result of its review, Commerce determined that a revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margin rates likely to prevail should the *Order* be revoked.[4]

On August 14, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the

[1] *See Antidumping Duty Order: Barium Carbonate from the People's Republic of China,* 68 FR 56619 (October 1, 2003) (*Order*).

[2] *See Barium Carbonate from China; Institution of a Five-Year Review,* 85 FR 125 (January 2, 2020).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 67 (January 2, 2020).

[4] *See Barium Carbonate from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 85 FR 26666 (May 5, 2020).

United States within a reasonably foreseeable time.[5]

Scope of the Order

The product covered by the *Order* is barium carbonate, regardless of form or grade and currently classifiable under subheading 2836.60.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order* on barium carbonate from China.

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: August 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–18286 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Barium Carbonate from China,* 85 FR 49681 (August 14, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–118]

Wood Mouldings and Millwork Products From the People's Republic of China: Amended Preliminary Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) is amending the scope of the countervailing duty (CVD) investigation of wood mouldings and millwork products (millwork products) from the People's Republic of China (China) to conform with the scope published in the preliminary determinations of the companion antidumping duty (AD) investigations of millwork products from Brazil and China, where appropriate. The period of investigation is January 1, 2019 through December 31, 2019.

DATES: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

Commerce published its *CVD Preliminary Determination* on June 12, 2020.[1]

On August 12, 2020, Commerce published the Brazil and China *AD Preliminary Determinations* within which the scope of the investigations was amended to exclude certain products, and to clarify the inclusion of certain products, based upon comments received from interested parties.[2]

Amended Scope of the Investigation

The products covered by this investigation are millwork products from China. We are amending the scope of the CVD investigation to conform with the scope of the companion AD investigations, where appropriate, as indicated below. The following products are not subject to the scope of the investigation:

- Lumber (solid, edge-glued or fingered-jointed);
- Stair stringers;
- Countertop/butcherblocks; and,
- Unassembled wooden kitchen cabinets and unassembled wooden bathroom cabinets, including their wood moulding components, which are covered under another CVD order.

Furthermore, the following products are subject to the investigation:

- Screen/surfaced on four sides (S4S) and/or surface one side, two edges (S1S2E) stock/boards that are finger-jointed or edge-glued; and,
- Wood moulding door components which enter as part of unassembled door kits.

The above exclusions and clarifications were first enumerated in the *AD Preliminary Determinations.* For a complete description of the amended scope of this investigation, *see* Appendix I.

Suspension of Liquidation

We have not revised the estimated cash deposit rates published in the *CVD Preliminary Determination.* In accordance with section 703(d)(1)(B) and (d)(2) of the Tariff Act of 1930, as amended (the Act), we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise as described in the amended scope of the investigation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to continue to require a cash deposit, pursuant to 19 CFR 351.205(d). Additionally, because certain products are now excluded from the scope of the investigation, Commerce will instruct CBP to terminate suspension of liquidation of those excluded products, and to refund any cash deposits previously posted with respect to them.

Public Comment

Commerce has set a separate deadline for scope comments in the AD and CVD millwork products investigation proceedings.[3] The current deadline for case briefs regarding scope issues is 30

[1] *See Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Affirmative*Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 85 FR 35900 (June 12, 2020) (*CVD Preliminary Determination*).

[2] *See Wood Mouldings and Millwork Products from Brazil: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 85 FR 48667 (August 12, 2020); and *Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 48669 (August 12, 2020) (collectively, *AD Preliminary Determinations*); *see also* Memorandum, ''Wood Mouldings and Millwork Products from Brazil and the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated August 5, 2020, which was placed on the records of the AD and CVD investigations.

[3] *See AD Preliminary Determinations* at ''Public Comment.''

days after the publication of the *AD Preliminary Determinations,* which is September 11, 2020, and the deadline for rebuttal briefs regarding scope issues is seven days after scope case briefs are due, which is September 18, 2020.[4] 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. Case and rebuttal briefs regarding scope issues must be filed on the AD and CVD records.

Notifications

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission of its amended determination. This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Amended Scope of the Investigation

The merchandise subject to this investigation consists of wood mouldings and millwork products that are made of wood (regardless of wood species), bamboo, laminated veneer lumber (LVL), or of wood and composite materials (where the composite materials make up less than 50 percent of the total merchandise), and which are continuously shaped wood or finger-jointed or edge-glued moulding or millwork blanks (whether or not resawn). The merchandise subject to this investigation can be continuously shaped along any of its edges, ends, or faces.

The percentage of composite materials contained in a wood moulding or millwork product is measured by length, except when the composite material is a coating or cladding. Wood mouldings and millwork products that are coated or clad, even along their entire length, with a composite material, but that are otherwise comprised of wood, LVL, or wood and composite materials (where the non-coating composite materials make up 50 percent or less of the total merchandise) are covered by the scope.

The merchandise subject to this investigation consists of wood, LVL, bamboo, or a combination of wood and composite materials that is continuously shaped throughout its length (with the exception of any endwork/dados), profiled wood having a repetitive design in relief, similar milled wood architectural accessories, such as rosettes and plinth blocks, and finger-jointed or edge-glued moulding or millwork blanks (whether or not resawn). The scope includes continuously shaped wood in the forms of dowels, building components such as interior paneling and jamb parts, and door components such as rails, stiles, interior and exterior door frames or jambs (including split, flat, stop applied, single- or double-rabbeted), frame or jamb kits, and packaged door frame trim or casing sets, whether or not the door components are imported as part of a door kit or set.

The covered products may be solid wood, laminated, finger-jointed, edge-glued, face-glued, or otherwise joined in the production or remanufacturing process and are covered by the scope whether imported raw, coated (*e.g.,* gesso, polymer, or plastic), primed, painted, stained, wrapped (paper or vinyl overlay), any combination of the aforementioned surface coatings, treated, or which incorporate rot-resistant elements (whether wood or composite). The covered products are covered by the scope whether or not any surface coating(s) or covers obscures the grain, textures, or markings of the wood, whether or not they are ready for use or require final machining (*e.g.,* endwork/dado, hinge/strike machining, weatherstrip or application thereof, mitre) or packaging.

All wood mouldings and millwork products are included within the scope even if they are trimmed; cut-to-size; notched; punched; drilled; or have undergone other forms of minor processing.

Subject merchandise also includes wood mouldings and millwork products that have been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, coating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation are countertop/butcherblocks, exterior fencing, exterior decking and exterior siding products (including solid wood siding, non-wood siding (*e.g.,* composite or cement), and shingles) that are not LVL or finger jointed; finished and unfinished doors; flooring; parts of stair steps (including newel posts, balusters, easing, gooseneck, risers, treads, rail fittings and stair stringers); picture frame components three feet and under in individual lengths; and lumber whether solid, finger-jointed, or edge-glued. To be excluded from the scope, finger-jointed or edge-glued lumber must have a nominal thickness greater than 1.5 inches and a certification stamp from an American Lumber Standard Committee-certified grading bureau. The exclusion for lumber whether solid, finger-jointed, or edge-glued does not apply to screen/''surfaced on 4 sides'' (S4S) and/or ''surface 1 side, 2 edges'' (SlS2E) stock (also called boards) that are finger-jointed, edge-glued mouldings, or millwork blanks (whether or not resawn).

Excluded from the scope of this investigation are all products covered by the scope of the countervailing duty order on *Hardwood Plywood from the People's Republic of China. See Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018).

Excluded from the scope of this investigation are all products covered by the scope of the countervailing duty order on *Multilayered Wood Flooring from the People's Republic of China. See Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011).

Excluded from the scope of this investigation are all products covered by the scope of the countervailing duty order on *Wooden Cabinets and Vanities from the People's Republic of China. See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order,* 85 FR 22134 (April 21, 2020).

Imports of wood mouldings and millwork products are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 4409.10.4010, 4409.10.4090, 4409.10.4500, 4409.10.5000, 4409.22.4000, 4409.22.5000, 4409.29.4100, and 4409.29.5100. Imports of wood mouldings and millwork products may also enter under HTSUS numbers: 4409.10.6000, 4409.10.6500, 4409.22.6000, 4409.22.6500, 4409.29.6100, 4409.29.6600, 4418.20.4000, 4418.20.8030, 4418.20.8060, 4418.99.9095 and 4421.99.9780. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2020–18285 Filed 8–19–20; 8:45 am]

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[4] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Banduoo Ltd. (Banduoo); Fujian Rongshu Industry Co., Ltd. (Fujian Rongshu); Roung Shu Industry Corporation (Roung Shu); and Xiamen Yi-He Textile Co., Ltd. (Xiamen Yi-He) made no shipments of subject merchandise during the period of review (POR) of September 1, 2018 through August 31, 2019.

DATES: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2020, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results,* but we received no comments.

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[3] The deadline for the final results of this review is now November 25, 2020.

Scope of the Order

The scope of this order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene terephthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- Also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an ''ornamental trimming;''
- be wound on spools; attached to a card; hanked (*i.e.,* coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this antidumping duty order.

Excluded from the scope of the order are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) ''pull-bows'' (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a ''belly band'' around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050; and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080;

[1] *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of No Shipments and Rescission, in Part, of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 19922 (April 9, 2020) (*Preliminary Results*).

[2] *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.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He had no shipments of the subject merchandise during the POR.[4] As no interested party filed comments regarding the *Preliminary Results,* we continue to find that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He did not have any shipments of subject merchandise during the POR and intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results of this review.[5]

Assessment Rates

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.[6] Because we continue to find in these final results that Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their antidumping duty case numbers (*i.e.,* at that exporter's rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue liquidation instructions for Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Banduoo, Fujian Rongshu, Roung Shu, and Xiamen Yi-He will remain unchanged from the rate assigned to them in the most recently completed review of those companies; (2) for merchandise exported by manufacturers 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 from the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the less-than-fair-value investigation.[7] 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.

Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: August 14, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–18288 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Preliminary Results.*

[5] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982, 56985 (September 17, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Preliminary Rescission of 2019 Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Kunshan Jujia Decoration Design Co., Ltd. (Jujia) did not make a *bona fide* sale for antidumping duty purposes during the period of review (POR) January 1, 2019 through December 31, 2019. Therefore, Commerce is preliminarily rescinding this review. Interested parties are invited to comment on the preliminary results of the review.

DATES: Applicable August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2020, Commerce published a notice of initiation of a new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (China).[1] Commerce subsequently issued an antidumping duty questionnaire, and supplemental questionnaires, to Jujia and received timely responses thereto. For additional background, *see* the Preliminary Decision Memorandum.[2]

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 85 FR 11342 (February 27, 2020).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Rescission of the 2019 Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China, dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order

The product covered by the order is wooden bedroom furniture, subject to certain exceptions. Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.90.7005, 9403.90.7080, 9403.50.9041, 9403.60.8081, 9403.20.0018, 9403.90.8041, 7009.92.1000 and 7009.92.5000. Although the HTSUS subheadings are provided for convenience and custom purposes, the written product description in the order remains dispositive. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 75l(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of sections in the Preliminary Decision Memorandum is attached in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of the Antidumping New Shipper Review

As discussed in the *Bona Fide* Sales Analysis Memorandum,[3] Commerce preliminarily finds that the sale made by Jujia is not a *bona fide* sale. Commerce reached this conclusion based on the totality of the circumstances surrounding the reported sale, including, among other things, the sales price and quantity. Because Jujia made no *bona fide* sales during the POR, we are preliminarily rescinding this review.[4] Because the factual information used in our *bona fides* analysis of Jujia's sale involves business proprietary information, a full discussion of our analysis is in the proprietary *Bona Fide* Sales Analysis Memorandum.

Public Comment

Interested parties are invited to comment on the preliminary results of this review.

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each brief: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[6] Executive summaries should be limited to five pages total, including footnotes.[7] All submissions, with limited exceptions, must be filed electronically using ACCESS.[8] Electronically filed comments must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing date and time to be determined. Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of hearing participants; and (3) a list of the issues to be discussed in the hearing. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Commerce intends to issue the final results of this review, which will include the results of its analysis of issues raised in any briefs and rebuttal briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B) of the Act.

Assessment Rates

If Commerce issues a final rescission of this review, it will instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entry at the China-wide rate.

If Commerce does not proceed to a final rescission of this new shipper review, pursuant to 19 CFR 351.202(b)(1), it will calculate an importer-specific assessment rate based on the final results of this review. However, pursuant to Commerce's refinement to its assessment practice in non-market economy cases, for entries that were not reported in the U.S. sales database submitted by Jujia, Commerce will instruct CBP to liquidate such entries at the China-wide rate.[10]

Cash Deposit Requirements

If Commerce proceeds to a final rescission of this review, the cash deposit rate will continue to be the China-wide rate for Jujia because Commerce will not have determined an individual margin of dumping for Jujia. If Commerce determines an individual margin of dumping for Jujia, it will instruct CBP to collect cash deposits, effective upon the publication of the final results of review, equal to the calculated dumping margin.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

[3] *See* Memorandum, ''2019 Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Preliminary *Bona Fide* Sales Analysis for Kunshan Jujia Decoration Design Co., Ltd.,'' dated concurrently with, and hereby adopted by, this notice (*Bona Fide* Sales Analysis Memorandum).

[4] *See* 19 CFR 351.213(d)(3).

[5] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID- 19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *Id.*

[8] *See* 19 CFR 351.303.

[9] *See Temporary Rule.*

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

Dated: August 14, 2020.

Joseph A. Laroski Jr.,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Issues Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Conclusion

[FR Doc. 2020–18245 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA394]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold online public meetings.

DATES: The Pacific Council and its advisory entities will meet online September 8–11 and September 14–18, 2020, noting there will be no meetings on Saturday, September 12 and Sunday, September 13. The Pacific Council meeting will begin on Friday, September 11, 2020 at 8 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. Monday, September 14, and each day through Friday, September 18, 2020. All meetings are open to the public, except a Closed Session will be held from 8 a.m. to 9 a.m., Friday, September 11, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be webinar only.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll-free; or access the Pacific Council website, *http://www.pcouncil.org* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The September 8–11 and September 14–18, 2020 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Friday, September 11, 2020 and continue at 8 a.m. Monday, September 14 daily through Friday, September 18. No meetings are scheduled for Saturday, September 12 through Sunday, September 13, 2020. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. You can attend the webinar online using a computer, tablet, or smart phone, using the webinar application. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio-only portion of the meeting.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times are described in Agenda Item A.5, Proposed Council Meeting Agenda, and will be in the advance September 2020 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, August 21, 2020.

A. Call to Order
  1. Opening Remarks
  2. Council Member Appointments
  3. Roll Call
  4. Executive Director's Report
  5. Approve Agenda
B. Open Comment Period
  1. Comments on Non-Agenda Items
  C. Administrative Matters
  1. National Marine Fisheries Service Report
  2. Executive Order 13921: Promoting American Seafood Competitiveness and Economic Growth—Final Recommendations
  3. Legislative Matters
  4. Fiscal Matters
  5. Approval of Council Meeting Record
  6. Membership Appointments and Council Operating Procedures
  7. Future Council Meeting Agenda and Workload Planning
D. Groundfish Management
  1. Gear Switching and Sablefish Area Management Scoping
  2 Workload and New Management Measure Priorities—Including the Scoping of Mothership Utilization Issues
  3. Impact Analyses Methodology Review
  4. Assessment Methodology Review—Final Action
  5. Inseason Adjustments—Final Action
  6. Update on Humpback Whale Endangered Species Act Consultation
E. Highly Migratory Species Management
  1. Recommend International Management Activities
  2. Exempted Fishing Permits
  3. Biennial Harvest Specifications and Management Measures—Preliminary
  4. Essential Fish Habitat Review
F. Ecosystem Management
  1. Climate and Communities Initiative Update
  2. Fishery Ecosystem Plan Five-Year Review
G. Coastal Pelagic Species Management
  1. Pacific Sardine Rebuilding Plan—Final Action
H. Salmon Management
  1. Reintroduction of Salmon Above Grand Coulee Dam
  2. Amendment 20: Management Schedule and Klamath Management Zone Boundary Change—Final Action
  3. Southern Resident Killer Whale Endangered Species Act Consultation
I. Pacific Halibut Management
  1. 2021 Catch Sharing Plan and Annual Regulations
  2. Transition of Area 2A Fishery Management
  3. Commercial-Directed Fishery Regulations for 2021
J. Habitat Issues
  1. Current Habitat Issues

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body

agendas for this meeting will be available on the Pacific Council website *https://www.pcouncil.org/* no later than Friday, August 21, 2020.

Schedule of Ancillary Meetings

Day 1—Tuesday, September 8, 2020

Coastal Pelagic Species Management Team 8 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Legislative Committee 10 a.m.

Day 2—Wednesday, September 9, 2020

Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Habitat Committee 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Scientific and Statistical Committee 8 a.m.

Day 3—Thursday, September 10, 2020

Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Enforcement Consultants 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Habitat Committee 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.

Day 4—Friday, September 11, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary
* No Meetings Scheduled for Saturday, September 12 through Sunday, September 13, 2020.

Day 5—Monday, September 14, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 6—Tuesday, September 15, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 7—Wednesday, September 16, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 8—Thursday, September 17, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Enforcement Consultants As Necessary

Day 9—Friday, September 18, 2020

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in this agenda may come before the Pacific Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Pacific Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2412 at least 10 business days prior to the meeting date.

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

Dated: August 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–18250 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA399]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Advisory Panel will hold a public webinar meeting.

DATES: The meeting will be held on Thursday, September 3, 2020, from 10 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/msb-ap-sept2020/.* Meeting audio can also be accessed via telephone by dialing 1–800–832–0736 and entering room number 5068871.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish Advisory Panel will meet via webinar to discuss recent performance of the Atlantic chub mackerel fisheries and develop a Fishery Performance Report. This report will be considered by the Scientific and Statistical Committee, the Monitoring Committee, and the Mid-Atlantic Fishery Management Council when reviewing 2021 catch and landings limits and management measures for chub mackerel.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: August 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–18251 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA372]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Ecosystem Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold an online meeting to review items from the California Current Ecosystem Integrated Ecosystem Assessment Team that may potentially inform future annual reports to the Pacific Council on the state of the California Current Ecosystem. The meeting is open to the public.

DATES: The SSC Ecosystem Subcommittee meeting will be held Friday, September 4, 2020 and will continue on Tuesday, September 8, 2020. The September 4 meeting will begin at 8:30 a.m. and continue until 12 p.m. Pacific Daylight Time or until business for the day has been completed. The September 8 meeting will begin at 1 p.m. and continue until 5 p.m. Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: The SSC's Ecosystem Subcommittee meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Ecosystem Subcommittee meeting is to review items from the California Current Integrated Ecosystem Assessment program that may inform future annual reports to the Pacific Council on the state of the California Current Ecosystem. Specifically, the SSC Ecosystem Subcommittee will review the following four items (the first two on Friday, September 4 and the last two on Tuesday, September 8): (1) California Sea Lion Pup Growth as an Indicator of Forage Conditions, (2) Natural Origin Central Valley Fall Chinook Stock Indicator, (3) Habitat Compression Index, and (4) Port-specific Revenue Indices. The SSC Ecosystem Subcommittee will consider recommending summaries of these ecosystem indicators be included in future state of the California Current Ecosystem reports to the Pacific Council.

No management actions will be decided by the SSC's Ecosystem Subcommittee. The SSC Ecosystem Subcommittee members' role will be development of recommendations and a report for consideration by the SSC and Pacific Council at their March 2021 meeting in Seattle, WA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC Ecosystem Subcommittee to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2412 at least 10 days prior to the meeting date.

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

Dated: August 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–18249 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA371]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management (EBFM) Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, September 8, 2020 at 9.30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/5437771503302278670.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Ecosystem-Based Fishery Management (EBFM) Committee will receive, review, and approve the remaining public outreach materials prepared by Green Fin Studio. These materials include a second infographic, a fourth presentation, stakeholder brochures, and an introductory video. They will also receive a draft plain language document on tools that built understanding of a worked example. These tools include a plain language document describing the Hydra operating model, the Kraken Visualization tool, and the eFEP catch framework demonstration tool. The Committee will discuss and provide final guidance on the framework and focus of public outreach workshops to be conducted in late 2020 and early 2021 as well as develop Council recommendations on the draft materials and plan for EBFM public outreach materials. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to

take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–18255 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XA386]

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on October 14–16, 2020. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 14, 2020, from 10 a.m. to 1 p.m. Hawaii Standard Time (HST) (or until business is concluded), October 15, 2020, from 10 a.m. to 1 p.m. HST (or until business is concluded), and October 16, 2020, from 10 a.m. to 1 p.m. HST (or until business is concluded).

ADDRESSES: The public meeting will be conducted via a web conference. Documents to be considered by the PAC will be sent out via email in advance of the conference call. Members of the public may submit written comments on meeting topics or materials; comments must be received by October 9, 2020. For details on how to call in to the conference line, to receive documents via email, or to submit comments, please contact Emily Reynolds, NMFS Pacific Islands Regional Office; telephone: 808–725–5039; email: *emily.reynolds@noaa.gov,* at least 3 days in advance of the call. This meeting may be recorded for the purposes of generating notes of the meeting.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the Permanent Advisory Committee, or PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) Not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC website: *http://www.wcpfc.int.*

Meeting Topics

The PAC meeting topics may include the following: (1) Outcomes of the 2019 annual meeting of the WCPFC and 2020 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) issues to be considered in WCPFC 2020 annual meeting; (3) potential U.S. proposals to the WCPFC 2020 annual meeting; and (4) other issues.

Special Accommodations

The conference call is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808–725–5039 by September 12, 2020.

Authority: 16 U.S.C. 6902 *et seq.*

Dated: August 14, 2020.

Kelly Denit,

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

[FR Doc. 2020–18183 Filed 8–19–20; 8:45 am]

BILLING CODE 3510–22–P

INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–014]

Submission for OMB Review; Comments Request

AGENCY: International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is renewing an existing information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received by October 19, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- *Email: fedreg@opic.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: DFC is submitting its Application for DPA–DFC Loan Program (DFC–014) to OMB for review and approval. This collection was previously granted an emergency clearance by OMB on June 5, 2020. The emergency clearance expires on December 31, 2020 and DFC is now seeking a regular clearance.

Summary Form Under Review

Title of Collection: Application for DPA–DFC Loan Program.

Type of Review: Extension without change of a currently approved information collection.

Agency Form Number: DFC–014.

OMB Form Number: 3015–0013.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Total Estimated Number of Annual Burden Hours: 100 hours.

Abstract: DFC–014 Application for DFC–DPA Loan Program is the principal document to be used by the U.S. International Development Finance Corporation (''DFC'') to determine if the proposed transaction is eligible for DFC–DPA financing and whether it meets required underwriting criteria.

Dated: August 17, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–18297 Filed 8–19–20; 8:45 am]

BILLING CODE 3210–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Notice of Early Scoping for the San Francisco Waterfront Flood Resiliency Study National Environmental Policy Act Compliance

AGENCY: Department of the Army, U.S. Army Corps of Engineers; Defense (DOD).

ACTION: Notice of Early Scoping.

SUMMARY: The San Francisco District, U.S. Army Corps of Engineers (USACE), intends to prepare a feasibility study integrated with an environmental assessment (EA) or environmental impact statement (EIS) to evaluate coastal storm and flood risk management alternatives along 7.5 miles of the San Francisco Waterfront, from Aquatic Park to Herons Head Park, in the City of San Francisco, San Francisco County, California. The Port of San Francisco is the non-federal partner for the study. USACE will conduct early scoping to solicit public participation and input to inform the environmental analyses and to assist with determining the appropriate level of NEPA documentation required for the study.

DATES: USACE requests that written comments regarding the scope of the environmental analysis and alternatives that should be considered as part of the study and NEPA analysis should be received by October 21, 2020.

ADDRESSES: Written scoping comments or requests to be added to the mailing list can be sent by email: *SFWFRS@usace.army.mil,* or by mail: Ms. Anne Baker, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Baker via email or mail at (see **ADDRESSES**). Study information will also be posted periodically on the internet at: *https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Projects-A-Z/San-Francisco-Waterfront-Storm-Damage-Reduction/*

For inquiries from the media, please contact the USACE San Francisco District Public Affairs Officer, Mr. Brandon Beach by email: *Brandon.A.Beach@usace.army.mil* or by telephone: (415) 503–6958.

SUPPLEMENTARY INFORMATION: The San Francisco District, U.S. Army Corps of Engineers (USACE), intends to prepare a feasibility study integrated with an environmental assessment (EA) or environmental impact statement (EIS) to evaluate coastal storm and flood risk management alternatives along 7.5 miles of the San Francisco Waterfront, from Aquatic Park to Herons Head Park, in the City of San Francisco, San Francisco County, California. The Port of San Francisco is the non-federal partner for the study. USACE will conduct early scoping to solicit public participation and input to inform the environmental analyses and to assist with determining the appropriate level of NEPA documentation required for the study.

USACE has not yet determined that an EIS will be necessary for the study, but will conduct the appropriate scoping and public outreach required for the preparation of an EIS, since it is the more stringent process. If at any time during the NEPA analysis USACE determines that there may be the potential for significant, unmitigable effects, then an EIS will be prepared. A formal Notice of Intent (NOI) to prepare an EIS would be filed in the **Federal Register** to initiate the EIS process. Should an EIS be necessary, written comments submitted during this early scoping period will be considered in development of the EIS. Written public comments in response to a Notice of Intent (NOI) to prepare an EIS would also be accepted and considered. USACE will substitute the public meetings associated with this Notice of Early Scoping for the scoping meetings that would normally occur after the publication of a NOI to prepare an EIS. Additional scoping meetings would therefore not be held, if an NOI to prepare an EIS is released. Written comments, including those on the scope of alternatives and impacts, will still be considered through any formal scoping period initiated by an NOI to prepare an EIS. The district would also seek to ensure that key resources agencies have had an informed opportunity to weigh in on subject proposals.

Please note that the San Francisco Planning Department (Planning Department) is the California Environmental Quality Act (CEQA) lead agency for the study. The Planning Department is conducting CEQA review under a separate process, which is not part of this early scoping effort under NEPA.

1. *Study Authorization.* The San Francisco Waterfront Flood Resiliency Study was originally authorized under Section 110 of the Rivers and Harbors Act of 1950, Public Law 515, 64 Stat. 163. The project was subsequently authorized under Section 142 of the Water Resources Development Act (WRDA) of 1976, Public Law 94–587, 90 Stat. 2917, 2930, as amended by Section 705 of WRDA of 1986, Public Law 99–662, 100 Stat. 4082, 4158. Authority for the NEPA early scoping process is provided by the Council on Environmental Quality (CEQ) Regulations (Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulation, 46 FR 18026, 18030 (March 23, 1981) as amended 1986, see Question 13).

2. *Study Location.* The proposed study area being considered is approximately 7.5 miles, from Aquatic Park to Herons Head Park, in the City of San Francisco, San Francisco County, California. This area of the waterfront is highly urbanized, supporting commercial, residential, recreation, tourism, and open space land uses. The area contains a complex mix of piers, structures, and seawall—many of which are considered historic. A study area map can be found online at: *https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Projects-A-Z/San-Francisco-Waterfront-Storm-Damage-Reduction/.*

3. *NEPA Purpose and Need.* The purpose of the study is to determine strategies to manage the risk of impacts from future flooding in the project area, including public health and safety. Coastal storm risk management measures would seek to reduce effects to important building, utility, and transportation infrastructure and resources, as well as social and economic resources, including recreation facilities. During certain conditions such as storms, king tides, or El Niño events, water from the San Francisco Bay periodically overtops sections of the seawall along the San Francisco Embarcadero waterfront, resulting in flooding of low-lying areas. Sea level rise is expected to increase risk of flooding in the future. Flooding could result in limited or no access to the Embarcadero, Ferry Building and terminals, and portions of downtown San Francisco. Potential flooding of these areas could adversely impact building infrastructure, including historic buildings; transportation and transportation infrastructure, including the BART, Muni, and the Embarcadero roadway; recreation and tourism; government resources; local businesses and economy; and public health and safety. Therefore, with the existing and increasing risk as sea levels continue to rise there is a need to manage the risk of flooding in the study area.

4. *Alternatives.* Alternative formulation is in the early stages. USACE and the Port of San Francisco are developing preliminary alternatives that combine a broad suite of flood risk management structural, non-structural, and natural and nature-based measures in addition to a No Action Alternative. Structural measures include options such as construction of new levees and floodwalls, or improvements to the existing seawall to address coastal flooding along the waterfront. Nonstructural measures include options such as raising critical infrastructure, floodproofing structures, recommending land use or zoning restrictions, or enhancing flood warning systems. Natural and nature-based features include measures like horizontal levees, ecological seawalls or ''ecotones'' that reduce flood risk while improving the environment. USACE and the Port of San Francisco will coordinate with interested stakeholders to further describe and refine the alternatives and/or develop additional alternatives throughout the study process. As alternative formulation progresses, more information will be available on the project website: *https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Projects-A-Z/San-Francisco-Waterfront-Storm-Damage-Reduction/.*

5. *Scoping Process.*

a. Two virtual public scoping meetings will be held to present an overview of the San Francisco Waterfront Flood Resiliency Study, the USACE alternative formulation process, and the NEPA process. Additionally, these meetings will afford all interested parties an opportunity to comment on the scope of analysis and potential alternatives. The first virtual scoping meeting will be held on September 16, 2020, from 6:00–7:30 p.m. The second virtual scoping meeting will be held on September 17, 2020, from 2:00–3:30 p.m. Information on accessing the virtual public meetings can be found at: *https://www.spn.usace.army.mil/Missions/Projects-and-Programs/Projects-A-Z/San-Francisco-Waterfront-Storm-Damage-Reduction/.*

b. USACE will be soliciting public comments throughout the 60-day scoping period (See Dates and Addresses above).

6. *Availability.* A minimum 30-day public review period will be provided for individuals, interested parties, and agencies to review and comment on the Draft NEPA document. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the Draft NEPA Document's public circulation. The Draft NEPA Document is scheduled to be available for public review and comment in spring 2022.

PUBLIC DISCLOSURE STATEMENT: USACE believes it is important to inform the public of the environmental review process. To assist the USACE in identifying and considering issues related to the study, comments made during formal scoping and later on the draft NEPA document should be as specific as possible. Reviewers should structure their participation in the environmental review of the proposal so that it alerts USACE to the reviewers' position and concerns. It is very important that those interested in this study participate by the close of the scoping period so that substantive comments and objections are made available to the USACE at a time when we can meaningfully consider them for alternative development and incorporate them into the study, as appropriate.

Paul E. Owen,

Brigadier General, U.S. Army, Commanding.

[FR Doc. 2020–18226 Filed 8–19–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for construction of the Proposed Delta Conveyance Project, Sacramento, San Joaquin, Contra Costa, and Alameda Counties, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers Sacramento District (USACE), as the lead agency under the National Environmental Policy Act (NEPA), will prepare an Environmental Impact Statement (EIS) for construction of the Delta Conveyance Project. The California Department of Water Resources (DWR) is the project proponent and will be referred to hereafter as the Applicant. The EIS will analyze the Applicant's proposed action to construct new conveyance facilities in the Sacramento-San Joaquin Delta (Delta) which includes intake facilities on the Sacramento River, tunnel reaches and tunnel shafts, a southern forebay and pumping plant, and south Delta Conveyance facilities that would connect to the existing State Water Project (SWP) infrastructure.

ADDRESSES: U.S. Army Corps of Engineers, Sacramento Regulatory Division, Attn: Mr. Zachary Simmons, 1325 J Street, Room 1350, Sacramento, CA 95814–2922.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS can be answered by Mr. Zachary Simmons, at (916) 557–6746, by email at *Zachary.M.Simmons@usace.army.mil;* or mail at U.S. Army Corps of Engineers, Sacramento Regulatory Division, Attn: Mr. Zachary Simmons, 1325 J Street, Room 1350, Sacramento, CA 95814–2922. Requests to be placed on the electronic or surface mail notification lists should also be sent to this address. For further information or media inquiries, contact Mr. Paul Bruton at (916) 557–5166, or by email at *spk-pao@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The proposed action requires permission from USACE is required under Section 14 of the Rivers and Harbors Act (RHA). In addition, the proposed work in navigable waters and discharge of dredge or fill material into waters of the U.S. requires authorization from USACE under Section 10 of the RHA of 1899 and Section 404 of the Clean Water Act.

1. *Proposed Action.* The project requiring an EIS involves construction of new conveyance facilities in the Delta that would connect to the existing SWP infrastructure. USACE's jurisdiction is limited to construction activities resulting in the discharge of dredge or fill material within waters of the U.S., work or structures within navigable waters, and modifications to the federal levees and navigation projects. The scope of the USACE NEPA review for operations of the new facilities is limited to potential effects to navigation and long-term operations and maintenance of the modifications to federal levees. The scope does not extend to the potential downstream effects from the diversion of water through new intakes or to the overall SWP and water deliveries.

The proposed action includes the construction of new intake facilities, a tunnel, and a forebay. Two new intake facilities would be located in the north Delta along the east bank of the Sacramento River between the communities of Clarksburg and Courtland. The new conveyance facilities would include a tunnel to convey water from the new intakes to a pumping plant and new southern forebay on Byron Tract, immediately west of the existing Clifton Court Forebay. A dual tunnel would connect the new facilities to the existing State Water Project (SWP) Banks Intake Canal in the south Delta. The new facilities would provide the SWP with an alternate location for diversion of water from the Delta and would be operated in coordination with the existing SWP south Delta pumping facilities, resulting in a system also known as ''dual conveyance'' because there would be two complementary methods to divert and convey water. Under the proposed project, the new north Delta facilities would be sized to convey up to 6,000 cubic feet per second (cfs) of water from the Sacramento River to the SWP facilities in the south Delta.

Because the proposed action would alter Federal levees and cross under a federal navigation project, permission from USACE is required under Section 14 of the Rivers and Harbors Act (RHA) (33 U.S.C. 408) (Section 408). In addition, the proposed work in navigable waters and discharge of dredge or fill material into waters of the U.S. requires authorization from USACE under Section 10 of the RHA (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). Proposed project elements requiring a permit under Section 404 and/or Section 10 include the construction of the intakes within the Sacramento River and associated intake facilities which include setback levees, two tunnel shafts, and temporary construction work areas. Project elements along the tunnel corridor include 13 crossings of navigable waterways, eight tunnel shafts, access roads and access road improvements, staging areas, tunnel material storage areas, and a barge landing within the Stockton Deep Water Ship Channel (SDWSC) at Lower Roberts Island. Project elements at the southern forebay facilities include construction of the new Southern Forebay, three tunnel shafts, one crossing of a navigable waterway, a pumping plant, outlet and control structure, tunnel material storage area, and temporary construction work areas. Proposed project elements requiring authorization under Section 408 include the crossing under the SDWSC, the barge landing within the SDWSC, and alterations to the Sacramento River Flood Control Project (SRFCP) to construct the intakes within the Sacramento River, associated intake facilities, and construction and maintenance of the setback levees along the Sacramento River. Compensatory mitigation would be required for unavoidable impacts to waters of the U.S. and would be developed during the EIS process.

Construction of the overall conveyance project, if approved, would take approximately 13 years, but the duration of construction at most locations would vary and would not extend for this full construction period. The future operation of the intakes after completion of construction would not be within control or responsibility of the Corps.

2. *Alternatives.* A number of project alternatives, including the no action alternative and the Applicant's preferred alternative will be evaluated in the EIS in accordance with NEPA (33 CFR part 230 (USACE NEPA Regulations) and 33 CFR part 325, Appendix B (NEPA Implementation Procedures for USACE Regulatory Projects). Current alternatives to be analyzed include variations of the proposed project. Options include two of three possible intake structures, multiple intake structure designs based on impact footprint and fish screen designs, intake and tunnel capacity between 3,000 to 7,500 cfs, and optimizing a tunnel alignment to minimize impacts within either a central Delta or eastern Delta corridor.

3. *Scoping Process.*

a. Affected Federal, State, regional, and local agencies; Native American Tribes; other interested private organizations; and the general public are invited to participate in the scoping process. Comments can be submitted to the contacts identified above or submitted via the website identified in 4. *Scoping Meetings* below.

b. The EIS will analyze the environmental effects of construction on the aquatic environment and all other impacts that fall within the USACE jurisdiction. Potentially significant issues to be analyzed in depth include impacts to waters of the United States (including wetlands), the federal flood control project, and air quality. Other impacts include biological resources, special status species, hydrology and water quality, land use, navigation, water supply, aesthetics, recreation, and socioeconomic effects.

c. USACE has invited the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Environmental Protection Agency to participate as cooperating agencies in the preparation of the EIS. The Applicant is lead agency for the preparation of an Environmental Impact Report (EIR) under the California Environmental Quality Act for the proposed project. The two environmental reviews will be completed as separate, but parallel processes, and result in separate documents.

d. USACE will consult with the State Historic Preservation Officer and with Native American Tribes to comply with the National Historic Preservation Act, and with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to comply with the Endangered Species Act. USACE will also coordinate with the USFWS to comply with the Fish and Wildlife Coordination Act and with NMFS to comply with the Magnuson-Stevens Fishery Conservation and Management Act.

4. *Scoping Meetings.* Due to the current COVID–19 pandemic and in compliance with Army and USACE directives, no in-person public scoping meetings will be held. Members of the public are invited to view project information and a presentation on the USACE proposed action at *https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Environmental-Impact-Statements/.* Comments may be submitted via the website or through email or written comments submitted to the contacts listed above.

5. *Availability of the Draft EIS.* The draft EIS is scheduled to be available for

public review and comment in mid-2021.

Paul E. Owen,

Brigadier General, U.S. Army, Commanding.

[FR Doc. 2020–18197 Filed 8–19–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0090]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Master Generic Plan for Customer Surveys and Focus Groups

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 21, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0090. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, 202–453–7061.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Master Generic Plan for Customer Surveys and Focus Groups.

OMB Control Number: 1800–0011.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 451,325.

Total Estimated Number of Annual Burden Hours: 115,344.

Abstract: Surveys to be considered under this generic will only include those surveys that improve customer service or collect feedback about a service provided to individuals or entities directly served by ED. The results of these customer surveys will help ED managers plan and implement program improvements and other customer satisfaction initiatives. Focus groups that will be considered under the generic clearance will assess customer satisfaction with a direct service, or will be designed to inform a customer satisfaction survey ED is considering. Surveys that have the potential to influence policy will not be considered under this generic clearance.

Dated: August 17, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–18241 Filed 8–19–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–481–000]

Rio Bravo Pipeline Company, LLC; Notice of Schedule for Environmental Review of the Rio Bravo Pipeline Project Amendment

On June 16, 2020, Rio Bravo Pipeline Company, LLC (RB Pipeline) filed an application in Docket No. CP20–481–000 requesting to amend the Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act granted by the Federal Energy Regulatory Commission (Commission or FERC) for the Rio Bravo Pipeline Project in Docket No. CP16–455–000. The proposed project is known as the Rio Bravo Pipeline Project Amendment (Project Amendment), and RB Pipeline proposes to modify the pipeline facilities that will transport natural gas to Rio Grande LNG, LLC's previously approved (but not yet constructed) liquefied natural gas (LNG) Terminal in Cameron County, Texas.

On June 25, 2020, the Commission issued its Notice of Application for the Project Amendment. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project Amendment. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project Amendment.

Schedule for Environmental Review

Issuance of EA—November 16, 2020

90-day Federal Authorization Decision Deadline—February 15, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project Amendment's progress.

Project Description

RB Pipeline proposes to modify the pipeline system facilities approved in the Commission's *Order Granting Authorizations under Sections 3 and 7 of the Natural Gas Act* (Order) issued on November 22, 2019. The Rio Bravo Pipeline Project, as authorized, consists of a 2.4-mile-long, 42-inch-diameter pipeline, including 0.8 mile of dual pipeline (referred to as the Header System) in Kleber and Jim Wells Counties, Texas; 135.5 miles of parallel 42-inch-diameter mainline pipelines originating in Kleberg County and terminating at Rio Grande LNG, LLC's Rio Grande LNG Terminal in Cameron County (referred to as Pipelines 1 and 2); four metering sites along the Header System; two interconnect booster compressor stations, each with a metering site; three compressor stations (one at the Rio Grande LNG Terminal); and other associated utilities, systems, and facilities, all in Texas. As part of the Project Amendment, RB Pipeline proposes various facility modifications to the authorized pipeline system:

- Decrease the maximum allowable operating pressure (MAOP) of the 2.4-mile-long Header System pipeline from 1,480 pounds per square inch gauge (psig) to 1,200 psig;
- construct an extension of 0.2 mile of mainline pipeline for each of Pipelines 1 and 2 for a total of 135.7 miles each;
- increase the diameter of Pipeline 1 from 42 inches to 48 inches and increase the MAOP of both pipelines from 1,480 psig to 1,825 psig (Pipeline 2 will remain a 42-inch-diameter pipeline); and
- increase the transportation capacity of Pipeline 1 from 2.25 billion cubic feet per day (Bcf/d) to 2.6 Bcf/d, and decrease the transportation capacity of Pipeline 2 from 2.25 Bcf/d to 1.9 Bcf/d, resulting in the total authorized capacity of 4.5 Bcf/d remaining unchanged from the authorized pipeline system.

The Project Amendment also includes modifications to the following aboveground facilities that are authorized (but unbuilt) along the Rio Bravo Pipeline Project right-of-way:

- Eliminate Compressor Station 2 in Kenedy County;
- eliminate Compressor Station 3 within the Rio Grande LNG Terminal in Cameron County, except for a meter and other ancillary facilities within the LNG Terminal;
- eliminate all facilities associated with Booster Stations 1 and 2, including related meter stations, in Kenedy County; and
- increase the horsepower (hp) at Compressor Station 1 from 180,000 hp to 282,000 hp by switching from six 30,000-hp natural gas compressor units to four 43,000-hp natural gas compressor units and two 55,000-hp compressor units.

Background

On July 28, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Rio Bravo Pipeline Project Amendment and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received seven comments from the public. The primary issues raised to date, including responses to the Commission's June 25, 2020 *Notice of Application* for the Project Amendment, are public benefit of the project, wetland impacts, impacts on fishing and birding, systems alternatives, pipeline safety, air quality and noise impacts, tribal consultation, cumulative impacts, and climate change. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project Amendment is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP20–481), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18267 Filed 8–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1430–008; ER10–1631–017; ER10–1854–017; ER10–1859–009; ER10–1872–009; ER10–1892–015; ER10–2678–018; ER10–2729–012; ER10–2739–028; ER10–2744–018; ER11–3320–017; ER11–3321–011; ER12–995–007; ER13–1561–008; ER13–2316–015; ER14–1219–012; ER14–19–016; ER14–2548–009; ER16–1652–016; ER16–1732–011; ER16–2405–011; ER16–2406–012; ER17–1494–003; ER17–1946–010; ER17–1947–005; ER17–1948–005; ER17–989–010; ER17–990–010; ER17–992–010; ER17–993–010; ER18–95–007; ER19–170–003; ER20–1440–003; ER20–660–003.

Applicants: Arlington Valley Solar Energy II, LLC, Armstrong Power, LLC, Aurora Generation, LLC, Bath County Energy, LLC, Bolt Energy Marketing, LLC, Buchanan Energy Services Company, LLC, Buchanan Generation, LLC, Centinela Solar Energy, LLC, Chambersburg Energy, LLC, Cherokee County Cogeneration Partners LP, Columbia Energy LLC, Doswell Limited Partnership, Gans Energy, LLC, Gateway Energy Storage, LLC, Helix Ironwood, LLC, Helix Maine Wind Development, LLC, Helix Ravenswood, LLC, LifeEnergy, LLC, LS Power Marketing, LLC, LSP University Park, LLC, Mobile Energy LLC, Ocean State Power LLC, Riverside Generating Company, L.L.C., Rockford Power, LLC, Rockford Power II, LLC, Santa Rosa Energy Center, LLC, Seneca Generation, LLC, Springdale Energy, LLC, Troy Energy, LLC, University Park Energy, LLC, Vista Energy Storage, LLC, Wallingford Energy LLC, West Deptford Energy, LLC, Yards Creek Energy, LLC.

Description: Notification of Change in Status of the LS MBR Sellers.

Filed Date: 8/13/20.

Accession Number: 20200813–5132.

Comments Due: 5 p.m. ET 9/3/20.

Docket Numbers: ER16–1404–003.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance filing of BSM renewable exemption tariff provisions to be effective 6/9/2020.
Filed Date: 8/13/20.
Accession Number: 20200813–5097.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER19–1900–003.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Compliance filing: Order No. 845 Second Compliance Filing to be effective 5/20/2019.
Filed Date: 8/13/20.
Accession Number: 20200813–5128.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER19–1927–003.
Applicants: Portland General Electric Company.
Description: Compliance filing: Order 845 Compliance Filing #2 to be effective 5/22/2019.
Filed Date: 8/14/20.
Accession Number: 20200814–5008.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER19–2727–003.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2020–08–14 CCDEBE Compliance Filing to be effective 1/28/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5132.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–1867–001.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: AEPTX-Coleman County EC-Golden Spread EC Interconnection Agreement-Amend Pending to be effective 9/1/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5070.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–1929–001.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: Tariff Amendment: BGE submits Response to Deficiency Letter in ER20–1929 to be effective 11/1/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5104.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2048–001; ER20–2047–001.
Applicants: Ellwood Power, LLC.
Description: Second Supplement to June 12, 2020 Ellwood Power, LLC, et al. tariff filings.
Filed Date: 8/13/20.
Accession Number: 20200813–5131.
Comments Due: 5 p.m. ET 8/24/20.
Docket Numbers: ER20–2660–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5735; Queue No. AF2–281 to be effective 7/20/2020.
Filed Date: 8/13/20.
Accession Number: 20200813–5094.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER20–2661–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5734; Queue No. AF2–429 to be effective 7/27/2020.
Filed Date: 8/13/20.
Accession Number: 20200813–5116.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER20–2662–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: East Line Central Line and West Line Solar Interconnection Agreement to be effective 10/13/2020.
Filed Date: 8/13/20.
Accession Number: 20200813–5129.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER20–2663–000.
Applicants: SR Snipesville, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5053.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2664–000.
Applicants: NorthWestern Corporation.
Description: Request to Terminate Network Integration Transmission Service of NorthWestern Corporation.
Filed Date: 8/13/20.
Accession Number: 20200813–5186.
Comments Due: 5 p.m. ET 9/3/20.
Docket Numbers: ER20–2666–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits ECSA No. 5654 to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5072.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2667–000.
Applicants: South Field Energy LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 8/15/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5077.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2668–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC filing of eight ECSAs to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5084.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2669–000.
Applicants: Neosho Ridge Wind, LLC.
Description: Baseline eTariff Filing: Market-Based Rates Tariff Application to be effective 8/28/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5107.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2670–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: § 205(d) Rate Filing: 2020–08–14_SA 2877 ITC Midwest-SMMPA 1st Rev TIA to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5109.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2671–000.
Applicants: Water Strider Solar, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 10/13/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5125.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2672–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: 8–14–20 Unexecuted Agreement, City and County of San Francisco WDT SA (SA 275) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5127.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2673–000.
Applicants: New York Independent System Operator, Inc, New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: Joint filing of LGIA among NYISO, NYSEG and Eight Point, SA. No. 2452 to be effective 7/31/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5148.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2674–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (Eversource) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5157.
Comments Due: 5 p.m. ET 9/4/20.
Docket Numbers: ER20–2675–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (National Grid) to be effective 10/14/2020.
Filed Date: 8/14/20.

Accession Number: 20200814–5158.
Comments Due: 5 p.m. ET 9/4/20.

Docket Numbers: ER20–2676–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (Unitil) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5160.
Comments Due: 5 p.m. ET 9/4/20.

Docket Numbers: ER20–2677–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (HQUS Eversource) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5161.
Comments Due: 5 p.m. ET 9/4/20.

Docket Numbers: ER20–2678–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (HQUS National Grid) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5162.
Comments Due: 5 p.m. ET 9/4/20.

Docket Numbers: ER20–2679–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (HQUS Unitil) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5165.
Comments Due: 5 p.m. ET 9/4/20.

Docket Numbers: ER20–2680–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating Second Amendments (HQUS Additional) to be effective 10/14/2020.
Filed Date: 8/14/20.
Accession Number: 20200814–5167.
Comments Due: 5 p.m. ET 9/4/2.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–16–000.
Applicants: LS Power Development, LLC.
Description: LS Power Development, LLC submits FERC–65–B Notice of Non-Material Change in Fact to Waiver Notification.
Filed Date: 8/13/20.
Accession Number: 20200813–5110.
Comments Due: 5 p.m. ET 9/3/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.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: August 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18281 Filed 8–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3211–010]

Power Authority of New York; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.
b. *Project No.:* 3211–010.
c. *Date Filed:* July 31, 2020.
d. *Applicant:* Power Authority of the State of New York (Power Authority or NYPA).
e. *Name of Project:* Hinckley (Gregory B. Jarvis) Hydroelectric Project.
f. *Location:* The existing project is located on West Canada Creek, a tributary of the Mohawk River, at the Hinckley Reservoir dam, approximately 0.5 mile upstream of the Hamlet of Hinckley in the counties of Oneida and Herkimer, New York. The project does not occupy federal land.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Cindy Brady, New York Power Authority, 123 Main Street, White Plains, NY 10601; (914) 287–3153; *Cynthia.Brady@nypa.gov.*
i. *FERC Contact:* Emily Carter, (202) 502–6512 or *emily.carter@ferc.gov.*
j. This application is not ready for environmental analysis at this time.
k. *Project Description:* The existing Gregory B. Jarvis Project consists of: (1) A 570-foot-long, 53-foot-high north embankment dam; (2) a 2,600-foot-long south embankment dam; (3) a 400-foot-long ogee-type, cyclopean concrete spillway with a crest elevation of 1,225 feet; [1] (4) a 65-foot-long, 82-foot-high non-overflow cyclopean concrete intake structure with the top at 1,240 feet; (5) intake structure trash racks with 5.375-inch clear-spacing; (6) a 15-foot-diameter penstock, which bifurcates into two 90-foot-long, 10.5-foot-diameter penstocks; (7) two 3-foot by 4-foot gate valves that lead to a 42-inch-diameter sluice gate; (8) a 120-foot-long, 55-foot-wide, 43-foot-high semi-underground powerhouse located 200 feet downstream of the non-overflow intake structure; (9) two 4.5-megawatt (MW) horizontal Kaplan turbine-generator units; (10) an underground transformer; (11) a 280-foot-long tailrace; (12) a 60-inch-diameter water pipe used as a low-level outlet; (13) two 4.16-kilovolt (kV) generator leads routed 50-feet underground to an aboveground NYPA-owned 46-kV/4.16-kV step-up transformer; (14) an approximately 300-foot-long, 46-kV underground transmission line; and (15) appurtenant facilities.

The Gregory B. Jarvis Project takes advantage of the releases prescribed by the New York State Canal Corporation (NYS Canal Corp) in accordance with the 2012 Hinckley Reservoir Operating Diagram to generate power. Project operation is adjusted on a twice-weekly basis. NYPA does not deviate from the operating diagram unless directed to do so by the NYS Canal Corp. Reservoir levels are maintained between 1,195 feet and 1,225 feet (the elevation of the spillway crest); however, reservoir water levels can fall below 1,195 feet during a dry season. The Jarvis Project does not operate when reservoir levels are below 1,195 feet.

The project has two horizontal Kaplan units which are each capable of operating between 300 and 900 cubic feet per second (cfs) for a total hydraulic

[1] All elevations are referenced to the Hinckley Datum. Elevations referenced to the Hinckley Datum are 1.04 feet higher than elevations referenced to the National Geodetic Vertical Datum [NGVD29 or mean sea level (msl)], thus, 1,225.0 Hinckley Datum corresponds to 1,223.96 feet NGVD29 or msl.

capacity of 1,800 cfs under normal operating conditions. At flows within the operating range of the units (300 to 1,800 cfs), the project provides outflow via generation. At flows below 300 cfs, or when the reservoir water surface elevation is below 1,195 feet, the project does not operate. During these conditions, the low-level sluice gate no. 4 is used to pass a minimum flow of 160 cfs. At flows greater than 1,800 cfs, and when the reservoir water surface elevation is greater than 1,225 feet, downstream releases are passed via a combination of generation and spillage.

NYPA occasionally operates the project in peaking mode. When NYPA is peaking, it will average the outflow required by the operating diagram over the course of the day. When operated in this manner, the project generates with a lower outflow during non-peak demand periods and then generates with a higher outflow during peak demand periods such that the total daily average flow is equal to the outflow prescribed by the operating diagram.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. At this time, the Commission has suspended access to the Commission's Public Access Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659. The application can also be found on the applicant's website (*http://www.nypa.gov/jarvis*).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	September 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	November 2020.
Commission issues draft Environmental Assessment (EA)	July 2021.
Comments on draft EA	August 2021.
Modified Terms and Conditions	October 2021.
Commission issues final EA	January 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 14, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–18265 Filed 8–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–63–000]

City of Alameda, California v. Pacific Gas and Electric Company; Notice of Complaint and Petition for Declaratory Order

Take notice that on August 10, 2020, City of Alameda, California (Complainant) filed a formal complaint and petition for declaratory order against Pacific Gas and Electric Company (Respondent) pursuant to sections 206 and 306 of the Federal Power Act [1] and Rules 206 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] requesting the Commission's intervention in order to terminate a controversy concerning the interpretation of an interconnection agreement between Complainant and Respondent and an operating agreement entered into pursuant to that interconnection agreement, all as more fully explained in the complaint.

Complainant certifies that a copy of the complaint was served on Respondent's corporate representative designated on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 9, 2020.

Dated: August 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18282 Filed 8–19–20; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824e and 825e.

[2] 18 CFR 385.206 and 385.207.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5806–003]

Deggendorf, Michael L.; Notice of Filing

Take notice that on August 13, 2020, Michael L. Deggendorf, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on September 3, 2020.

Dated: August 14, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–18280 Filed 8–19–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0403; FRL–10013–93–OAR]

Proposed Information Collection Request; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions From Operating Mill Tailings (40 CFR Part 61, Subpart W) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions from Operating Mill Tailings (Renewal)'' (EPA ICR No. 2464.03, OMB Control No. 2060–0706) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, the 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 December 31, 2020. 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 19, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2020–0403, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The 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: Jonathan P. Walsh, Radiation Protection Division, Office of Radiation and Indoor Air, Mail Code 6608T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9238; fax number: (202) 343–2304; email address: *walsh.jonathan@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 the EPA's docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the 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. The 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, the 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: On January 17, 2017, the EPA issued final revisions to the NESHAP for Radon Emissions from Operating Mill Tailings, codified at 40 CFR part 61, subpart W. These revisions were promulgated as part of a review of pre-1990 NESHAPs pursuant to Clean

Air Act Section 112(q)(1). Included in the final revisions was a requirement that owners and operators of uranium recovery facilities maintain specific records pertaining to the design, construction and operation of the uranium tailings impoundments, both conventional and non-conventional, and heap leach piles. These records are to be retained at the facility and contain information regarding the approved design of the impoundments and/or heap leach pile, including but not limited to, all tests performed that prove the liner is compatible with the material(s) being placed on the liner. For non-conventional impoundments this requirement also includes written and digital photographic records showing compliance with the requirement to maintain liquid in the impoundment such that any solid materials in the impoundment are not visible above the liquid level. Apart from the required design documents (per 40 CFR part 61, subpart A), records regarding the inspections to determine the liquid retention requirement for non-conventional ponds were new requirements for collection of information that is not covered under an already existing ICR for radionuclide NESHAPS, EPA Number 1100.16, OMB Number 2060–0191.

Information collected is used by the Agency to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with these standards. Compliance is demonstrated through inspection. All facilities are required to maintain their records for the operational lifetime of the facility. In some cases, they report results to the EPA.

Form Numbers: None.

Respondents/affected entities: The North American Industry Classification System (NAICS) codes of facilities associated with the activity of the respondents are: Uranium-Radium-Vanadium Ore Mining—212291.

Respondent's obligation to respond: Mandatory (CAA, Sec. 112; 40 CFR part 61).

Estimated number of respondents: 9 (total).

Frequency of response: Reporting (submission of digital photographs) at least monthly; more frequent or one-time collection of records, depending on activity.

Total estimated burden: 1,806 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $137,856 (per year), includes $2,400 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 5,347 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is attributable to a reduction in the number of estimated respondents. The initial ICR identified a larger universe of respondents that could potentially be subject to the newly defined requirements, many of which were (and remain) in the process of licensing and development. It is estimated that no additional facilities will become subject to these requirements in the next few years.

Dated: August 14, 2020.

Richard White,

Associate Director, Radiation Protection Division.

[FR Doc. 2020–18206 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0404; FRL 10013–80–OAR]

Alternative Methods for Calculating Off-Cycle Credits Under the Light-Duty Vehicle Greenhouse Gas Emissions Program: Application From American Honda Motor Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on an application from Honda Motor Company (''Honda'') for off-cycle carbon dioxide (CO_2) credits under EPA's light-duty vehicle greenhouse gas emissions standards. ''Off-cycle'' emission reductions can be achieved by employing technologies that result in real-world benefits, but where that benefit is not adequately captured on the test procedures used by manufacturers to demonstrate compliance with emission standards. EPA's light-duty vehicle greenhouse gas program acknowledges these benefits by giving automobile manufacturers several options for generating ''off-cycle'' CO_2 credits. Under the regulations, a manufacturer may apply for CO_2 credits for off-cycle technologies that result in off-cycle benefits. In these cases, a manufacturer must provide EPA with a proposed methodology for determining the real-world off-cycle benefit. Honda has submitted an application that describes a methodology for determining off-cycle credits from technologies described in their application. Pursuant to applicable regulations, EPA is making this off-cycle credit calculation methodology available for public comment.

DATES: Comments must be received on or before September 21, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0404, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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.*

FOR FURTHER INFORMATION CONTACT: Linc Wehrly, Office of Transportation and Air Quality, Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4286. Fax: (734) 214–4869. Email address: *wehrly.linc@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA's light-duty vehicle greenhouse gas (GHG) program provides three pathways by which a manufacturer may accrue off-cycle carbon dioxide (CO_2) credits for those technologies that achieve CO_2 reductions in the real world but where those reductions are not adequately captured on the test used to determine compliance with the CO_2 standards, and which are not otherwise reflected in the standards' stringency. The first pathway is a predetermined list of credit values for specific off-cycle technologies that may be used beginning in model year 2014.[1] This pathway allows manufacturers to use conservative credit values established by EPA for a wide range of technologies, with minimal data submittal or testing

[1] See 40 CFR 86.1869–12(b).

requirements, if the technologies meet EPA regulatory definitions. In cases where the off-cycle technology is not on the menu but additional laboratory testing can demonstrate emission benefits, a second pathway allows manufacturers to use a broader array of emission tests (known as ''5-cycle'' testing because the methodology uses five different testing procedures) to demonstrate and justify off-cycle CO_2 credits.[2] The additional emission tests allow emission benefits to be demonstrated over some elements of real-world driving not adequately captured by the GHG compliance tests, including high speeds, hard accelerations, and cold temperatures. These first two methodologies were completely defined through notice and comment rulemaking and therefore no additional process is necessary for manufacturers to use these methods. The third and last pathway allows manufacturers to seek EPA approval to use an alternative methodology for determining the off-cycle CO_2 credits.[3] This option is only available if the benefit of the technology cannot be adequately demonstrated using the 5-cycle methodology. Manufacturers may also use this option to demonstrate reductions that exceed those available via use of the predetermined list.

Under the regulations, a manufacturer seeking to demonstrate off-cycle credits with an alternative methodology (*i.e.,* under the third pathway described above) must describe a methodology that meets the following criteria:

- Use modeling, on-road testing, on-road data collection, or other approved analytical or engineering methods;
- Be robust, verifiable, and capable of demonstrating the real-world emissions benefit with strong statistical significance;
- Result in a demonstration of baseline and controlled emissions over a wide range of driving conditions and number of vehicles such that issues of data uncertainty are minimized;
- Result in data on a model type basis unless the manufacturer demonstrates that another basis is appropriate and adequate.

Further, the regulations specify the following requirements regarding an application for off-cycle CO_2 credits:

- A manufacturer requesting off-cycle credits must develop a methodology for demonstrating and determining the benefit of the off-cycle technology and carry out any necessary testing and analysis required to support that methodology.
- A manufacturer requesting off-cycle credits must conduct testing and/or prepare engineering analyses that demonstrate the in-use durability of the technology for the full useful life of the vehicle.
- The application must contain a detailed description of the off-cycle technology and how it functions to reduce CO_2 emissions under conditions not represented on the compliance tests.
- The application must contain a list of the vehicle model(s) which will be equipped with the technology.
- The application must contain a detailed description of the test vehicles selected and an engineering analysis that supports the selection of those vehicles for testing.
- The application must contain all testing and/or simulation data required under the regulations, plus any other data the manufacturer has considered in the analysis.

Finally, the alternative methodology must be approved by EPA prior to the manufacturer using it to generate credits. As part of the review process defined by regulation, the alternative methodology submitted to EPA for consideration must be made available for public comment.[4] EPA will consider public comments as part of its final decision to approve or deny the request for off-cycle credits.

II. Off-Cycle Credit Application: GHG Credit for Cold Storage Evaporator

Using the alternative methodology approach discussed in their application, Honda is applying for credits for all 2017 model year and later Honda and Acura vehicles for a cold storage evaporator system that results in idle start-stop credits beyond those provided in the regulations. Honda's cold storage evaporators utilize a paraffin wax material in the evaporator tank to sustain the evaporator's ability to absorb heat from the cabin air when the engine is shut off, consequently maintaining cooler air temperature and cabin comfort for a longer period of time during engine shutoff as compared to the shorter comfort period provided by a non-cold storage evaporator. The concept behind this strategy is similar to the use of alternative passenger warming technologies that maintain driver comfort longer during engine off events at *cold* ambient temperatures in order to delay engine startups for cabin heating. In particular, at ambient temperatures where air conditioning is used for cooling the cabin, Honda's cold storage evaporator implementation aims to reduce A/C compressor and engine use during both extended engine off vehicle stops and multiple short stops while also increasing the ambient temperature threshold above which the idle start-stop system is disabled in order to maintain cabin comfort.

Honda has provided a methodology for and test data from two different types of operational test conditions—extended stops and multiple stops—as well as an alternative calculation method that yields higher credit values than the primary method. Using the lower values from the primary evaluation and calculations, Honda is requesting EPA approval of an off-cycle GHG credit of 1.0 grams CO_2 per mile for the Cold Storage Evaporator equipped in MY 18–19 Honda Odyssey, 1.2 g/mile for the MY 17–19 Honda Pilot and Acura MDX & MY 19 Honda Passport AWD, 1.0 g/mi for the MY 19 Acura RDX AWD, 0.7 g/mi for MY 19 Honda Passport FWD and 0.6 g/mi for MY 17–19 Acura TLX & MY 19 Acura RDX FWD.

EPA has previously approved credits determined by alternative GHG credit calculation methods for idle start-stop systems for both Mercedes and Hyunda-Kia. Details of the methodology, testing and analysis can be found in Honda's application.

III. EPA Decision Process

EPA has reviewed the application for completeness and is now making the application available for public review and comment as required by the regulations. The off-cycle credit application submitted by Honda (with confidential business information redacted) has been placed in the public docket (see **ADDRESSES** section above) and on EPA's website at *https://www.epa.gov/vehicle-and-engine-certification/compliance-information-light-duty-greenhouse-gas-ghg-standards.*

EPA is providing a 30-day comment period on the application for off-cycle credits described in this notice, as specified by the regulations. The manufacturer may submit a written rebuttal of comments for EPA's consideration, or may revise an application in response to comments. After reviewing any public comments and any rebuttal of comments submitted by manufacturers, EPA will make a final decision regarding the credit request. EPA will make its decision available to the public by placing a decision document in the docket and on EPA's website at the same manufacturer-specific page shown above. While the broad methodologies used by Honda could potentially be used for other vehicles and by other manufacturers,

[2] See 40 CFR 86.1869–12(c).

[3] See 40 CFR 86.1869–12(d).

[4] See 40 CFR 86.1869–12(d)(2).

the vehicle specific data needed to demonstrate the off-cycle emissions reductions would likely be different. In such cases, a new application would be required, including an opportunity for public comment.

Dated: August 14, 2020.

Mary Manners,

Acting Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2020–18207 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2020–0183; FRL–10013–75–ORD]

Availability of the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period; extension.

SUMMARY: The Environmental Protection Agency (EPA) is extending the public comment period for the document titled, ''Availability of the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds.'' The original **Federal Register** document announcing the public comment period was published on July 24, 2020. The public science webinar will still convene on August 19, 2020.

DATES: The public comment period for the notice published on July 24, 2020 (85 FR 44887), is being extended. The EPA must receive comments on or before September 23, 2020.

ADDRESSES: The ''Availability of the IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds'' is available via the internet on IRIS' website at *https://www.epa.gov/iris* and in the public docket at *https://www.regulations.gov,* Docket ID: EPA–HQ–ORD–2020–0183.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the draft IRIS Assessment Plan for Oral Exposure to Vanadium and Compounds, contact Dr. James Avery, CPHEA; telephone: 202–564–1494; or email: *avery.james@epa.gov.*

SUPPLEMENTARY INFORMATION: How to Submit Technical Comments to the Docket at *https://www.regulations.gov.* Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2020–0183 for the vanadium and compounds (oral) IRIS assessment, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

For information on visiting the EPA Docket Center Public Reading Room, visit *https://www.epa.gov/dockets.* Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room may be closed to the public with limited exceptions. The telephone number for the Public Reading Room is 202–566–1744. The public can submit comments via *www.Regulations.gov* or email.

Instructions: Direct your comments to docket number EPA–HQ–ORD–2020–0183 for vanadium and compounds (oral). Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *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 *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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health and Environmental Assessment.

[FR Doc. 2020–18128 Filed 8–19–20; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a Modified System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–8—FCA internet Access System—FCA. The FCA internet Access System—FCA system is used to monitor FCA and Farm Credit System Insurance Corporation (FCSIC) employees' and contractors' access to the internet. The Agency is updating the notice to broaden the overall purpose of the system, including maintaining account and usage information required for approving, monitoring, facilitating, and disabling access to FCA information technology and is updating the categories of records and individuals maintained in the system to reflect that modified purpose.

Additionally, the FCA is making administrative updates as well as non-substantive changes to conform to the

system of records notice (SORN) template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A–108.

DATES: You may send written comments on or before September 21, 2020. The FCA filed an amended System Report with Congress and the Office of Management and Budget on May 29, 2020. This notice will become effective without further publication on September 29, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

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

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

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

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The substantive changes and modifications to the currently published version of FCA–8—FCA internet Access System—FCA include:

1. Updating the name of the system to reflect the expanded purpose—FCA–8—FCA Information Technology User Access and Usage Records—FCA.
2. Identifying the records in the system as unclassified.
3. Updating the system location to reflect the system's current location.
4. Updating the system managers to reflect the system's current owner.
5. Expanding the purpose of the system to include maintaining account and usage information required for approving, monitoring, facilitating, and disabling access to FCA information technology.
6. Expanding and clarifying the categories of records to ensure they are consistent with the purposes for which the records are collected.
7. Expanding and clarifying the categories of individuals to ensure they are consistent with the purposes for which the records are collected.
8. Expanding and clarifying how records may be stored and retrieved.
9. Revising the retention and disposal section to reflect the relevant records schedule.
10. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

Additionally, non-substantive changes have been made to the notice to align with the latest guidance from OMB.

The amended system of records is: FCA–8—FCA Information Technology User Access and Usage Records—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–8—FCA Information Technology User Access and Usage Records—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Information Technology, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Chief Information Officer and Director, Office of Information Technology, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252, and 44 U.S.C. 3101, 3501, 3534.

PURPOSES OF THE SYSTEM:

Information in this system of records is used by FCA to maintain account and usage information required for approving, monitoring, facilitating, and disabling access to FCA information technology.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA and FCSIC employees, contractors, and other authorized users of or persons requesting access to or use of FCA information technology.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information including, but not limited to: (a) Contact information including name, title or positions held, business and affiliations, email and telephone numbers; (b) system, network, or similar logs, including access and usage records, including registration numbers or identification numbers associated with FCA information technology; (c) websites visited, dates, and times; (d) usernames, passwords, authentication credentials, and similar information associated with access to and use of FCA information technology; (e)information associated with specific user information technology requests (incident tickets), including issue and resolution notes and contact information; and (f) internet protocol (IP) addresses, Media Access Control (MAC) addresses, usage logs, and similar information associated with external users of FCA information technology.

RECORD SOURCE CATEGORIES:

Current and former FCA and FCSIC employees, contractors, and other authorized users of or persons requesting access to or use of FCA information technology.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175). The information

collected in the system will be used in a manner compatible with the purposes for which the information has been collected.

Disclosure to consumer reporting agencies: None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in hard copy and electronic form, including file folders on a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name of individual, user name, user ID, IP or MAC address, machine ID or name, or some combination thereof.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the FCA Comprehensive Records Schedule and the National Archives and Records Administration's General Records Schedule requirements.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a need-to-know in support of their official duties. Paper records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875; Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Dated: August 13, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–18223 Filed 8–19–20; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is proposing to establish a new system of records. The Non-Payroll Employee Administrative Records System will collect information used for non-payroll personnel actions and human resources administrative purposes, including administering supplemental benefits, employee assistance programs, and work life programs.

DATES: You may send written comments on or before September 21, 2020. The FCA filed a Notice of a New System Report with Congress and the Office of Management and Budget on May 13, 2020. This notice will become effective without further publication on September 29, 2020, unless modified by a subsequent notice to incorporate comments received from the public.

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

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

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

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when establishing a new system of records.

The new system of records, FCA–19—Non-Payroll Employee Administrative Records System—FCA, will be used to collect and maintain information used for non-payroll personnel actions and for human resources administrative purposes, including administering supplemental benefits, employee assistance programs, and work life programs. These include, but are not limited to retirement, transit subsidies, parking, fitness facilities, classes, wellness seminars, student loan repayment, flexible spending, child care subsidies, flexible work schedules and telecommuting, as well as other similar benefits not otherwise covered as part of the general personnel and administrative records covered by the government-wide system of records notice published by the Office of Personnel Management (OPM/GOVT–1) or those records covered under FCA–1—Employee Attendance, Leave, and Payroll Records—FCA.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA sent notice of this new system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

System Name and Number:

FCA–19—Non-Payroll Employee Administrative Records System—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Director, Office of Agency Services and Chief Human Capital Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSES OF THE SYSTEM:

The purpose of the Non-Payroll Employee Administrative Records System is for the Agency to collect and maintain information used for non-payroll personnel actions and for human resources administrative purposes, including administering supplemental benefits, employee assistance programs, and work life programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, interns, and contracting personnel of the Farm Credit Administration, in addition to other individuals who may make use of FCA's fitness facilities or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information may include: (a) Individual name, Social Security number (SSN), employee ID number, Taxpayer Identification Number (TIN), or similar; (b) employment related information including title, position, grade, start date, supervisor's name, performance reports, training, professional licenses, certification and memberships information, whether the employee maintains a security clearance related to his or her position, and disciplinary information; proposed and approved work schedules and alternative work locations; (c) home and work contact information, including address, telephone number, and email address; (d) information about modes of transportation to and from work; (e) information related to an employee's participation in supplemental retirement health and benefit programs, including contribution amount(s), dependents and beneficiary names, addresses, relationship, and Social Security number(s); (f) information about student loans related to the student loan repayment benefit, including type of loan, loan account number, loan holder name and address, total loan amount and amount outstanding; and service agreement information; and (g) receipts and similar documentation provided as evidence of expenditures for reimbursement through supplemental benefits, employee assistance and work life programs.

As noted above, this system covers general personnel and administrative records not otherwise included in OPM/GOVT–1 or FCA–1. This system complements those systems, and in some cases, the notice incorporates by reference but does not repeat all the information contained in those systems.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from current and former FCA employees, interns, and contractors, as well as from any individual who may use FCA's fitness facilities or services, and from entities associated with benefits and work-life programs including retirement, human resources functions, accounting, and payroll systems administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.'' The information collected in the system will be used in a manner compatible with the purposes for which the information has been collected and, in addition to the general routine uses, may be disclosed for the following purposes:

1. To carriers, providers, and other federal agencies involved in the administration of employee benefit programs and such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in such programs, process employee participation in such programs, audit benefits paid under such programs, or perform any administrative function in connection with those programs; and

2. To Federal, State, and local taxation authorities concerning compensation to employees or to contractors; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to financial organizations concerning employee allotments to accounts; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

Disclosure to consumer reporting agencies: None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic form. Paper records are maintained in file folders, with sensitive information kept under lock and key, with access limited to those with a need-to-know in support of their official duties. Electronic records are maintained in secure file shares and similar systems with technical access restricted to authorized personnel with a need-to know in support of their duties.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, individual name, SSN, employee ID, or some combination thereof.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Files are retained in accordance with the FCA's Comprehensive Records Schedule, item 6, or with the applicable National Archives and Records Administration (NARA) General Records Schedules (GRS).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with need-to-know in support of their official duties. Paper records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

None. This is a new System of Records.

Dated: August 13, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–18224 Filed 8–19–20; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Rescission of a System of Records Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is rescinding the System of Records Notice, FCA–18—Inspector General Investigative Files—FCA, which is duplicative of FCA–7—Inspector General Investigative Files—FCA.

DATES: You may send written comments on or before September 21, 2020. The proposed action will become effective without further publication on September 29, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

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

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

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.*

Once you are in the website, click inside the ''I want to. . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4019, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 and subsequent guidance from the Office of Management and Budget that agencies publish in the **Federal Register**, notice of rescission of a System of Records Notice when an agency stops maintaining a previously established system of records. A review of the System of Records Notice, FCA–18—Inspector General Investigative Files—FCA, was conducted in March 2020. The Agency determined the system notice was duplicative of another system, FCA–7—Inspector General Investigative Files—FCA and is no longer necessary. The Agency previously published a notice of rescission for FCA–18 but erroneously maintained the system on its list of active systems of records.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA sent notice of this action to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

SYSTEM NAME AND NUMBER:

FCA–18—Inspector General Investigative Files—FCA.

HISTORY:

Federal Register Vol. 64, No. 100/Tuesday, May 25, 1999 page 21875, Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Dated: August 13, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–18225 Filed 8–19–20; 8:45 am]

BILLING CODE 6705–01–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 September 8, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *The Mathis Family Gift Trust and Sharon Lambert Mathis, individually and as trustee, both of Rome, Georgia;* to join the Mathis Family Control Group and retain voting shares of RCB Financial Corporation, and thereby indirectly retain voting shares of River City Bank, both of Rome, Georgia.

Board of Governors of the Federal Reserve System, August 17, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–18299 Filed 8–19–20; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1204]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on 06/02/2020 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the *Attention:* CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS) (OMB Control No. 0920–1204, Exp. 11/30/2020)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC's National Center for Environmental Health (NCEH) is requesting a three-year Paperwork Reduction Act (PRA) clearance to revise and continue to collect information under the ''Behavioral Risk Factor Surveillance System (BRFSS) Asthma Call-back Survey (ACBS)'' (OMB Control No. 0920–1204, Expiration Date 11/30/2020).

The ACBS is funded by the NCEH National Asthma Control Program (NACP) in the Asthma and Community Health Branch (ACHB). The ACBS is a follow-up survey on asthma and is administered on behalf of NCEH by the CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) BRFSS Program. The BRFSS (OMB Control No. 0920–1061, Expiration date 3/31/2021) is a nationwide system of customized, cross-sectional telephone health surveys. The BRFSS information collection is conducted in a continuous, three-part telephone interview process: Screening, participation in a common BRFSS core survey, and participation in optional question modules that states use to customize survey content. BRFSS coordinators in the health departments in U.S. states, territories, and the District of Columbia (collectively referred to as ''states'' and ''jurisdictions'') are responsible for both the BRFSS and the ACBS administration.

The purpose of ACBS is to gather state-level asthma data and to make them available to track the burden of the disease, to monitor adherence to asthma guidelines, and to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Beyond asthma prevalence estimates, for most states, the ACBS provides the only sources of adult and child asthma data on the state and local level.

Data collection for ACBS involves screening, obtaining permission, consenting, and telephone interviewing on a subset of the BRFSS respondents from participating states. The ACBS eligible respondents are BRFSS adults, 18 years and older, who report ever being diagnosed with asthma. In addition, some states include children, below 18 years of age, who are randomly selected subjects in the BRFSS household. Parents or guardians serve as ACBS proxy respondents for their children ever diagnosed with asthma. If both the BRFSS adult respondent and the selected child in the household have asthma, then only one or the other is eligible for the ACBS.

State BRFSS Coordinators submit de-identified data files to CDC on a monthly or quarterly basis for cleaning and weighting. The CDC BRFSS ACBS operation team returns clean, weighted data files to the state of origin for its use. The ACBS adds considerable state-level depth to the existing body of asthma data. It addresses critical questions surrounding the health and experiences of persons with asthma. Health data include symptoms, environmental factors, and medication use among persons with asthma. Data on their experiences include activity limitation, health system use, and self-management education. These asthma data are needed to direct and evaluate interventions undertaken by asthma control programs located in state health departments. Federal agencies and other entities also rely on this critical information for planning and evaluating efforts, and to reduce the burden from this disease. The CDC makes annual ACBS datasets available for public use and provides guidance on statistically appropriate uses of the data.

The NACP provides its 40 participating states with technical and methodological assistance. Based on feedback from ACBS working groups, the NACP proposes to revise the ACBS protocol to improve response. The protocol revisions include three significant changes. First, the ACBS interview will be done within two days of the BRFSS interview based on a NACP project that evaluated the impact of the original two-week lag on reduced ACBS response rates. Secondly, in households where both the randomly selected child and adult responding to the BRFSS have a diagnosis of asthma, the NACP requests to increase the child proportion from 50% up to 75%—100% to maximize the child sample size. Thirdly, the NACP requests to drop the option of identifying the Most

Knowledge Person for child respondents in the ACBS, and to move it to the BRFSS state-added questions section.

Also, in response to the 2017 Terms of Clearance, the NACP undertook efforts to streamline the 2021 ACBS questionnaire, reduce unnecessary burden, and ensure that the question wording is synchronized with more recent studies. The questionnaires were re-evaluated by ACBS questionnaire working groups and the ACBS recipients.

The time burden estimates are based on the 2016 ACBS data collection, which is the most recent data released. The burden table reflects the landline and cell phone data collection methods used in 2016 and later years. Additionally, the time burden accounts for reporting burden incurred by the states for the monthly or quarterly adult and child ACBS data submissions to CDC. The total estimated annualized time burden for all respondents is 6,615 hours. Participation in the ACBS is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
BRFSS Adults	ACBS Landline Screener—Adult	17,800	1	1/60
	ACBS Cell Phone Screener—Adult	16,733	1	1/60
BRFSS Parents or Guardians of Children	ACBS Landline Screener—Child	2,576	1	1/60
	ACBS Cell Phone Screener—Child	3,824	1	1/60
ACBS Adults	ACBS Adult Consent and Questionnaire	23,166	1	10/60
ACBS Parents or Guardians of Children	ACBS Child Consent and Questionnaire	3,787	1	10/60
State BRFSS Coordinators	ACBS Adult Data Submission Layout	40	12	155/60
	ACBS Child Data Submission Layout	40	12	25/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18278 Filed 8–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0213]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Vital Statistics Report Forms to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 5, 2020 to obtain comments from the public and affected agencies. CDC did not receive any comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Vital Statistics Report Forms (OMB Control No. 0920–0213, Exp. 04/30/2021)—Extension — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The compilation of national vital statistics dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. This submission requests approval to collect monthly and annual summary statistics for three years.

The Monthly Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, and infant deaths. Similar data have been published since 1937 and are the sole source of these data at the National level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events. Respondents for the Monthly Vital Statistics Reports Form are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, local (county) officials in New Mexico who record marriages occurring, and divorces and annulments granted in each county of New Mexico will use this form. This form is also

designed to collect counts of monthly occurrences of births, deaths, and infant deaths immediately following the month of occurrence.

The Annual Vital Statistics Occurrence Report Form collects final annual counts of marriages and divorces by month for the United States and for each State. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. Respondents for the Annual Vital Statistics Occurrence Report Form are registration officials in each State and Territory, the District of Columbia, and New York City.

There are no costs to respondents other than their time.

The total annualized burden hours are 139.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, Territory, and New Mexico County Officials.	Monthly Vital Statistics Report	91	12	8/60
State, Territory, and other officials	Annual Vital Statistics Occurrence Report	58	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18277 Filed 8–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20NK; Docket No. CDC–2020–0094]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled NCHS Research and Development Survey (RANDS). RANDS will leverage commercially-created and maintained survey panels to supplement and expand NCHS' methodological research, allowing NCHS to quickly obtain and disseminate information about the ongoing coronavirus outbreak and provide documentation supporting the validity of outbreak-related survey questions.

DATES: Written comments must be received on or before October 19, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0094 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Research and Development Survey (RANDS) COVID19 Data Collection—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention's (CDC)

Background and Brief Description

The National Center for Health Statistics (NCHS) requests approval for a new six-month OMB Emergency Clearance for Research and

Development Survey (RANDS) COVID19 Data Collection. Since COVID–19 has resulted in a public health crisis, data related to the pandemic is needed in an expedited manner.

This information collection request encompasses two separate, but related information collections. First, a two-round methodological survey (RANDS–COVID–19) using NORC's AmeriSpeak Panel and TrueNorth supplemental panel, and second, a set of cognitive interviews that will be used to validate the items on the RANDS–COVID–19 questionnaire. While NCHS would prefer to conduct iterative rounds of cognitive interviews prior to the fielding of the RANDS–COVID–19 questionnaire, given both the limitations of the current testing environment due to social distancing and the public health need for the RANDS–COVID–19 data itself, NCHS will be unable to follow its typical workflow. Instead, the cognitive interviewing project proposed here will function as a validity study so that NCHS staff and other subject matter experts can understand the constructs of the questions as they analyze, interpret, and disseminate the RANDS–COVID–19 data.

The purpose of both activities will include a research component, and will also contribute to CDC's ongoing surveillance of the COVID–19 pandemic. Given the current outbreak and the resulting limitations placed on NCHS' other data collections, RANDS will provide NCHS and CDC with early estimates of COVID–19-related concepts. The questionnaire will cover areas such as general health, psychological distress, chronic conditions, health behaviors, testing and treatment for COVID–19, the outbreak's effects on healthcare access, and how individuals are modifying their behaviors due to the epidemic. Estimated burden for this one-time information collection is 7,447 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

Types of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Individuals or households	RANDS–COVID–19 Round 1	12,000	1	20/60	4,000
Individuals or households	RANDS–COVID–19 Round 2	10,000	1	20/60	3,334
Individuals or households	Screener (recruited from newspaper/flyer).	150	1	5/60	13
Individuals or households	Questionnaire	100	1	55/60	92
Individuals or households	Respondent Data Collection Sheet	100	1	5/60	8
Total					7,447

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18279 Filed 8–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20HR]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Community-Based Organizations' Changes in Preparedness and Resources for Support of Biomedical HIV Prevention to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 9, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Community-Based Organizations' Changes in Preparedness and Resources for Support of Biomedical HIV Prevention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Antiretroviral (ARV) medications can be effectively used to reduce the number

of new HIV infections. In persons without HIV infection, ARVs can be given: (1) For 28 days following a potential HIV exposure through sexual or injection behaviors as nPEP, or (2) before potential sexual HIV exposures and taken daily for months to years as PrEP. In persons with HIV infection, beginning treatment with ARVs early in their infection (*e.g.,* with high CD4 cell counts) can greatly lower their risk of transmitting infection to uninfected sexual partners; this is also called treatment as prevention or TasP. PrEP is 99% effective at reducing the risk of HIV through sexual contact when taken daily. PrEP is also 74%-84% effective at reducing the risk of HIV infection through injection drug use when taken daily. Persons living with HIV who are taking ARVs as prescribed, as well as achieving viral suppression, effectively have no risk for transmitting the virus to an HIV-negative partner through sexual contact. CDC is working with various jurisdictions with high HIV prevalence to increase capacity of ARV provision, build collaborative efforts between health departments and community-based organizations, and engage multi-sector provider systems to reach individuals with high risk of HIV infection as part of the End the HIV Epidemic Initiative. CBOs will play a crucial role in the End the HIV Epidemic Initiative. In a previous survey conducted by CDC's Division of HIV/AIDS Prevention, CBOs reported high awareness of nPEP, PrEP, and TasP, but their ability to meet client need was low. Although clinical CBOs were more prepared to support the expansion of biomedical HIV prevention interventions, the likelihood that all CBOs would incorporate these interventions if they had additional resources was somewhat high.

Research is needed to better understand the capacity of CBOs to incorporate biomedical HIV prevention interventions into their existing infrastructure. It is unclear whether the provision of and capacity to provide nPEP, PrEP, and TasP has increased among CBOs since the original survey was conducted. Furthermore, it is unclear whether non-clinical CBOs have achieved parity in linking clients to biomedical HIV prevention interventions with their clinical counterparts. This new survey will assess current capacity and provision of nPEP, PrEP, and TasP among CBOs providing HIV services to populations with increased risk for HIV acquisition. In addition, the results of this survey will be compared to the results of the 2015 survey to assess differences in awareness, capacity, and provision of biomedical HIV prevention interventions. Respondents will include organizations engaged in HIV prevention and outreach. Up to 330 respondents (n=330; 175 funded CBOs and 155 CBOs that did not receive funding) will be recruited to complete the survey. This project will employ a cross-sectional survey design. Executive level staff members of all CBOs within each of the two strata (mentioned above) will receive phone calls, using publicly available information, to elicit interest in participating in the survey. If the executive level staff member is not interested or is unable to complete the survey, he or she may nominate a direct client service provider and provide this person's email address to study staff. Potential respondents will be contacted from a list of CBOs that completed the 2015 survey. Potential respondents from CBOs that received DHAP funding through PS15–1502 and PS17–1704 will also be contacted to determine their interest in participating in the data collection effort. Each organization's representative will be sent an email with a link to the survey website (created with Survey Monkey). One link will be used for CBOs directly funded by CDC and a separate link will be used for unfunded CBOs. The email will instruct the recipient on how to complete the survey. Three email reminders will be sent to organizations for those that do not complete the survey. Email reminders will be sent two weeks, one month, and two months after the initial email if the potential respondent does not compete the survey. The survey should take approximately 30 minutes to complete.

Where possible, data from the 2015 survey will be combined with data from the 2020 survey. Analyses will include completeness (non-response rates per item) as well as frequency of item responses for awareness, intentions, and provision of PrEP, nPEP, and TasP will be assessed for all respondents combined. Frequency and differences in item responses will be analyzed for relationship to CBO characteristics (*e.g.,* clinical CBOs vs non-clinical CBOs). Frequency and differences in item responses will be analyzed across survey years. We will perform multivariable analysis as needed (to assess interactions between time and type of CBO).

The total annualized burden hours is 165 hours. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
.....	Community Based Organization HIV Prevention Needs Assessment Survey.	330	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18276 Filed 8–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20HO]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Heat-related Changes in Cognitive Performance to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 25, 2020 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This

notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Heat-related Changes in Cognitive Performance—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–173 as amended by Public Law 95 –164 (Federal Mine Safety and Health Act of 1977), and Public Law 109–236 (Mine Improvement and New Emergency Response Act of 2006) has the responsibility to conduct research to improve working conditions and to prevent accidents and occupational diseases in U.S. mines. Heat strain is one of these occupational diseases and is an increasing problem among many industries, including mining. As mines expand into deeper and hotter environments, and as heat waves occur with increasing frequency and severity, heat strain among underground and surface miners is likely to increase. Not only can heat strain lead to heat illness, but studies have demonstrated associations between heat exposure and work injuries. Although the underlying mechanism between heat exposure and injury is not known, reduced cognitive function is likely contributory.

Despite the increasing importance of heat strain in mining, few studies have focused on heat strain among U.S. miners. The few studies that are available have demonstrated that miners often exceed a core body temperature of 38 °C during work activities, which is above the recommended threshold, but more information on frequency, duration, and intensity of elevated core body temperatures is needed in order to focus future heat strain research to better serve the mining industry.

In addition to determining the patterns of duration and intensity of heat strain among U.S. miners, investigating the additional effects of heat strain beyond the risk of heat illness is an important step in improving miner health and safety. Studies have demonstrated associations between heat stress and cognitive deficits, but substantial inter- and intra-individual variability exists in the physiologic and cognitive responses to heat exposure. More information is needed about the most important factors (*e.g.,* age, sex, chronic disease, fitness level, hydration) contributing to individual variability as well as interactions between these factors, because individual variability likely affects the usefulness of one-size-fits-all heat stress indices that are currently used in mining. Additionally, it is unclear which characteristics of core body temperature (*e.g.,* absolute temperature thresholds vs. rising or falling temperatures vs rate of temperature change) are most associated with cognitive dysfunction. A better understanding of how individual variability and core body temperature relate to cognitive deficits would assist in developing strategies for screening and monitoring miners to mitigate or prevent heat strain. Therefore, this study aims to assess the following objectives: (1) Whether a core body temperature threshold exists at which cognitive performance begins to decline, (2) What factors most contribute to individual variability in cognitive and physiologic responses to heat, and (3) What patterns of duration and intensity of heat strain are most common among U.S. surface and underground miners.

To study these objectives, a dual-arm field and laboratory study will be conducted. The field study will be conducted at surface and underground mines. Data will be collected from miners working in warm or hot areas of participating mines. Participants will swallow temperature pills to measure core body temperature and will wear bio-harnesses to measure heart rate. Two six-minute assessments will be taken during each shift. The assessments include questions on sleepiness and work tasks and a Psychomotor Vigilance Test (PVT) to assess vigilant attention and reaction time. An initial screening questionnaire as well as post-shift questionnaires will be used to obtain information on risk factors for heat strain and cognitive deficits. The purpose of collecting data at the field sites is to evaluate the frequency, duration, and intensity of heat strain by monitoring core body temperature and heart rate throughout two complete shifts, as well as to assess associations between core body temperature and cognitive deficits.

The laboratory study will be conducted in an environmental chamber, in which environmental conditions can be highly controlled. Data will be collected from miners, construction workers, and firefighters. These three groups were chosen because of their risk of heat exposure and their proximity to the NIOSH laboratory where the study will be conducted. Participants will perform alternating resistance and aerobic exercises followed by brief surveys to evaluate sleepiness (Karolinska Sleepiness Scale), affect (Positive and Negative Affect Schedule), and fatigue. Following these surveys, two cognitive tests (PVT and N-back, which measures vigilance, working memory, and complex tracking) will be administered. Testing will occur at room temperature and in hot conditions to compare cognitive test results between conditions. Participants will swallow temperature pills and wear bio-harnesses to enable the collection of real-time core body temperature and heart rate data. An initial health screening questionnaire as well as additional questionnaires administered prior to each test will be used to ensure that participants are able to withstand the physical demands of testing and to provide information on factors that affect individual variability to heat

tolerance. Additionally, a physical examination and fingerstick blood tests will be used for health screening. The purpose of collecting data in the environmental chamber is to compare physiologic and cognitive measurements at different core body temperatures to evaluate factors contributing to individual variability in cognitive and physiologic responses to heat and to evaluate whether core body temperature thresholds exist above which cognitive deficits are observed.

The total estimated burden hours are 103. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (hours)
Miners.				
	Ingestion of temperature pill	30	2	1/60
	Fitting of chest strap	30	2	1/60
	Consent form (field)	30	1	30/60
	Health screening questionnaire (field)	30	1	30/60
	Heat stress app—shift questionnaire (field)	30	4	1/60
	PVT cognitive test (field)	30	5	5/60
	Heat stress app—post—shift questionnaire (field)	30	2	10/60
	Ingestion of temperature pill	15	3	1/60
	Fitting of chest strap	15	3	1/60
	Consent form (chamber)	15	1	30/60
	Physical examination	15	1	10/60
	Health screening questionnaire (chamber)	15	1	30/60
Miners/ firefighters/ construction workers.				
	Fingerstick blood sample for point-of-care testing	8	1	1/60
	Release of Information (HIPPA)	3	1	1/60
	Borg and thermal scale	15	5	1/60
	PANAS KSS fatigue	15	5	2/60
	Cognitive test: PVT (chamber)	15	5	10/60
	Cognitive test: N-back	15	5	1/60
	Pre-test screening questionnaire (chamber)	15	2	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–18275 Filed 8–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Administration for Native Americans (ANA) Ongoing Progress Report (OPR) and Objective Work Plan (OWP)

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a revision to the information collection: Ongoing Progress Report (OPR) and the Objective Work Plan (OWP) (OMB #0970–0452). Changes are proposed to reduce the burden on the public by combining ANA's Annual Data Report (OMB #0970–0475) with the OPR.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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.

SUPPLEMENTARY INFORMATION:

Description: Content changes are being made to the currently approved OPR. ANA will continue to use the currently approved OPR with minimal changes to the instructions for the remainder of fiscal year (FY) 2020 and will use the modified OPR beginning FY 2021. The modified OPR combines ANA's Annual Data Report (OMB #0970–0475) with the OPR.

The information in the OPR is collected on a semi-annual basis to monitor the performance of grantees and better gauge grantee progress. The semi-annual data collection replaces the previous quarterly filing requirement of the OPR.

The OPR information collection is conducted in accordance with Sec. 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects.

There are no changes proposed to the OWP. The OWP information collection is conducted in accordance with 42 U.S.C. of the Native American Programs Act of 1972, as amended. This collection is necessary to evaluate applications for financial assistance and determine the relative merits of the projects for which such assistance is

requested, as set forth in Sec. 806 [42 U.S.C. 2991d–1](a)(1).

Respondents: Federally and state-recognized tribes, Native Pacific Islanders, Tribal Colleges and Universities, native non-profits, and consortia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Objective Work Plan	300	1	3	900	300
Ongoing Progress Report FY 2020	200	2	1	400	133
Ongoing Progress Report FY 2021—Exp. Date	200	4	2	1600	533

* Burden is annualized over the three year approval period.

Estimated Total Annual Burden Hours: 966.

Authority: Sec. 806 [42 U.S.C. 2991d–1](a)(1) and Sec. 811 [42 U.S.C. 2992].

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–18219 Filed 8–19–20; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1429]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Human Drug Compounding Outsourcing Facilities under Section 503B of the Federal Food, Drug, and Cosmetic Act and Associated Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection pertaining to the registration of human drug compounding outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and associated fees.

DATES: Submit either electronic or written comments on the collection of information by October 19, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 19, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 19, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–1429 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act and Associated Fees.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly

available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Human Drug Compounding Outsourcing Facilities and Associated Fees Under Section 503B of the FD&C Act

OMB Control Number 0910–0776—Revision

This information collection helps to support implementation of section 503B of the FD&C Act and the Drug Quality and Security Act (DQSA).

A. Registration

Under section 503B of the FD&C Act (21 U.S.C. 353b), added by DQSA, a facility that compounds drugs may elect to register with FDA as an outsourcing facility. Drug products compounded in a registered outsourcing facility can qualify for exemptions from the FDA-approval requirements in section 505 of the FD&C Act (21 U.S.C. 355), the requirement to label products with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), and the requirements for drug supply chain security in section 582 of the FD&C Act (21 U.S.C. 360eee–1) if the requirements in section 503B of the FD&C Act have been met.

After the initial registration, under section 503B(b) of the FD&C Act, a facility that elects to register with FDA as an outsourcing facility must also do so annually between October 1 and December 31. Upon registration, the outsourcing facility must provide specific information including its name, place of business, a unique facility identifier, and a point of contact's email address and phone number. The outsourcing facility must also indicate: (1) Whether it intends to compound, within the next calendar year, a drug that appears on our drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e); and (2) whether it compounds from bulk drug substances and, if so, whether it compounds sterile or non-sterile drugs from bulk drug substances.

Outsourcing facilities that elect to register submit registration information for each facility electronically using a Structured Product Labeling (SPL) format in accordance with the FDA guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing (May 2009).'' The guidance is available from our website at: *https://www.fda.gov/media/71146/download.* Respondents unable to use electronic means to register may submit a written request for a waiver from the requirement.

B. Registration Fees

Upon registration, and in accordance with section 503B and 744K of the FD&C Act, facilities are assessed an establishment fee and receive an annual invoice from FDA with instructions for remitting payment. Until payment is made for each given fiscal year (FY), an establishment is not considered to be registered as an outsourcing facility.

In accordance with section 744K of the FD&C Act (21 U.S.C. 379j–62), certain outsourcing facilities may qualify for a small business reduction in the amount of the annual establishment fee. To qualify for this reduction, an outsourcing facility must submit a written request to FDA certifying that the entity meets the requirements for the reduction. For each FY a firm seeks to qualify as a small business and receive the fee reduction, it must submit to FDA a written request by April 30 of the preceding FY. For example, an outsourcing facility must have submitted a written request for the small business reduction by April 30, 2020, to qualify for a reduction in the fiscal year 2021 annual establishment fee.

Section 744K also requires an outsourcing facility to submit written requests for a small business reduction in a specified format: Form FDA 3908 entitled ''Outsourcing Facilities for Human Drug Compounding: Small Business Establishment Fee Reduction Request.'' Form FDA 3908 is available from our website at: *https://www.fda.gov/media/90740/download.* In response to the submission of a small business reduction request, FDA will send a notification letter of its decision and recommends that applicants retain the notification.

C. Reinspection Fees

In accordance with section 503B, outsourcing facilities are subject to inspection and, in accordance with section 744K, subject to reinspection fees. A reinspection fee will be incurred for each reinspection and is intended to reimburse FDA when a particular outsourcing facility requires reinspection because of noncompliance identified during a previous inspection. After a reinspection is conducted, FDA will send an invoice to the email address indicated in the facility's registration file. The invoice contains instructions for remitting the reinspection fee.

D. Dispute Resolution

Agency regulations under § 10.75 (21 CFR 10.75) provide for internal Agency review of decisions. Accordingly, an outsourcing facility may request reconsideration of an FDA decision related to the fee provisions of section 744K of the FD&C Act. Requests for reconsideration should include the facility's rationale for its position that FDA's decision was in error and include any additional information that is relevant to the outsourcing facility's assertion. The denial of a request for reconsideration may be appealed by submitting a written request to FDA, consistent with § 10.75.

To assist respondents with the information collection provisions, we have developed Agency guidance. The guidance document, entitled ''Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act (November 2014),'' describes the process for electronic submission of establishment registration information for outsourcing facilities and provides information on how to obtain a waiver from submitting registration information electronically. The guidance document, entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act (November 2014),'' describes the types and amounts of fees that outsourcing facilities must pay, the adjustments to fees required by law, how outsourcing facilities can submit payment to FDA, the consequences of outsourcing facilities' failure to pay fees, and how an outsourcing facility can qualify as a small business to obtain a reduction in fees. The guidance documents were issued consistent with our good guidance practice regulations (21 CFR 10.115), which provide for public comment at any time, and are available on our website at *https://www.fda.gov/media/87570/download* and *https://www.fda.gov/media/136683/download,* respectively.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Electronic Submission of Registration Information Using the SPL Format.	70	1	70	4.5	315
Waiver Request From Electronic Submission of Registration Information.	1	1	1	1	1
Subtotal					
Remission of Annual Establishment Fee From FDA Invoice.	70	1	70	0.5 (30 minutes)	35
Request for Small Business Reduction (Form FDA 3908).	15	1	15	25	375
Reinspection Fees	14	1	14	0.5 (30 minutes)	7
Reconsideration Requests	1	1	1	1	1
Appeal of Reconsideration Denials	1	1	1	1	1
Total			101		419

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate 70 respondents annually will submit outsourcing facility registrations using the SPL format as specified in Agency guidance and assume each registration will require 4.5 hours to prepare and complete. We expect no more than one waiver request from the electronic submission requirement annually and assume each waiver request will require 1 hour to prepare and submit. We estimate each of the 70 registrants will remit annual establishment fees and assume this task requires 30 minutes per respondent. We estimate that 15 of those respondents will request a small business reduction in the amount of the annual establishment fee using Form FDA 3908.

We estimate 14 outsourcing facilities annually will remit reinspection fees and assume this will require 30 minutes. We also estimate that we will receive three requests for reconsideration and one appeal of a denial of a request for reconsideration and assume 1 hour per respondent for this activity.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Retention of small business designation notification letter.	15	1	15	0.5 (30 minutes)	7.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that annually 15 outsourcing facilities will maintain a copy of their small business designation letter and that maintaining each record will require 0.5 hour (30 minutes).

These estimates reflect a slight increase in the number of annual registrations, but a decrease in reinspection fee submissions.

Dated: August 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18254 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1727]

Public Meeting on the Center for Drug Evaluation and Research Standard Core Sets: Clinical Outcome Assessments and Endpoints Grant Program—Summer 2020; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following virtual public meeting entitled ''Public Meeting on CDER Standard Core Sets: Clinical Outcome Assessments and Endpoints Grant Program—Summer 2020.'' The purpose of the public meeting is to ensure that as standard core sets of clinical outcome assessments (COAs) are developed as part of the FDA pilot grant program, the identified concepts, COAs, and endpoints reflect what is most important to patients and relevant to regulatory and potentially other stakeholder decision making. To facilitate this, stakeholders including patients, care partners, FDA reviewers, drug developers, as well as other government and academic researchers, health care providers, health technology assessors and health payers are encouraged to attend the meeting.

DATES: The public meeting will be held on Friday, August 28, 2020, from 8:30 a.m. to 12:30 p.m. Eastern Time. Submit either electronic or written comments on this public meeting by Wednesday, October 28, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this public meeting via an online teleconferencing platform.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–1727. The docket will close on October 28, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before Wednesday, October 28, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of Wednesday, October 28, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1727 for ''Public Meeting on CDER Standard Core Sets Clinical Outcome Assessments and Endpoints Grant Program—Summer 2020.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Lyna Merzoug, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6308, Silver Spring, MD 20993–0002, 301–796–6001, *CDER_StandardCoreCOAs@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of our Patient Focused Drug Development (PFDD) efforts, FDA developed a pilot grant program to support the development of publicly available standard core set(s) of COAs

and their related endpoints for specific disease indications. On September 11, 2019, FDA made three awards under this grant program in the areas of: (1) Migraine, (2) acute pain in infants and young children, and (3) physical function across a range of chronic conditions.

The purpose of this public meeting is to ensure that, as these standard core sets of clinical outcome assessments are developed, the identified concepts, COAs, and endpoints reflect what is most important and relevant to patients and support regulatory and potentially other stakeholder decision making.

COAs are often endpoints in clinical trials used to support drug approval and labeling claims or other communications regarding clinical benefit. Clinical benefit is defined as a positive clinically meaningful effect of an intervention on how an individual feels, functions, or survives. FDA uses COAs primarily to determine whether a drug has been shown to provide clinical benefit to patients. The severity of side effects or treatment burden can also be measured by COAs.

A standard core set of COAs can include different types of COAs such as patient-reported outcome (PRO), clinician-reported outcome (ClinRO), observer-reported outcome (ObsRO), and performance outcome (PerfO) instruments and their related endpoints. These sets should assess a minimum list of impacts that matter most to patients, are likely to demonstrate change (including differences in trial arms related to disease burden, treatment burden, and if applicable, physical function), and should be assessed during a clinical trial. A standard core set might be relevant across several disease populations or subgroups or be focused on attributes of a specific disease.

II. Topics for Discussion at the Public Meeting

This meeting will provide an opportunity for grantees funded as part of the FDA Standard Core COAs and Endpoints Pilot Grant Program to share their progress on the standard core COA sets and to receive feedback from stakeholders.

III. Participating in the Public Meeting

Registration: Persons interested in attending this public meeting via webcast must register online at *https://www.eventbrite.com/e/public-meeting-on-cder-standard-core-sets-clinical-outcome-assessments-registration-108754210772* by August 28, 2020, at 12 p.m. Eastern Daylight Time. Registration is free and based on availability, with priority given to early registrants. FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. Webcast information will be provided upon completion of registration. Closed captioning will be provided.

Streaming webcast of the public meeting: This public meeting will be streamed via a webcast only. To register for the webcast, please visit *https://www.eventbrite.com/e/public-meeting-on-cder-standard-core-sets-clinical-outcome-assessments-registration-108754210772.* The webcast can be accessed via: *http://fda.yorkcast.com/webcast/Play/50353b66f81e463ea7c0df6e31e225a11d.* Click on the link and hit the ''play'' button and it will start. The webcast link will be activated 30 minutes prior to the start of the meeting.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible on the meeting website at *https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-cder-standard-core-sets-clinical-outcome-assessments-and-endpoints-grant-program-0.*

Dated: August 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18238 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–1945]

Determination of Regulatory Review Period for Purposes of Patent Extension; OXERVATE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OXERVATE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 19, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 16, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 19, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 19, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–1945 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OXERVATE.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product OXERVATE (cenegermin-bkbj). OXERVATE is indicated for the treatment of neurotrophic keratitis. Subsequent to this approval, the USPTO received a patent term restoration application for OXERVATE (U.S. Patent No. 8,501,439) from Dompe Farmaceutici S.p.A., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 21, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of OXERVATE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OXERVATE is 1,484 days. Of this time, 1,240 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 1, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 1, 2014.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 22, 2017. FDA has verified the applicant's claim that the biologics license application (BLA) for OXERVATE (BLA 761094) was initially submitted on December 22, 2017.

3. *The date the application was approved:* August 22, 2018. FDA has verified the applicant's claim that BLA 761094 was approved on August 22, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 863 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th

Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18239 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–5802]

Determination of Regulatory Review Period for Purposes of Patent Extension; VYLEESI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VYLEESI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 19, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 16, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 19, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 19, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–5802 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VYLEESI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory

review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VYLEESI (bremelanotide), which is indicated for the treatment of premenopausal women with acquired, generalized hypoactive sexual desire disorder (HSDD) as characterized by low sexual desire that causes marked distress or interpersonal difficulty and is not due to a co-existing medical or psychiatric condition, problems with the relationship, or the effects of a medication or drug substance. The product is not indicated for treatment of HSDD in postmenopausal women or in men and is not indicated to enhance sexual performance. Subsequent to this approval, the USPTO received a patent term restoration application for VYLEESI (U.S. Patent Nos. 6,579,968 and 6,794,489) from Palatin Technologies, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 21, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VYLEESI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VYLEESI is 6,721 days. Of this time, 6,265 days occurred during the testing phase of the regulatory review period, while 456 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 27, 2001. The applicant claims March 13, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 27, 2001, which was 30 days after FDA receipt of the first IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 23, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for VYLEESI (NDA 210557) was initially submitted on March 23, 2018.

3. *The date the application was approved:* June 21, 2019. FDA has verified the applicant's claim that NDA 210557 was approved on June 21, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18240 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6063]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, Health and Human Services (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 21, 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 0910–0360. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10:00 a.m.–12:00 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Customer/Partner Service Surveys

OMB Control Number 0910–0360—Extension

Under section 1003 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the Agency. Executive Order 12862, entitled ''Setting Customer Service Standard,'' directs Federal Agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking extension of an existing OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as food processors; cosmetic, drug, biologic, and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA estimates conducting 15 customer/partner service surveys per year, each requiring an average of 15 minutes for review and completion. We estimate respondents to these surveys to be between 100 and 20,000 customers. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data.

Respondents to this collection of information cover a broad range of stakeholders who have specific characteristics related to certain products or services regulated by FDA.

In the **Federal Register** of January 21, 2020 (85 FR 3389), 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 REPORTING BURDEN [1]

Type of survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Mail, telephone, web-based	55,000	1	55,000	0.25 (15 minutes)	13,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: August 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18244 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1206]

Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.7 Implementation Guide 3.3 and for Define-Extensible Markup Language Version 2.1; Requirement Ends for Study Data Tabulation Model Version 1.3 Implementation Guide 3.1.3; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of July 7, 2020. The document announced the dates that support and requirement will begin for version 1.7 of the Clinical Data Interchange Standards Consortium (CDISC) for Study Data Tabulation Model (SDTM) Implementation Guide (IG) 3.3, and for version 2.1 of the Define-Extensible Markup Language (Define-XML). The document provided the incorrect dates for these electronic study data standards. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Chenoa Conley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 301–796–0035, *cderdatastandards@fda.hhs.gov,* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 2020 (85 FR 40658), in FR Doc. 2020–14512, the following correction is made:

On page 40659, in the first column, the last three sentences of the document are corrected to read as follows: ''Support for version 1.7 of the CDISC SDTM IG 3.3 and version 2.1 of the Define-XML will begin on March 15, 2021, and the date that the requirement begins for CDISC version 1.7 SDTM IG 3.3 and version 2.1 of the Define-XML for new drug applications, abbreviated new drug applications, certain biologics license applications, and noncommercial investigational new drug applications will be March 15, 2022. Support and requirement for version 1.3 of the CDISC SDTM IG 3.1.3 will end on March 15, 2021.''

Dated: August 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18236 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–6098]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups as Used by the Food and Drug Administration (All Food and Drug Administration-Regulated 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 21, 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 0910–0497. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10:00 a.m.–12:00 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups as Used by the Food and Drug Administration (All FDA-Regulated Products)

OMB Control Number 0910–0497—Extension

FDA conducts focus group interviews on a variety of topics involving FDA-regulated products, including drugs, biologics, devices, food, tobacco, and veterinary medicine.

Focus groups provide an important role in gathering information because they allow for a more indepth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

- To obtain consumer information that is useful for developing variables and measures for quantitative studies,
- to better understand consumers' attitudes and emotions in response to topics and concepts, and
- to further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine their ideas but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

Respondents to this collection of information will include members of the general public, healthcare professionals, the industry, and other stakeholders who are related to a product under FDA's jurisdiction. Inclusion and exclusion criteria will vary depending on the research topic.

In the **Federal Register** of January 8, 2020 (85 FR 916), we published a 60-day notice requesting public comment on the proposed collection of information. FDA received three comments. FDA thanks the commenters for their comments and provides our response below. The first and second comments strongly support the proposed information collection related to focus groups used by the FDA. The third comment was not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus Group Interviews	8,800	1	8,800	1.75	15,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: August 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–18243 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4620]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Reports of Corrections and Removals

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 21, 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 0910–0359. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Reports of Corrections and Removals—21 CFR part 806

OMB Control Number 0910–0359—Extension

FDA is requesting approval for the collection of information pertaining to reports of corrections and removals required under part 806 (21 CFR part 806), which implements section 519(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(g)), as amended by the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115).

Under § 806.10 (21 CFR 806.10), within 10 working days of initiating any action to correct or remove a device to reduce a risk to health posed by the device or to remedy a violation of the FD&C Act caused by the device that may present a risk to health, device manufacturers or importers must submit a written report to FDA of the correction or removal.

Under § 806.20(a) (21 CFR 806.20(a)), device manufacturers or importers that initiate a correction or removal that is not required to be reported to FDA must keep a record of the correction or removal.

In the **Federal Register** of December 20, 2016 (81 FR 92603), FDA published a final rule titled ''Postmarketing Safety Reporting for Combination Products.'' This final rule describes the postmarketing safety reporting requirements that apply when two or more different types of regulated medical products (drugs, devices, and/or biological products, which are referred to as ''constituent parts'' of a combination product) comprise a combination product and the combination product or its constituent parts have received FDA marketing authorization. PMSR is approved under OMB control number 0910–0834.

Under § 4.102(c)(1)(iii) (21 CFR 4.102(c)(1)(iii)), combination product applicants whose combination products received marketing authorization under a BLA, NDA, or ANDA and include a device constituent part must also submit correction or removal reports as described in § 806.10 and comply with recordkeeping requirements as described in § 806.20.

Under § 4.105(b) (21 CFR 4.105(b)), combination product applicants must maintain records relating to their postmarketing safety reports for whichever is the longest required recordkeeping period under the PMSR requirements applicable to the combination product applicant under § 4.102.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed devices that have serious problems and to ensure that defective devices are removed from the market. This will assure that FDA has current and complete information regarding these corrections and removals to determine whether recall action is adequate. Failure to collect this information would prevent FDA from receiving timely information about devices that may have a serious effect on the health of users of the devices.

Reports of corrections and removals may be submitted to FDA via mail or using FDA's Electronic Submission Gateway (ESG). We estimate that approximately 50 percent of submitters will use the ESG. Our estimate of the reporting and recordkeeping burden is based on Agency records and our experience with this program, as well as similar programs that utilize FDA's ESG.

For respondents who submit corrections and removals using the electronic process, the operating and maintenance costs associated with this information collection are approximately $50 per year to purchase a digital verification certificate (certificate must be valid for 1 to 3 years). This burden may be minimized if the respondent has already purchased a verification certificate for other electronic submissions to FDA. However, FDA is assuming that all respondents who submit corrections and removals using the electronic process will be establishing a new WebTrader account and purchasing a digital verification certificate. We therefore estimate the total operating and maintenance costs to be $25,850 annually (517 respondents × $50).

In the **Federal Register** of February 21, 2020 (85 FR 10168), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity (21 CFR part)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]	Total operating and maintenance costs
Electronic process setup [3]	517	1	517	3.08	1,592	$25,850
Submission of corrections and removals (part 806)	1,033	1	1,033	10	10,330	
4.102(c)(1)(iii) Submitting correction or removal reports	20	1	20	10	200	

[1] There are no capital costs associated with this collection of information.

[2] Totals may not sum due to rounding.

[3] We estimate that approximately 50 percent of respondents will submit corrections and removals using the electronic process. The actual burden hours for setup of the electronic process listed in the reporting burden table are divided by 3 to avoid double counting in the Office of Information and Regulatory Affairs Consolidated Information System. However, the one-time Average Burden per Response is 9.25 hours, resulting in a total one-time burden of 4,782 hours for the setup of the electronic process.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity (21 CFR Part)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
Records of corrections and removals (part 806)	93	1	93	10	930

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

Activity (21 CFR Part)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
4.105(b) additional recordkeeping by device-led combination products	279	0.45	126	0.5	63

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Totals may not sum due to rounding.

New information technology applications have allowed us to more accurately calculate the number of registrants of medical device facilities that submit information electronically. Therefore, there is a 50 percent reduction in the number of respondents who will submit corrections and removals using the electronic process.

In addition, under OMB control number 0910–0834 (''Postmarketing Safety Reporting for Combination Products''), an additional 200 hours have been added to the annual reporting burden and an additional 63 hours have been added to the annual recordkeeping burden to comply with the PMSR requirements.

We have therefore revised the number of respondents to the information collection. This adjustment has resulted in a 1,293-hour decrease of the estimated burden.

Dated: August 14, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–18269 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Circulatory System Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will take place virtually on October 7, 2020, from 9 a.m. Eastern Time to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, *aden.asefa@fda.hhs.gov,* 301–796–0400, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On October 7, 2020, the committee will discuss, make recommendations, and vote on information regarding the premarket approval application (PMA) for the TransMedics Organ Care System (OCS)—Heart, by TransMedics, Inc. The proposed Indication for Use for the TransMedics OCS—Heart, as stated in the PMA, is as follows:

The TransMedics OCS Heart System is a portable *ex-vivo* organ perfusion and monitoring system indicated for the resuscitation, preservation, and assessment of donor hearts with one or more of the following characteristics for transplantation into a potential recipient in a near-physiologic, normothermic, and beating state:

- Expected cross-clamp or ischemic time ≥4 hours due to donor or recipient characteristics (*e.g.,* donor-recipient geographical distance, expected recipient surgical time)
- Donor Age ≥55 years
- Donors with history cardiac arrest and downtime ≥20 minutes
- Donor history of alcohol use
- Donor LV Ejection Fraction ≤50 percent but ≥40 percent
- Donor history of Left Ventricular Hypertrophy (septal or posterior wall thickness of >12 and ≤16 millimeters)

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/advisory-committees/circulatory-system-devices-panel/2020-meeting-materials-circulatory-system-devices-panel.* Select the link for the 2020 Meeting Materials. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 1, 2020. Oral presentations from the public will be scheduled on October 7, 2020, between approximately 1 p.m. Eastern Time and 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed

participants, and an indication of the approximate time requested to make their presentation on or before September 23, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2020.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–18259 Filed 8–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Updates to the Bright Futures Periodicity Schedule as Part of the HRSA-Supported Preventive Services Guidelines for Infants, Children, and Adolescents

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Periodicity Schedule of the Bright Futures Recommendations for Pediatric Preventive Health Care (''Bright Futures Periodicity Schedule''), as part of the HRSA-supported preventive service guidelines for infants, children, and adolescents, is maintained in part through a national cooperative agreement, the Bright Futures Pediatric Implementation Program.

DATES: Members of the public are invited to provide written comments no later than September 21, 2020. All comments received on or before this date will be reviewed and considered by the Bright Futures Periodicity Schedule Workgroup and provided for further consideration by HRSA in determining the recommended updates that it will support.

ADDRESSES: Members of the public interested in providing comments can do so by accessing the public comment web page at: *https://mchb.hrsa.gov/maternal-child-health-topics/child-health/bright-futures.html.*

FOR FURTHER INFORMATION CONTACT: Bethany Miller, HRSA, Maternal and Child Health Bureau, email: *BMiller@hrsa.gov,* telephone: (301) 945–5156.

SUPPLEMENTARY INFORMATION: The Bright Futures Program has been funded as a cooperative agreement by HRSA since 1990. A primary focus of this program is for the funding recipient to maintain and update the Bright Futures Guidelines for Health Supervision of Infants, Children and Adolescents, a set of materials and tools for providing quality preventive care screenings and well-child visits. One component of these tools is the Bright Futures Periodicity Schedule, a chart that identifies the recommended screenings, assessments, physical examinations, and procedures to be delivered within preventive checkups at each age milestone. Over the program's existence, the Bright Futures Periodicity Schedule has become the accepted schedule within the United States for preventive health services through the course of a child's development.

Under the Public Health Service Act, non-grandfathered group health plans and health insurance issuers must include coverage, without cost sharing, for certain preventive services, for plan years (in the individual market, policy years) that begin on or after the date that is one year after the date the recommendation or guideline is issued. These include preventive health services provided for in the Bright Futures Periodicity Schedule as part of the HRSA-supported Preventive Services Guidelines for Infants, Children, and Adolescents. A panel of pediatric primary care experts convened to review the latest evidence and recommends updating the Bright Futures Periodicity Schedule to include screening all individuals ages 18 and older at least once for hepatitis C virus infection. This proposed update aligns with the United States Preventive Services Task Force's recommendation that all adults ages 18 to 79 be screened at least once for hepatitis C virus infection.

The American Academy of Pediatrics, which has been the HRSA cooperative agreement recipient for this program since 2007, maintains the Periodicity Schedule. Under HRSA's cooperative agreement with the American Academy of Pediatrics, the Bright Futures Program is required to administer a process for developing and regularly recommending, as needed, updates to the Bright Futures Periodicity Schedule. As described in the Notice of Funding Opportunity for the Bright Futures Program (HRSA–18–078), the consideration of potential updates is expected to be ''a comprehensive, objective, and transparent review of available evidence that incorporates opportunity for public comment.''

Thomas J. Engels,

Administrator.

[FR Doc. 2020–18268 Filed 8–19–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0906–xxxx—New]

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Enhancing Linkage of Sexually Transmitted Infection and Human Immunodeficiency Virus Surveillance Data in the Ryan White HIV/AIDS Program Evaluation

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 19, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Enhancing Linkage of Sexually Transmitted Infection and Human Immunodeficiency Virus Surveillance Data in the Ryan White HIV/AIDS Program Evaluation, OMB No. 0906–xxxx—New.

Abstract: HRSA's Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective Human Immunodeficiency Virus (HIV) care, treatment, and support to low-income people with HIV. Nearly two-thirds of clients (patients) live at or below 100 percent of the Federal poverty level and approximately three-quarters of RWHAP clients are racial and ethnic minorities. Since 1990, the RWHAP has developed a comprehensive system of HIV service providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people with diagnosed HIV in the United States.

HRSA is conducting a multi-year evaluation of the *Enhancing Linkage of Sexually Transmitted Infection (STI) and HIV Surveillance Data in the Ryan White HIV/AIDS Program* (*Enhancing STI Linkage*) demonstration project. The *Enhancing STI Linkage* demonstration project is a capacity building cooperative agreement that seeks to improve linkage, re-engagement in care, and health outcomes for people with HIV in the RWHAP. Through this demonstration project, a Technical Assistance Provider is collaborating with four RWHAP Part B jurisdictions to provide them with tailored training and technical assistance (TA) to facilitate data sharing across STI and HIV surveillance systems. A persistent barrier to addressing HIV and STI infections simultaneously and jointly is the lack of data systems linking HIV and STI surveillance data. Aside from helping to address problems around coinfection, there are substantial opportunities—particularly for the RWHAP—associated with linking HIV and STI surveillance data, including, but not limited to, identifying people with HIV currently out of care and identifying people with STIs who could be tested for HIV and promptly linked to care. This clearance request is for approval of data collection activities associated with the *Enhancing STI Linkage* evaluation which will occur simultaneously with the demonstration project, over a three-year project period.

Need and Proposed Use of the Information: This mixed methods evaluation will assess the achievement and effectiveness of the *Enhancing STI Linkage* demonstration project. HRSA will collect quantitative and qualitative data to inform the HRSA on how to enhance jurisdictions' use of STI and HIV surveillance data to improve service delivery and HIV-related health outcomes. Information gleaned from the *Enhancing STI Linkage* evaluation may be used to enhance and coordinate health departments' responses to HIV and STI epidemics and affect change in HIV care continuum outcomes.

Likely Respondents: Multiple respondents from four HRSA RWHAP Part B recipients, including data end-users identified by the Part B recipients within their jurisdiction.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

ANNUALIZED DATA COLLECTION BURDEN—YEARS 2 AND 3

Type of respondent	Form name	Number of respondents	Number responses per respondent *	Total responses	Average burden per response (in hours)	Total burden hours
Jurisdiction TA Recipient.	Jurisdiction TA Recipient Semi-Structured Interview Guide.	12	2	24	1	24
Policy Stakeholder	Policy Stakeholder Semi-Structured Interview Guide.	12	2	24	.5	12
Data End-User	Data End-User Survey	105	2	210	.17	36
Total	.....	129	.....	258	.....	72

* **Note:** Burden hours represent responses for both years 2 and 3; and there are 2 responses per respondent, indicating one in each year (one in year 2 and another in year 3).

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–18273 Filed 8–19–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS)

announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Hearing of the Subcommittee on Privacy, Confidentiality, and Security.

Dates and Times: Monday, September 14, 2020: 9:30 a.m.–5:30 p.m.

Place: U.S. Department of Health and Human Services Virtual.

Status: Open.

Purpose: At the September 14, 2020, hearing, the National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy, Confidentiality, and Security, will explore the privacy, confidentiality, and security considerations for data collection and use during a public health emergency, in light of the nationwide COVID–19 pandemic.

The Subcommittee will hear from invited experts and review written testimony received in advance from interested individuals, organizations, and stakeholders.

At the hearing, NCVHS will receive input from public health practitioners, academics, advocates, representatives of industry, and other experts about data stewardship principles designed to guide the privacy and security of individually identifiable health information when new technologies are deployed for public health surveillance during an emergency. These are expected to touch on new uses of medical, geolocation, proximity, or adjacency data; social media; contact tracing applications; privacy and security guardrails essential to responsible use of data when creating and employing new tools; and future use and lifecycle management of individually identifiable health data. The Committee will also consider concerns raised by privacy, civil rights, and public interest advocates about the potential for discrimination and harm when information intended to protect the public is repurposed for other uses, such as law enforcement, immigration, or unrelated research or commercial enterprise.

The Committee will use this input to inform development and dissemination of best practices for safeguarding individually identifiable health data collected, used, and shared during a pandemic or long-term nationwide public health emergency.

The Committee requests comments from the public to inform its deliberations in advance and will consider them together with the input of subject matter experts at the hearing. The Committee has developed specific questions to ensure comments address key issues under consideration, available at: *https://ncvhs.hhs.gov/Sept-2020-PCS-Subcommittee-Hearing-Public-Comment-Questions.* Please submit comments using the questions provided at this link to *NCVHSmail@cdc.gov* by close of business Wednesday, September 9, 2020.

There will be a public comment period at the meeting. The meeting times and topics are subject to change. Please refer to the NCVHS website for information and agenda updates.

Contact Person for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website: *https://ncvhs.hhs.gov/.* Further information, including an agenda and instructions to access the broadcast of the meeting, will be posted on the NCVHS website.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2020–18248 Filed 8–19–20; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: National Substance Use and Mental Health Services Survey (N–SUMHSS) (OMB No. 0930–)

Historically SAMHSA collected information on substance use and mental health treatment facilities through two (2) separate data collections: The National Survey of Substance Abuse Treatment Services (N–SSATS; OMB No. 0930–0106) and the National Mental Health Services Survey (N–MHSS; OMB No. 0930–0119). SAMHSA also maintain as part of the N–SSATS data collection approval, an inventory of treatment facility, named the Inventory of Behavioral Health Services (I–BHS) (N–SSATS; OMB No. 0930–0106).

Some of the content and questions in the N–SSATS and N–MHSS data collection surveys are similar and represented an additional burden to approximately 14 percent of facilities that received both surveys. SAMHSA recognizes the need to have data collections that are less burdensome to these facilities that provide these services. To help reduce respondent burden, increase efficiency, and better manage resources, SAMHSA goal is to combine these two surveys into the National Substance Use and Mental Health Services Survey (N–SUMHSS).

The N–SUMHSS, will include the facility characteristics and services questions currently asked in the N–SSATS and the N–MHSS. The survey will also collect, on an annual basis, client counts on those individuals receiving services at these facilities. Historically, client count information was collected every other year; however there is an increasing need to collect and maintain data on current and accurate numbers of clients in treatment at the local level for community to assess capacity and estimate resource requirements. This information on substance use and mental health services has assisted with communities to better respond to life changing events, (*i.e.* hurricane) and plan for service demands in the event of a natural disaster, (*i.e.* earthquakes).

SAMHSA requests is for approval of the N–SUMHSS data collection and the extension of the I–BHS data collection. The N–SUMHSS survey will provide data on the numbers and types of patients treated and the characteristics of facilities providing substance use and mental health treatment services. The extension of the duration of the I–BHS survey, which is current authorized as part of N–SSATS (OMB No. 0930–0106), aligns it to the same period as the N–SUMHSS. These surveys are conducted under the authority of Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4) to meet the specific mandates for annual information about public and private substance use/mental health treatment providers and the clients they serve.

This request includes:

• N–SUMHSS, an annual census of substance use and mental health treatment facilities which collects descriptive data on the location, scope of services provided, and operational characteristics of all known substance use and mental health treatment facilities in the United States and jurisdictions, and on utilization of services by means of a single-day count of clients in treatment; and

• I–BHS data collection activities associated with updating the inventory of both mental health treatment facilities and substance use treatment facilities.

The information in N–SUMHSS and I–BHS is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

The request for OMB approval will include a request to conduct the N–SUMHSS survey which includes facility characteristics and services and one-day client counts and to update the I–BHS facility listing on a continuous basis in 2021, 2022 and 2023. Also included in this request is the Between Cycle N–SUMHSS data collection (N–SUMHSS BC), to be conducted between annual surveys to collect information on new facilities for inclusion in the Treatment Locator. N–SUMHSS BC use is an abbreviated N–SUMHSS survey questionnaire.

The estimated annual burden for the I–BHS and BHSIS activities is as follows:

Type of respondent and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours	Wage rate	Total hour cost
States:							
I–BHS Online [1]	56	75	4,200	0.08	336	$23	$7,728
State Subtotal	56		4,200		336		7,728
Facilities:							
I–BHS application [2]	800	1	800	0.08	64	19.40	1,242
Augmentation screener	1,300	1	1,300	0.08	104	19.40	2,018
N–SUMHSS questionnaire (either SU or MH)	32,000	1	32,000	0.67	21,333	47.95	1,022,917
N–SUMHSS (both SU and MH)	5,000	1	5,000	1.17	5,833	47.95	279,692
N–SUMHSS BC	1,000	1	1,000	0.58	580	47.95	27,811
Facility Subtotal	40,100		40,100		27,914		1,333,680
Total	40,156		44,300		28,250		1,341,408

[1] States use the I–BHS Online system to submit information on newly licensed/approved facilities and on changes in facility name, address, status, etc.

[2] New facilities complete and submit the online I–BHS application form in order to get listed on the Inventory.

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.

Carlos Graham,

Social Science Analyst.

[FR Doc. 2020–18220 Filed 8–19–20; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6218–N–01]

Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice describes the program rules, statutory and regulatory waivers, and alternative requirements applicable to supplemental Community Development Block Grant (CDBG) funds made available to prevent, prepare for, and respond to coronavirus (CDBG–CV funds) and to annual formula CDBG grants awarded in fiscal years 2019 and 2020. Except as otherwise described in this notice and the CARES Act, the statutory and regulatory provisions governing the CDBG program apply to CDBG–CV and CDBG grants. This notice also describes conforming waivers and alternative requirements for other formula programs included in the consolidated planning regulations in 24 CFR part 91.

DATES: *Applicable:* August 7, 2020.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–708–0033. Except for the ''800'' number, these telephone numbers are not toll-free. Questions regarding the CDBG–CV program may be submitted to *CPDQuestionsAnswered@hud.gov.* Interested parties may also visit HUD's website at *https://www.hud.gov/program_offices/comm_planning* for updated information and resources.

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I. Overview and Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) confirmed the first case in the United States of a coronavirus known by several names, including novel coronavirus, and SARS–CoV–2, and which causes the disease commonly referred to as COVID–19. On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136) (CARES Act). The CARES Act makes available $5 billion in CDBG coronavirus response (CDBG–CV) funds to prevent, prepare for, and respond to coronavirus. In the CARES Act and this notice, the term ''coronavirus'' means SARS–CoV–2 or another coronavirus with pandemic potential.

The nation faces significant public health and economic challenges related to this respiratory disease. To address these challenges, CDBG–CV and CDBG grants are a flexible source of funding that can be used to pay costs that are not covered by other sources of assistance, particularly to benefit persons of low and moderate income.

This notice is broken into sections. Section II provides a general overview of the CDBG–CV and CDBG program flexibilities provided by the CARES Act. Section III describes the allocations, grant procedures, program flexibilities, waivers, and alternative requirements applicable to CDBG–CV grants. Section IV describes the program flexibilities, waivers, and alternative requirements that apply to fiscal years 2019 and 2020 CDBG grants used to prevent, prepare for, and respond to coronavirus or that affect other aspects of program administration. Other sections contain administrative information related to this notice.

II. Summary of Special Authorities Under the CARES Act

The CARES Act modifies some CDBG program rules and authorizes the Secretary of HUD to grant waivers and alternative requirements. Accordingly, this notice describes how requirements of the CDBG program are modified for CDBG–CV grants, fiscal year 2020 CDBG grants under the Department of Housing and Urban Development Appropriations Act, 2020 (Pub. L. 116–94), and fiscal year 2019 CDBG grants under the Department of Housing and Urban Development Appropriations Act, 2019 (Pub. L. 116–6). For ease of reference, citations in this notice include parentheticals indicating whether a CDBG program statute or regulation applies to entitlement grants, state grants, insular area grants, or grants to nonentitlement counties in Hawaii. Where citations do not include Hawaii counties or insular areas, the additional citation is not necessary because the cited entitlement CDBG regulation applies to insular areas and Hawaii counties in addition to entitlement grantees.

II.A. Program Modifications in the CARES Act

The Community Development Fund heading in title XII of Division B of the CARES Act modifies some CDBG program requirements to provide immediate support for coronavirus efforts. The modifications are described in more detail in Section III, and are the following:

- Permits a public comment period of no less than 5 days when citizen participation is required.
- Permits grantees to develop expedited citizen participation procedures and to hold virtual public hearings when necessary for public health reasons.
- Eliminates the public services cap for coronavirus-related activities.
- Allows states and local governments to reimburse allowable costs of eligible activities regardless of the date the costs were incurred.

II.B. Authority To Grant Waivers and Alternative Requirements

The CARES Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the use of CDBG–CV grants, fiscal year 2020 CDBG grants, and fiscal year 2019 CDBG grants to prevent, prepare for, and respond to coronavirus or that affect other aspects of program administration for the fiscal year 2019 and 2020 CDBG grants, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding by the Secretary that any such waivers or alternative requirements are necessary to expedite or facilitate the use of such amounts to prevent, prepare for, and respond to coronavirus. Additional waiver authority is provided in 24 CFR 5.110 and 91.600. In accordance with these provisions, HUD may waive regulatory provisions (subject to statutory limitations) for good cause.

As required by the CARES Act, the Secretary has considered the waivers and alternative requirements in this notice and finds that there is good cause for each and that each is necessary to expedite or facilitate the use of grant funds to prevent, prepare for, and respond to coronavirus.

III. CDBG–CV Grants

This section describes the CDBG–CV allocations to states and units of general local government (including insular areas), the process to access grant funds, and the rules, waivers, and alternative requirements that apply to CDBG–CV grants.

III.A. Allocations of CDBG–CV Funds

Of the $5 billion made available by the CARES Act, HUD will use $10,000,000 to make technical assistance awards to provide an immediate increase in capacity building and technical assistance to support the use of CDBG–CV grants and CDBG grants to prevent, prepare for, and respond to coronavirus.

The remaining funds will be allocated as described in sections III.A.1. and III.A.2.

III.A.1. First Allocation

The CARES Act requires HUD to allocate up to $2 billion in CDBG–CV funds using the same formula that it used to allocate fiscal year 2020 CDBG

grants pursuant to section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306). HUD made this first CDBG–CV allocation on April 2, 2020, 24 days before the 30-day allocation deadline in the CARES Act, in the amount of $2 billion. The allocations are available on HUD's website at *https://www.hud.gov/program_offices/comm_planning/budget/fy20/*.

III.A.2. Additional Allocations

The CARES Act requires HUD to make a second round of CDBG–CV allocations within 45 days of enactment of the CARES Act. HUD is required to make this allocation in the amount of $1 billion directly to states and insular areas to prevent, prepare for, and respond to coronavirus within the state or insular area. HUD made this second round of CDBG–CV allocations on May 11, 2020, in the amount of $1 billion. The allocations and methodology are available on HUD's website at: *https://www.hud.gov/program_offices/comm_planning/budget/fy20/*. The second CDBG–CV allocations were based on factors identified in the CARES Act: Public health needs, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, economic and housing market disruptions, and other factors, as determined by the Secretary, using best available data.

The CARES Act authorized HUD to allocate the remaining $2 billion in CDBG–CV funds, minus the $10 million set aside for technical assistance, on a rolling basis. The CARES Act provides that the remaining $2 billion shall be distributed directly to states or units of general local government, at the discretion of the Secretary, according to a formula based on factors to be determined by the Secretary, prioritizing risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing market disruptions resulting from coronavirus. The District of Columbia is defined as a metropolitan city under the Housing and Community Development Act of 1974 and not as a state or insular area. As such, it was not eligible for funding under the Round 2 $1 billion allocation. To ensure national geographic coverage in Round 2, HUD made an allocation from the third round of funding to the District of Columbia simultaneously with the second round because the District met the geographic criteria for the third round of allocations and was the only geographic area in the nation that was not covered by the second round of allocations.

HUD will publish additional third round allocations and a description of the allocation formulas on HUD's website at *https://www.hud.gov/program_offices/comm_planning/budget/fy20/* and will provide a link to this site in any press release announcing an allocation.

III.A.3. Reallocation

Under Section 106 of the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5306), HUD reallocates annual formula CDBG funds that cannot be distributed to grantees when it allocates the next fiscal year's appropriation of annual formula CDBG funding. Given the immediate need for coronavirus assistance, the Department is specifying the following alternative requirement to sections 106I and (d)(3)I (42 U.S.C. 5306I and 5306(d)(3)I), and the reallocation provisions of 24 CFR 570.4(a), 570.420I, 570.429(d)(2), and 570.442(b), to expedite the use of any funds that may become available for reallocation.

If a jurisdiction receiving an allocation of CDBG–CV funds fails to apply for funding in accordance with the requirements of this notice by August 16, 2021 (the deadline established by the CARES Act) or HUD is unable to distribute funds to a grantee for another reason, HUD may notify the jurisdiction of the cancellation of all or part of its allocation amount. Funds that are not awarded to jurisdictions under the formulas described in paragraphs III.A.1. and III.A.2. may be reallocated based on factors identified in the CARES Act, as determined by the Secretary. If made, reallocations will be published on HUD's website.

III.B. CDBG–CV Grant Rules, Waivers, and Alternative Requirements

This section describes program flexibilities in the CARES Act and provides waivers and alternative requirements to expedite or facilitate the use of CDBG–CV funds. The rules, waivers, and alternative requirements described in this section only apply to CDBG–CV grants (as specified in this section) and in some cases to fiscal year 2019 and fiscal year 2020 CDBG grants (as specified in section IV) and program income (as specified in sections III.B.5.(f)(iv) and III.B.6.(a)). The CARES Act statutory flexibilities, waivers, and alternative requirements do not apply to other sources of CDBG funds (even if used in conjunction with CDBG–CV funds, fiscal year 2019 CDBG funds, or fiscal year 2020 CDBG funds) except as otherwise described in section IV.B.3.(b).

III.B.1. General Grant Requirements

CDBG–CV grants are subject to the requirements of the CARES Act, the authorities and conditions imposed on fiscal year 2020 CDBG grants, and the mandatory provisions of this notice and waivers and alternative requirements. Except as otherwise described, grantees must comply with statutory and regulatory provisions governing the CDBG program. These include regulations at: 24 CFR part 570 subpart I (states); 24 CFR part 570 subparts A, C, D, E, F, J, K, and O for CDBG (entitlements, nonentitlement Hawaii counties and insular areas).

To facilitate the use of CDBG–CV funds in accordance with the grant requirements, HUD is imposing an alternative requirement that the definitions of CDBG funds in 24 CFR 570.3 (entitlements) and 24 CFR 570.481(a)(2) (states) include CDBG–CV funds. This alternative requirement applies the requirements in 24 CFR part 570 to the use of CDBG–CV funds, except as modified by rules, waivers, and alternative requirements applicable to CDBG–CV grants.

CDBG–CV grant agreements will impose requirements by incorporating program rules, waivers, and alternative requirements (including those published in memoranda, in this and any future notices).

Grantees should not assume that their normal CDBG funding distribution procedures are adequate to swiftly distribute and use CDBG–CV grants. For example, if a grantee's existing policies mandate lengthy processes to select activities or complete procurements, grantees should try to expedite actions with local waiver authorities or emergency procedures that may be available without state or local rulemaking. In addition, urban counties that normally distribute CDBG funds on a proportional basis among all participating jurisdictions should consider whether their normal procedures would result in funding awards that are too small to be used expeditiously and productively by the participating jurisdictions.

III.B.2. Responsible Use of CARES Act Funds

CDBG–CV funds are subject to additional measures designed to prevent fraud, waste, and abuse. HUD will conduct regular oversight and monitoring activities to determine that use of CDBG–CV funds is consistent with grant requirements and limited to the necessary and reasonable costs of activities to prevent, prepare for, and respond to coronavirus. Measures to

increase transparency and accountability include:

• Regular reporting on the use of CDBG–CV funds, including reporting that may be required by the CARES Act to conduct audits and reviews of programs, operations, and expenditures relating to funds under the CARES Act and the Coronavirus response (see section III.B.8. for information on reporting requirements); and

• a requirement that grantees prevent the duplication of benefits that is caused when a person, household, business, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance is more than the total need (see section III.B.9. for information on duplication of benefits).

III.B.3. Overview of Process To Receive CDBG–CV Grants

On April 2, 2020, HUD published the first round of CDBG–CV allocations on the *hud.gov* website and notified jurisdictions of their allocation amounts. On April 9, 2020, John Gibbs, Acting Assistant Secretary for Community Planning and Development, issued a memorandum with the subject, ''*CARES Act Flexibilities for CDBG Funds Used to Support Coronavirus Response and plan amendment waiver*'' (''April 9 memorandum''), available at *https://www.hud.gov/sites/dfiles/CPD/documents/CARES-Act-Flexibilities-CDBG-Funds-Used-Support-Coronavirus-Response.pdf.* The memorandum advised grantees to amend or prepare consolidated plan submissions for CDBG–CV grants as soon as possible. Grantees may have partially or fully completed the application process before HUD publishes this notice.

The April 9 memorandum also granted waivers to expedite this process of applying for CDBG–CV funds by permitting application for a grantee's share of the first $2 billion through a substantial amendment to a grantee's most recent annual action plan (the most recent year may be the 2019 annual action plan). These waivers and alternative requirements describing the content of a substantial amendment to add CDBG–CV allocations to the most recent annual action plan are in section III.B.4.(b)(i).

Submitting a substantial amendment may speed access to grant funds because consultation and public hearings are not required (although 24 CFR 570.441I(2) requires insular areas to hold a public hearing for amendments, section III.B.4.(a)(iii) waives this requirement for CDBG–CV substantial amendments). However, the April 9 memorandum does not preclude grantees from applying by submitting a FY 2020 Action Plan that includes the CDBG–CV funds. If the grantee chooses to include CDBG–CV grant funds in its annual action plan for FY 2020 funds, the grantee must comply with action plan submission procedures in 24 CFR part 91 (including consultation and a public hearing), as modified by the waiver and alternative requirements in paragraph III.B.4.(a)(iv), which apply the CARES Act citizen participation flexibilities to all consolidated plan formula grant programs.

The following procedures apply regardless of whether the grantee applies for CDBG–CV funds through an action plan or action plan substantial amendment:

• Rather than wait to apply until HUD allocates all available CDBG–CV funds, HUD recommends that grantees apply as soon as possible for CDBG–CV funds that HUD has allocated. Grantees receiving subsequent allocations can make substantial amendments to apply for subsequent allocation amounts after they are announced.

• All grantees may adopt and use expedited procedures to draft, propose, modify, or amend consolidated plans for CDBG–CV and fiscal year 2019 and 2020 CDBG grants as described in section III.B.4. These expedited procedures amend the grantee's citizen participation plan and require it be published for no less than 5 calendar days to solicit public comment. Expedited procedures may include virtual hearings, as described in section III.B.4.(a)(ii).

• The grantee must publish its application for CDBG–CV funds (whether through a new action plan or action plan substantial amendment) for no less than 5 calendar days to solicit public comment. The comment period can run concurrently with the comment period on changes to add expedited procedures to the citizen participation plan. The grantee must respond to public comments.

• The grantee must submit its application for CDBG–CV funds to HUD for review in accordance with 24 CFR 91.500. To receive a CDBG–CV grant, a grantee must also submit a SF–424, SF–424D and the certifications at 24 CFR 91.225(a) and (b) or 24 CFR 91.325(a) and (b) and 24 CFR 91.425.

• HUD and the grantee will enter a grant agreement and HUD will establish the grantee's line of credit.

• The grantee may draw funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification.

III.B.4. Application for Grant Funds and Citizen Participation

This section III.B.4. describes the CDBG program flexibilities in the CARES Act and additional waivers and alternative requirements that HUD granted to facilitate or expedite the process to amend consolidated plans and apply for CDBG–CV grants.

III.B.4.(a) Expedited Citizen Participation and Virtual Hearings

The CARES Act permits grantees to adopt expedited citizen participation procedures and hold virtual hearings for consolidated plan submissions for CDBG–CV funds and for CDBG grants for fiscal years 2019 and 2020. Section III.B.4.(a)(iii) includes a corollary waiver and alternative requirement to permit states to extend these flexibilities to units of general local government and insular areas. Section III.B.4.(a)(iv) includes a corollary waiver and alternative requirement extending these flexibilities to other consolidated plan formula programs.

III.B.4.(a)(i) Citizen Participation, Public Notice and Comment Period. The CARES Act authorizes a CDBG–CV grantee to adopt and utilize expedited procedures to prepare, propose, modify, or amend its consolidated plan, notwithstanding sections 104(a)(2), (a)(3), and (c) of the HCD Act (42 U.S.C. 5304(a)(2), (a)(3), and (c)) and section 105 of the Cranston-Gonzalez National Affordable Housing Act (NAHA, at 42 U.S.C. 12705). The expedited procedures may permit virtual hearings, as described in section III.B.4.(a)(ii), whenever a public hearing is required by 24 CFR 91.105 (entitlements), 91.115 (states), 570.431 (Hawaii counties), 570.441 (insular areas), or by the grantee's citizen participation plan. Expedited procedures adopted by the grantee shall provide citizens with notice and a reasonable opportunity to comment of no less than 5 days.

Expedited procedures must be published for no less than 5 calendar days to solicit public comment, and once adopted, become part of the grantee's citizen participation plan. The public comment period for incorporating expedited procedures into the citizen participation plan may run concurrently with the public comment period on a proposed CDBG–CV substantial amendment or other proposed consolidated plan submissions for CDBG–CV funds and fiscal year 2019 and 2020 CDBG grants. Consolidated plan submissions for other

programs are addressed in section III.B.4.(a)(iv).

The CARES Act modifies the annual formula CDBG program requirement that a grantee must solicit comments from its citizens for a period of at least 30 days before it submits a substantial amendment or an annual action plan to HUD.

III.B.4.(a)(ii) Virtual Hearings. For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, the CARES Act authorizes the grantee to hold virtual hearings in lieu of in-person public hearings for CDBG–CV grants and for fiscal year 2019 and 2020 CDBG grants (virtual hearings for other consolidated plan formula programs are addressed in section III.B.4.(a)(iv)). All virtual hearings held under the authority provided by the CARES Act shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses from local officials to all citizen questions and issues, and public access to all questions and responses.

Therefore, grantees may use online platforms to hold virtual hearings that facilitate public access to all questions and responses and provide timely responses from local officials. Additionally, grantees must take appropriate actions to encourage the participation of all residents, including the elderly, minorities, persons with limited English proficiency, as well as persons with disabilities, consistent with the jurisdiction's citizen participation plan.

The CARES Act does not modify nondiscrimination requirements. Consistent with 24 CFR 91.105 (entitlements) and 91.115 (states), and 24 CFR 570.431 (Hawaii counties) and 570.441 (insular areas), a jurisdiction is expected to take whatever actions are appropriate to encourage the participation of all its citizens in virtual and in-person hearings, including minorities and persons with limited English proficiency, as well as persons with disabilities. Whether hearings are in-person or virtual, grantees must take appropriate steps to ensure effective communication with persons with disabilities consistent with the requirements of accessibility laws, such as Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The grantee must provide appropriate auxiliary aides and services where necessary to afford individuals with hearing and vision impairments an equal opportunity to access and participate in such hearings. These may include effective methods that make aurally delivered information available to individuals who are deaf or hard or hearing, and visually delivered materials available to individuals who are blind or have low vision. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a grantee shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services should be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. For virtual hearings, such steps should include ensuring that information is provided on an accessible website, that emails and other digital notifications are accessible, and that the application or platform used to host the hearing is also accessible. Additional services such as audio description or captioning may also be needed to provide effective communication in a digital context. Helpful guidelines for ensuring the accessibility of web-based and digital materials are available through the World Wide Web Consortium's Web Accessibility Initiative at *https://www.w3.org/WAI/.* Examples of auxiliary aids and services that may be necessary when conducting hearings online can be found at 28 CFR 35.104.

Grantees must also take reasonable steps to provide meaningful access to persons with limited English proficiency consistent with Title VI of the Civil Rights Act. To ascertain their obligations, grantees should conduct the four-factor analysis set forth in HUD's limited English proficiency guidance found at *https://www.hud.gov/sites/documents/FINALLEP2007.PDF,* which may be covered by grantees' Language Assistance Plan, recognizing that the use of the internet to conduct such a hearing may change the analysis. For virtual or online hearings, such services may also include translation of documents and captioning or interpretation in the appropriate language(s). More information on the four-factor analysis and other requirements can be found at *https://www.hud.gov/sites/documents/FINALLEP2007.PDF.*

III.B.4.(a)(iii) Modifications to citizen participation requirements for local governments that receive funds from States and for insular areas. HUD is clarifying that by authorizing states to adopt expedited citizen participation procedures, the CARES Act authorized expedited procedures and virtual public hearings for citizen participation by units of general local government that receive CDBG–CV funds from a state through a method of distribution. This is because 24 CFR 91.115I requires states to include citizen participation requirements for units of general local government in its own citizen participation plan. Expedited procedures must still describe how units of local governments receiving funds from the state will meet the citizen participation requirements in 24 CFR 570.486.

Additionally, HUD is waiving the requirement in 570.441I(2) that an insular area must hold a public hearing on a substantial amendment. Instead, HUD is imposing an alternative requirement to permit the insular area to adopt expedited requirements by modifying its citizen participation plan to replace the hearing if it provides community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan or annual action plan.

III.B.4.(a)(iv) Extension of CARES Act Flexibilities to All Consolidated Plan Formula Programs (CDBG, CDBG–CV, HOME, HOPWA, HTF, ESG) and Section 108 Loan Guarantees. The CARES Act altered consolidated plan citizen participation requirements for some CDBG–CV grants, fiscal year 2019 and 2020 annual formula CDBG grants, and Emergency Solutions Grant supplemental CARES Act (ESG–CV) grants. It did not modify citizen participation for other annual formula CDBG and ESG grants, Section 108 Loan Guarantees, or for HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), and Housing Opportunities for Persons With AIDS (HOPWA) formula programs before fiscal year 2019.

On April 1, 2020, HUD issued two waivers to modify citizen participation requirements for consolidated plan substantial amendments for CDBG, ESG, HOME, HTF, and HOPWA. The first eliminated the 30-day minimum for the required public comment period for substantial amendments, provided that no less than 5 days are provided for public comments on each substantial amendment concerning the proposed uses of CDBG, HOME, HTF, HOPWA, or ESG funds. The second allowed grantees to determine what constitutes reasonable notice and opportunity to comment, given their circumstances, for the 2020 program year. The waivers were published in a memorandum

signed by Acting Assistant Secretary John Gibbs on March 31, 2020. It is available at: *https://www.hud.gov/sites/dfiles/CPD/documents/Availability-of-Waivers-of-CPD-Grant-Program-and-Consolidated-Plan-Requirements-to-Prevent-the-Spread-of-COVID-19-and-Mitigate-Economic-Impacts-Caused-by-COVID-19.pdf.*

HUD is now issuing waivers and alternative requirements to expedite procedures to modify citizen participation plans for *all* 2020 fiscal year consolidated plan and annual action plan submissions that pertain to ESG, HOME, HTF, and HOPWA formula programs. The waivers are necessary to effectively implement the CARES Act flexibilities offered to CDBG grantees because planning and annual action plan consolidated plan submissions for CDBG–CV and CDBG grants are inextricably linked with the consolidated plan submissions for ESG, HOME, HTF, and HOPWA.

In 1995, HUD published the consolidated plan regulation at 24 CFR part 91. The consolidated plan replaced the following separate application and planning submissions: The Comprehensive Housing Affordability Strategy (CHAS), enacted by NAHA at 42 U.S.C. 12701, the Community Development Plan requirements, added to the CDBG program by NAHA (42 U.S.C. 5304), the CDBG final statement, the HOME program description, and the ESG and HOPWA applications. In 2015, HUD published an interim rule that added HTF to the consolidated planning regulations. States and units of general local government (including insular areas) that apply for Section 108 loan guarantees pursuant to 24 CFR 570.704 may also be required to include the use of guaranteed loan funds in their consolidated plans.

Grantees that apply for CDBG–CV or CDBG funds as part of their 3–5 year consolidated plan or annual action plan submissions cannot reasonably take advantage of the expedited CARES Act citizen participation requirements unless the other programs included in these submissions are subject to the same expedited requirements. Creating a separate application process for CDBG–CV and CDBG funds would add time and complications that are likely to delay the availability of funds and undermine the purpose of the CARES Act provisions to expedite assistance. Further, separating CDBG planning and applications would thwart several of the reasons cited for the consolidated planning rule, *e.g.,* providing comprehensive information on the jurisdiction that is easy to understand and reducing paperwork and simplifying the process of requesting and obtaining federal funds available to the jurisdictions (60 FR 1878, published January 5, 1995).

Therefore, HUD is waiving provisions at 24 CFR 91.105(b)(4), (c)(2) and (k), 24 CFR 91.115(b)(4), (c)(2) and (i), 24 CFR 91.401, 24 CFR 570.431, 24 CFR 570.441, and 24 CFR 570.704 to the extent necessary to permit the following alternative requirement: CDBG, HOME, HTF, HOPWA, and ESG grantees may modify their citizen participation plans to adopt expedited procedures that apply when the grantees prepare, propose, modify, or amend any consolidated plan submissions that contain uses of CDBG–CV funds or uses of fiscal year 2019 or 2020 CDBG funds to prevent, prepare for, and respond to coronavirus. The expedited procedures must, at a minimum, provide citizens with notice and a reasonable opportunity to comment of no less than 5 days.

Additionally, HUD is waiving provisions at 24 CFR 91.105(b) and I, 24 CFR 91.115(b) and I, 24 CFR 91.401, and 24 CFR 570.431, 570.441, and 570.486(a) to the extent necessary to establish the following alternative requirement. For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, CDBG, ESG, HOME, HTF, and HOPWA grantees, and units of general local government receiving CDBG funds from state or insular area CDBG grantees, may hold virtual hearings in lieu of in-person public hearings to fulfill public hearing requirements imposed by 42 U.S.C. 12707(a)(3) and the regulations at 24 CFR part 91 and 24 CFR part 570, or by the grantee's citizen participation plan.

For each virtual hearing, a grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses from local officials to all citizen questions and issues, and public access to all questions and responses. Therefore, grantees may use online platforms to hold virtual hearings that provide public access to questions and responses and provide timely responses from local officials. This alternative requirement is only applicable to consolidated planning submissions describing the use of fiscal year 2019 or 2020 annual formula funds for CDBG, ESG, HOME, HTF, and HOPWA, or for CDBG–CV or ESG–CV funds provided under the CARES Act.

HUD cannot modify requirements for CDBG grantees to mirror the elimination of citizen participation for substantial amendments and new consolidated plan submissions for ESG–CV funds because HUD cannot waive the minimum requirements the CARES Act imposed on CDBG grantees. Therefore, this waiver and alternative requirement does not alter or expand the authority for ESG grantees to omit the citizen participation and consultation requirements for consolidated plan submissions that only pertain to ESG CARES Act (ESG–CV) funding.

III.B.4.(b) CDBG–CV Application Content and Submission

III.B.4.(b)(i). CDBG–CV Application Content, Submission, Consistency with Other Portions of Consolidated Plan. In the April 9 memorandum, HUD issued a waiver and alternative requirement that permits a grantee to apply for CDBG–CV funds by submitting a substantial amendment to its most recently approved annual action plan. Grantees may also apply for CDBG–CV funds in a future annual action plan submission.

As part of the application submission, HUD is temporarily waiving the requirements (found at 42 U.S.C. 12706 and 24 CFR 91.325(a)(5) and 91.225(a)(5)) that grantees certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan portion of the consolidated plan. HUD is imposing a related alternative requirement that allows grantees to submit those certifications when the grantee submits its next full (3–5 year) consolidated plan due after the 2020 program year. Grantees may not have considered the needs associated with CDBG–CV funds when developing their current consolidated plan strategic plan and needs assessment.

In conjunction, HUD is temporarily waiving 42 U.S.C. 5304I to the extent that it requires HUD to annually review grantee performance under the consistency criteria. This waiver also only applies until the grantee submits its next full (3–5 year) consolidated plan due after the 2020 program year.

Applying through a substantial amendment to the most recent action plan. If the CDBG–CV application is submitted as a substantial amendment to the most recent annual action plan, the substantial amendment must include the CDBG–CV allocation as an available resource for the year. The amendment must include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus. To permit this expedited application process, in the April 9 memorandum HUD waived statutory provisions at 42 U.S.C. 12705(a)(2) to the extent they require

updates to the housing and homeless needs assessment, (24 CFR 91.205 and 91.405), housing market analysis (24 CFR 91.210 and 91.410), and strategic plan (24 CFR 91.215 and 91.415. HUD also waived 24 CFR 91.220 (entitlements) and 91.320 (states), to the extent those regulations limit the action plan to a specific program year, to permit grantees to prepare substantial amendments to their most recent annual action plan (including their 2019 annual action plan).

In the April 9 memorandum, HUD also issued a waiver and alternative requirement to 24 CFR 91.505 to facilitate the use of the CDBG–CV funds to the extent necessary to require submission of the substantial amendment to HUD for review in accordance with 24 CFR 91.500, and required that, to receive a CDBG–CV grant, a grantee must also submit a SF–424, SF–424D, and the certifications at 24 CFR 91.225(a) and (b) (entitlements) or 24 CFR 91.325(a) and (b) (states).

HUD is now adding to the waivers in the April 9 memorandum as follows. The abbreviated consolidated plan regulations for insular areas at 24 CFR 570.440(i) are waived to the extent necessary to impose the same alternative requirements in the April 9, 2020 waiver, so that if an insular area applies for CDBG–CV funds by submitting a substantial amendment to an abbreviated consolidated plan, the following requirements apply. The substantial amendment must include the CDBG–CV allocation as an available resource for the year. The amendment must include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus. The grantee must submit the substantial amendment to HUD for review in accordance with 24 CFR 91.500, and to receive a CDBG–CV grant, it must submit a SF–424, SF–424D and the certifications at 24 CFR 570.440I.

If CDBG–CV funds are included in a substantial amendment to the most recently submitted annual action plan, existing cooperation agreements between a local government and an urban county governing other CDBG funds in the most recently submitted annual action plan (for purposes of either an urban county or a joint program) will automatically cover CDBG–CV funding as well. These cooperation agreements will continue to apply to the use of CDBG–CV funds for the duration of the CDBG–CV grant.

Applying through a new annual action plan submission. The action plan submission procedures in 24 CFR part 91 (including consultation and a public hearing) apply to grantees that choose to submit CDBG–CV applications by including CDBG–CV funds in a new annual action plan submission. Content of action plans is described at 24 CFR 91.220 (entitlements), 91.320 (states), and 24 CFR 570.440 (insular areas).

Applying for additional CDBG–CV allocations. The waivers and alternative requirements in the April 9 memorandum apply to all allocations of CDBG–CV funds. HUD encourages grantees to apply for additional allocations of CDBG–CV funds as they are announced by submitting substantial amendments to their most recent annual action plan. Grantees are advised that an application for an additional allocation of CDBG–CV funds should be submitted as a substantial amendment to the annual action plan that describes the first CDBG–CV allocation.

An application submitted as a substantial amendment must include the CDBG–CV allocation as an available resource for the year and include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus.

HUD strongly encourages grantees to apply for allocations through substantial amendments as they are announced. However, grantees that have not submitted applications for CDBG–CV funds when additional allocations are announced may submit a single application for all allocations as a substantial amendment to the most recent annual action plan, or as part of a new annual action plan.

III.B.4.(b)(ii). Content of CDBG–CV application for States Acting Directly. The waiver and alternative requirement in paragraph III.B.6.(b)(i) permit states to carry out activities directly. Therefore, HUD is granting the following waiver and alternative requirement to amend 24 CFR 91.320(d) and 24 CFR 91.320(k)(1)(i) to the extent necessary to require a state to submit a description of a method of distribution and include a list of the use of all funds for activities it will carry out directly, and how the use of the funds will prevent, prepare for, and respond to coronavirus. A state that has already submitted its application for CDBG–CV funds may amend its annual action plan that describes the use of CDBG–CV funds to modify its description of a method of distribution and include a list of the use of all funds for activities it will carry out directly, and how the use of the funds will prevent, prepare for, and respond to coronavirus.

III.B.4.(b)(iii). Deadline to Apply for Assistance. Under the CARES Act, the deadline is August 16, 2021, for grantees to submit their CDBG–CV action plan and the annual Action Plan for fiscal year 2019 and 2020 CDBG funds. This deadline supersedes the August 16, 2020 deadline established by 24 CFR 91.15 in accordance with section 116(b) of the HCD Act.

III.B.5. Allowable Costs, Eligible Activities and National Objectives

This section describes modifications to the CDBG program requirements that address allowability of costs that can be charged to CDBG–CV grants.

III.B.5.(a) Use of Funds for CARES Act Purposes

The grantee is required to use all CDBG–CV funds for CDBG-eligible activities that are carried out to prevent, prepare for, and respond to coronavirus. CDBG–CV grants cannot be used for any other purpose. This requirement is discussed more fully in section III.B.5.(f), which discusses eligible activities.

Additionally, HUD weighed the purpose of the CARES Act to prevent, prepare for, and respond to coronavirus with the intent of Congress expressed in section 101I of the HCD Act (42 U.S.C. 5301I) that CDBG funds not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. Given the extreme and unexpected downturn in local and national economic conditions, local resources are strained. Jurisdictions must provide new and expanded support with fewer resources. Therefore, HUD has concluded that when CDBG funding is used for purposes of the CARES Act, it is not considered to substantially replace the amount of local financial support previously provided to community development activities.

III.B.5.(b) Reimbursements

The CARES Act provides that CDBG–CV funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to coronavirus incurred by a state or locality regardless of the date on which such costs were incurred. This authority is broader than the authority to reimburse costs with other CDBG funds.

The term ''locality'' is not defined by the CARES Act, the HCD Act, or the CDBG program regulations. For purposes of CDBG–CV grants, a ''locality'' shall mean units of general local government, as defined in section 102 of the HCD Act.

The CARES Act also requires that all costs reimbursed with CDBG–CV funds be allowable costs, meaning they comply with all grant requirements.

Therefore, HUD is adopting the following waivers and alternative requirements to 24 CFR 570.200(h) and 570.489(b) to facilitate the use of CDBG–CV funds to reimburse allowable costs by modifying current regulations that are inconsistent with CARES Act reimbursement authority and imposing safeguards to help ensure the allowability of all costs charged to the CDBG–CV grant:

Grantees shall not reimburse costs incurred before January 21, 2020, without written approval from HUD's Office of Block Grant Assistance (OBGA), by emailing the contact person listed at the beginning of this notice. HUD is imposing a presumption that costs of activities undertaken before January 21, 2020, the date the CDC confirmed the first case of coronavirus in the United States in the State of Washington,[1] are highly unlikely to be eligible for reimbursement because they likely are not costs to prevent, prepare for, and respond to coronavirus. The need to pay for coronavirus-related costs incurred after this date far exceeds the amount of CDBG–CV funds available. HUD cautions that it will only consider granting written approval in extraordinary cases where the clear link to the purposes of the CARES Act is documented by substantial evidence provided to HUD by the grantee. Inquiries related to this requirement can be submitted to the contact identified above for this notice.

HUD is waiving the requirements of 570.200(h) and 570.489(b) to the extent necessary to authorize a grantee to permit reimbursement of pre-application costs of subrecipients, units of general local government, and itself, in addition to pre-agreement and pre-award costs. However, an environmental review must be performed and a release of funds must be obtained in accordance with 24 CFR part 58 prior to committing CDBG–CV funds to reimburse such costs. After the grantee signs a CDBG–CV agreement it may reimburse a unit of general local government or subrecipient for costs incurred before the unit of general local government or subrecipient applies to the grantee for assistance.

For grantees subject to the entitlement CDBG regulation at 24 CFR 570.200(h), the following waivers and alternative requirements apply: In lieu of the effective date described at 570.200(h), the grantee shall use the date in box 4 of form HUD–7082, Funding Approval/Agreement. HUD is waiving the requirement at 570.200(h)(1)(i) and (ii) that the activity for which costs are incurred must be included in a consolidated plan action plan or amended consolidated plan action plan before incurring the costs. Instead, the activity for which costs were incurred must be included in the grantee's CDBG–CV application before CDBG–CV funds are used to reimburse those costs. Or, if the use of CDBG–CV funds for reimbursements is not included in the CDBG–CV application, this use may be included in a subsequent amendment to the annual action plan that describes the use of the CDBG–CV funds (following the grantee's citizen participation plan procedures for amendments). To facilitate the use of funds provided under a one-time grant rather than an annual appropriation, HUD is waiving the time limitation and the monetary limitation on reimbursements in 570.200(h)(1)(v) and (vi) and related provisions at 570.200(h)(2). HUD is not waiving the requirement at 570.200(h)(1)(iii) to comply with the environmental review procedures stated in 24 CFR part 58.

All grantees may authorize subrecipients to incur pre-award costs in accordance with pre-agreement cost authority under 24 CFR 570.489(b) (states) and pre-award cost authority under 24 CFR 570.200(h) (entitlements), as modified above. Consistent with the waiver and alternative requirement in paragraph III.B.6.(b)(i) that authorizes states to act directly, the provisions of 24 CFR 570.489(b) are waived to the extent necessary to authorize a state to charge to the grant pre-agreement costs of its subrecipients in addition to the pre-agreement costs of units of general local government, in accordance with procedures established by the state and subject to the requirements that apply to pre-agreement costs of units of general local government in 24 CFR 570.489(b), and the requirements that apply to the use of CDBG–CV funds.

While provisions of 24 CFR 570.489(b) requiring compliance with 24 CFR part 58 do not apply prior to an application for CDBG–CV funds, a unit of general local government or state must document compliance with the environmental review requirements at 24 CFR part 58 following the application to the state or unit of general local government for funding and prior to reimbursement of pre-application costs, per 24 CFR 570.200(h)(1)(iii) and 24 CFR 570.489(b). If a grantee cannot meet all requirements at 24 CFR part 58 and cannot demonstrate there was no environmental harm committed, the pre-application costs cannot be reimbursed with CDBG–CV or other HUD funds.

III.B.5.(c) Terms and Conditions Made Applicable by the CARES Act

The CARES Act subjects CDBG–CV funds to the authorities and conditions applicable to annual CDBG grants for fiscal year 2020. Therefore, the following requirements apply to CDBG–CV grants:

III.B.5.(c)(i). Limitations on Use of Funds for Eminent Domain. The grantee shall ensure that no CDBG–CV funds are used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) shall be considered a public use for purposes of eminent domain.

III.B.5.(c)(ii). Prohibition on Certain Funds Transfers. The Grantee or unit of general local government that directly or indirectly receives CDBG–CV funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the HCD Act or permitted by waiver and alternative requirements that apply to the use of CDBG–CV funds.

III.B.5.(c)(iii). E.O. 12372—Special Contract Condition. Notwithstanding any other provision governing CDBG–CV funds, no funds may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR part

[1] See CDC Press Release at: *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.

III.B.5.(c)(iv). Mandatory Evaluation of Special Economic Development Activities. CDBG–CV funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570—''Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.'' Given the likelihood that CDBG–CV funds will be used to assist businesses needing working capital financing for everyday operations, such as payroll costs, HUD intends to provide advice or technical assistance on the application of the guidelines and objectives set forth in Appendix A to such assistance. HUD will consider providing advice or technical assistance in recognition of the differences in underwriting assistance for the wide range of economic development projects permitted under section 105(a)(17) (as implemented at 24 CFR 570.203(b)).

III.B.5.(d) National Objectives

III.B.5.(d)(i) Use of Urgent Need National Objective. HUD has received questions regarding the records necessary to document that a grantee's activities to prevent, prepare for, and respond to coronavirus satisfy the urgent need national objective. To meet the urgent need national objective criteria at 24 CFR 570.208I (entitlements) and 570.483(d) (states), a grantee (or in the case of the State CDBG program, a unit of general local government or a state, if the state is carrying out activities directly as authorized by section III.B.6.(b)(i)) must certify that: (1) The activity is designed to alleviate existing conditions; (2) those existing conditions pose a serious and immediate threat to the health or welfare of the community and are of recent origin or recently became urgent; and (3) that the grantee, state, or unit of general local government is unable to finance the activity on its own, and that other sources of funds are not available. The State CDBG regulation at 24 CFR 570.483(d) requires the state's determination of these elements in addition to the unit of general local government's certification.

Entitlement grantees must maintain records required by 24 CFR 570.506(b)(12) to document: (1) The nature and degree of seriousness of the condition requiring assistance and the timing of its development; (2) evidence that the recipient certified that the CDBG activity was designed to address the urgent need; and (3) evidence confirming that other financial resources to alleviate the need were not available. The State CDBG recordkeeping requirements at 24 CFR 570.490 require states and state recipients to maintain records to demonstrate compliance with the urgent need criteria.

The following information provides guidance on how a grantee may satisfy existing recordkeeping requirements for the urgent need national objective criteria in addition to a grantee's or unit of general local government's certification and a state's determination (or state's certification, if the state is acting directly):

Criteria 1: Is the activity designed to alleviate existing conditions? For CDBG–CV grants, the records the grantee maintains to demonstrate that the activity was designed to alleviate existing conditions can be the same records used to show that grant funds were used to prevent, prepare for, and respond to coronavirus, as required by the CARES Act.

Criteria 2: Does the condition pose a serious and immediate threat to the health or welfare of the community that is of recent origin or that recently became urgent? In light of the severity of coronavirus and the urgency of the nation in addressing its impacts, pursuant to 24 CFR 570.208I (entitlements) or 24 CFR 570.483(d) (states), a grantee may certify that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community within 18 months following a date determined by one of the following three methods:

- Referral to a U.S. Department of Health and Human Services issued press release declaring a public health emergency for the entire United States found at *https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html.* The declaration was retroactive to January 27, 2020;
- Referral to the President's declaration of the ongoing Coronavirus Disease 2019 (COVID–19) pandemic as an emergency of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''). (The President subsequently approved additional major disaster declarations for states); or
- Referral to the effective date of a grantee's own local or state emergency declaration.

Criteria 3: Is the grantee or unit of general local government unable to finance the activity on its own, and are other sources of funds are not available to carry out the activity? The extreme needs of local governments resulting from coronavirus in the United States outweigh available resources, despite the extraordinary level of assistance provided to states and units of general local government under the CARES Act. Therefore, documentation that the activity will prevent, prepare for, and respond to the coronavirus may be used to demonstrate that a grantee or unit of general local government is unable to finance the activity on its own.

All CDBG–CV grantees are required to establish and maintain adequate procedures to prevent any duplication of benefits for assisted activities (as discussed in section III.B.9. of this notice). To demonstrate that no financial assistance has been received or is available to pay costs charged to a CDBG–CV grant, a grantee may demonstrate that no other funds are available for an activity by maintaining records of compliance with mandatory duplication of benefits requirements described in section III.B.9.

All grantees are reminded to consider how the use of the urgent need national objective will affect their compliance with the CDBG ''overall benefit'' requirements discussed in paragraph III.B.5.(d)(iv).

III.B.5.(d)(ii) Modification of Location-Based Presumption of LMI Benefit for Job Creation and Retention National Objective Criteria. To facilitate the use of funds for economic development, HUD is removing the higher poverty rate required in some cases for central business districts, which is not required by statute. HUD is instituting an alternative requirement to modify the regulations at 24 CFR 570.208(a)(4)(v) (entitlement) and 24 CFR 570.483(b)(4)(v) (state) by deleting the criteria at 24 CFR 570.208(a)(4)(v)(B) (entitlement) and 24 CFR 570.483(b)(4)(v)(B) (state). Under this alternative requirement, for purposes of the LMI job creation/retention national objective at 24 CFR 570.208(a)(4) and 24 CFR 570.483(b)(4), a census tract qualifies for the presumptions under the criteria established in regulations at 24

CFR 570.208(a)(4)(v) and 24 CFR 570.483(b)(4)(v) if the poverty rate is at least 20 percent and if it evidences pervasive poverty and general distress using the criteria described in 24 CFR 570.208(a)(4)(v)(C) (entitlement) and 24 CFR 570.483(b)(4)(v)(C) (states).

This alternative requirement eliminates a requirement that census tracts that contain at least a portion of a central business district must have a poverty rate of at least 30 percent before residents and businesses in the tract are entitled to a presumption of low- and moderate-income (LMI) benefit. HUD has determined that eliminating the 30 percent requirement for tracts that contain central business districts will standardize the required poverty rate to meet the presumption regardless of where the persons or the business is located, which facilitates the use of grant funds to assist desperate businesses. Central business districts are hubs that contain many coronavirus-affected businesses and facilitating assistance to businesses that seek to retain jobs is consistent with the purposes of the CARES Act. Standardizing the poverty rate for the LMI benefit presumption may help to avoid wholesale collapse of central business districts at a when many businesses have closed or at risk of closing due to insufficient revenues.

III.B.5.(d)(iii) LMI Job Creation and Retention Records. HUD is establishing the following waiver and alternative requirement to facilitate and expedite assistance to coronavirus-affected businesses by streamlining national objective criteria and recordkeeping requirements for activities that benefit LMI persons by retaining or creating jobs. The normal job creation and retention recordkeeping requirements consider family income when determining whether a beneficiary is a person of low or moderate income, but these requirements are likely to be burdensome during a time when unemployment has surged and family income is more difficult to document. Collection of income information directly from assisted businesses can streamline assistance. Therefore, notwithstanding that the definitions of low-income person and moderate-income person in 24 CFR 570.3 are based on family income, for purposes of meeting the national objective criteria for job creation or retention at 24 CFR 570.208(a)(4) and 24 CFR 570.483(b)(4), HUD is imposing the following waiver and alternative requirement: Grantees and employers may consider individuals that apply for or hold jobs to be members of one-person families for activities that prevent, prepare for, and respond to coronavirus. HUD is also modifying related recordkeeping requirements at 24 CFR 570.506(b)(7) (entitlement) and the jointly agreed upon requirements referenced in 24 CFR 570.490 (state) by adding the following additional presumption: The recipient may substitute records showing the type of job and the annual wages or salary of the job in lieu of maintaining records showing the person's family size and income to demonstrate that the person who filled or held/retained the job was a low- or moderate-income person, when required by paragraph 24 CFR 570.506(b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v) (entitlement) or the requirements referenced in 24 CFR 570.490 (state). HUD will consider the person income-qualified if the annual wages or salary of the job is equal to or less than the Section 8 low-income limit established by HUD for a one-person family. Under this alternative requirement, a grantee will have substantially reduced documentation requirements because they will be working with assisted businesses rather than each person, and potentially their households, who received a job.

III.B.5.(d)(iv) Overall Benefit to LMI Persons. HUD is establishing an alternative requirement to modify the calculation of overall LMI benefit, so that compliance with the requirement is separated from the annual formula CDBG program calculation of overall benefit. Overall LMI benefit for CDBG–CV grants will be calculated based on the percentage of the CDBG–CV grant that benefits LMI persons. This alternative requirement is consistent with the idea that one-time, supplemental funding should not skew the calculation of overall benefit for use of annual formula CDBG grants and guaranteed loan funds. This modification expedites and facilitates the use of funds in part by enabling grantees to best plan which activities will benefit LMI persons.

Section 101I of the HCD Act (42 U.S.C. 5301I) establishes the primary objective of the HCD Act: the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' CDBG–CV grants are subject to the requirement that 70 percent of funds are for activities that benefit LMI persons. The requirements at 42 U.S.C. 5301I, 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) (entitlements and nonentitlement counties in Hawaii), 24 CFR 570.420(d)(2)–(3) (insular areas), and 24 CFR 570.484 (states) shall remain in place to the extent that they require the grantee to ensure that 70 percent of its CDBG–CV grant be expended for activities that benefit LMI persons. As an alternative requirement, however, HUD is requiring that grantees must demonstrate compliance with the overall benefit requirement separately for a grantee's total CDBG–CV grant allocation and not in combination with annual formula CDBG funding or commitments under the Section 108 Loan Guarantee program.

Under this alternative requirement, there is no option for grantees to select the timeframe for compliance. HUD previously instructed grantees to submit certifications required by 24 CFR 91.225 (entitlements) or 24 CFR 91.325 (states). The regulations at 24 CFR 91.225(b)(4)(ii) and 24 CFR 91.325(b)(4)(ii) require grantees to certify that the aggregate use of CDBG funds will comply with the overall benefit requirement during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years. Under this alternative requirement, grantees are not required to carry out the grant consistent with the mandatory overall benefit certification because HUD has changed the requirement related to overall benefit.

III.B.5.(e) Public Benefit

III.B.5.(e)(i) Elimination of Aggregate Public Benefit Test. HUD is waiving the standard for aggregate public benefit that applies to economic development activities described in 24 CFR 570.209(b)(1)–(2) (entitlement) and in 24 CFR 570.482(f)(2)–(3) (state). The public benefit standards were designed to require that economic development activities, in the aggregate, provide an appropriate amount of public benefit based on the amount of CDBG funds used. Given the clear benefit derived from addressing economic disruptions due to coronavirus, CDBG–CV grantees can adequately demonstrate public benefit based on the individual public benefit standards, as modified by waivers and alternative requirements in section III.B.5.(e)(ii).

Therefore, to facilitate and expedite the use of CDBG–CV funds for coronavirus-related economic development activities, HUD is waiving the aggregate public benefit standards at 24 CFR 570.209(b)(1)–(2) (entitlement) and 24 CFR 570.482(f)(2)–(3) (state). In granting this waiver, HUD notes that based on the growing number of urgent requests for economic development assistance, particularly from small business, grantees are likely to have difficulty determining the appropriate

amount of CDBG assistance, in the aggregate, for their current and next program years.

III.B.5.(e)(ii) Modification of Individual Public Benefit Standards. To facilitate the use of grant funds by providing greater leeway to grantees to identify the most advantageous means of providing economic development assistance, HUD is modifying the individual public benefit standards. HUD is imposing a waiver and alternative requirement to establish an alternative means by which grantees can demonstrate public benefit from the use of CDBG–CV funds for individual special economic development activities.

Certain economic development activities described in 24 CFR 570.209 (entitlement) and in 24 CFR 570.482(f)(1) (state) are subject to individual public benefit standards at 24 CFR 570.209(b)(3) (entitlement) and 24 CFR 570.482(f)(4) (state). Grantees must satisfy these public benefit standards to show that the amount of CDBG funds used for individual economic development activities is appropriate relative to the benefit to the public from those activities.

HUD is waiving the individual standards at 24 CFR 570.209(b)(3) and 24 CFR 570.482(f)(4) and imposing the following alternative requirement. For activities subject to the public benefit standards, grantees must document that: (a) The activity will create or retain at least one full-time equivalent, permanent job per $85,000 of CDBG funds used; (b) the activity will provide goods or services to residents of an area such that the number of LMI persons residing in the area served by the assisted businesses amounts to at least one LMI person per $1,700 of CDBG funds used; or (c) the assistance was provided due to business disruption related to coronavirus (in which case, no monetary standard applies because HUD has determined that there is sufficient public benefit derived from the provision of assistance to stabilize or sustain businesses in the grantee's jurisdiction that suffer disruption due to coronavirus, and that facilitation of business assistance for this purpose may help to avoid complete economic collapse within the grantee's jurisdiction). This alternative requirement does not modify the requirements related to eligible activities and national objectives criteria.

III.B.5.(f) Eligible Activities

Grantees may use CDBG–CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus. By law, use of funds for any other purpose is unallowable. To satisfy these purposes, grantees may assist activities that respond to direct effects, such as the need to rehabilitate a building to add isolation rooms for recovering coronavirus patients. A grantee may also undertake activities to address indirect effects of the virus, such as the economic and housing market disruptions caused by social distancing measures and stay at home orders implemented to prevent the spread of coronavirus.

Some activities clearly tie back to the purposes of the CARES Act, such as public services, economic development and microenterprise assistance, public facilities, and the rehabilitation of private buildings to provide housing. However, HUD is not prohibiting grantees from carrying out any particular CDBG eligible activity described in the HCD Act and the part 570 regulations, because other CDBG eligible activities, such as acquisition, can justifiably be used to fulfill the CARES Act purposes depending upon the circumstances.

To remain consistent with the structure of a block grant program and the flexibility of CDBG to provide multiple avenues to achieve the purposes of the CARES Act, HUD is implementing the limitation that funds be used for the coronavirus-related purposes of the CARES Act by requiring grantees to document the use of funds to prevent, prepare for, and respond to coronavirus, rather than by expressly prohibiting grantees from undertaking any of the eligible activities described in the HCD Act. HUD cautions grantees that the recordkeeping requirements of this notice require clear documentation that all uses of funds satisfy the statutory purposes of the CARES Act.

The current needs to prevent, prepare for, and respond to coronavirus may require use of CDBG–CV funds for uncommon activities. HUD is preparing a series of technical assistance products that describe opportunities to quickly deploy CDBG–CV funds to address immediate needs. As this technical assistance is developed, it will be posted on the CDBG–CV page on the *https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19.*

When identifying eligible activities to be carried out with CDBG–CV funds, grantees can reduce the potential for duplication of benefits by designing activities that address needs not covered by other sources of financial assistance. More information on requirements to prevent the duplication of benefits is described in section III.B.9.

III.B.5.(f)(i) Extension of Emergency Payments. HUD is providing an alternative requirement to extend the period that grantees can make emergency grant payments on behalf of individuals and families. Normally, CDBG funds may not be used for income payments, which are not included among eligible activities in section 105(a) of the HCD Act for states, and which are expressly prohibited by 24 CFR 570.207(b)(4) in the Entitlement CDBG regulations. The phrase *income payments* means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes *emergency payments* made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

Coronavirus has had a massive impact on families' ability to work for pay, make rent or mortgage payments, access or pay for food, clothing, and basic utilities, and access many other essential items and services. To help individuals and families address these challenges, HUD is waiving section 105(a)(8) of the HCD Act and 24 CFR 570.207(b)(4) only to the extent necessary to establish the following alternative requirement: CDBG–CV funds may be used to provide emergency payments for individuals or families impacted by coronavirus for items such as food, clothing, housing (emergency rental assistance or mortgage assistance) or utilities for up to six consecutive months.

Emergency payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments. CDBG–CV grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible. Grantees using this alternative requirement must document, in their policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable.

III.B.5.(f)(ii) Opportunity Zones and Related Flexibilities for Economic Development. To facilitate and expedite the use of grant funds for economic development during this time of extraordinary need, HUD is clarifying the existing requirements and adopting an alternative requirement that expands economic development activities that can be carried out with CDBG–CV funds. HUD is adopting this alternative requirement because the entitlement

regulations at 24 CFR 570.203(b) describe some financing mechanisms for economic development, but do not provide an exhaustive list of the forms of support grantees can provide to private, for-profit businesses and to nonprofits for special economic development activities. Many economic development activities are carried out in conjunction with other forms of assistance and Federal tax-based programs that help provide additional sources of financing for economic development, particularly in LMI areas. HUD wants to facilitate the ability for grantees to use CDBG–CV funds to fill financing gaps that cannot be met by other sources and quickly launch critical economic development projects, particularly in Opportunity Zones and other target areas, without taking the time to seek additional clarification from HUD on activity eligibility for individual projects.

First, this notice clarifies an existing requirement of economic development activities that grantees may carry out pursuant to 24 CFR 570.203(b) (entitlement) or section 105(a)(17) of the HCD Act (state). Grantees may provide assistance to an economic development project through a for-profit entity that passes the funds through a financing mechanism (*e.g.,* Qualified Opportunity Funds and New Markets Tax Credit (NMTC) investment vehicles). The regulations at 24 CFR 570.203(b) already list forms of support by which grantees can provide assistance to private, for-profit businesses where the assistance is appropriate to carry out an economic development project. HUD has previously interpreted this provision to allow for CDBG assistance to NMTC investment vehicles. This clarification makes clear that such assistance through any financing mechanism (which is not limited to NMTC investment vehicles) is eligible under 24 CFR 570.203(b). The regulation also does not apply to states, but states may consider 24 CFR 570.203(b), as clarified by the following alternative requirement, as guidance in the same way that they may consider other Entitlement CDBG regulations.

HUD is not waiving 24 CFR 570.203(b) (entitlement) or section 105(a)(17) (state), and other statutory and regulatory requirements remain in place.

Second, this notice establishes an alternative requirement that expands the authority in section 105(a)(15) of the HCD Act and 24 CFR 570.204 to permit grantees subject to entitlement CDBG regulations to assist nonprofit organizations serving the development needs of their jurisdiction by carrying out community economic development projects through a financing mechanism. The nonprofit may pass assistance through a financing mechanism to another entity based on the language in section 105(a)(15) of the HCD Act. Grantees subject to entitlement regulations must document that the assisted nonprofit is serving the development needs of the jurisdiction and that the assistance is used for a community economic development project that is necessary to prevent, prepare for, and respond to coronavirus.

III.B.5.(f)(iii) Public Services Cap. The CARES Act provides that notwithstanding section 105(a)(8) of the HCD Act (42 U.S.C. 5305(a)(8)), there shall be no per centum limitation for the use of funds for public services activities to prevent, prepare for, and respond to coronavirus. The CARES Act provides this flexibility for all CDBG–CV funds and CDBG funds appropriated in fiscal years 2019 and 2020 to the extent that grantees use these funds to carry out public service activities to prevent, prepare for, and respond to coronavirus.

Following enactment of the CARES Act, the public services cap described in section 105(a)(8) of the HCD Act and 24 CFR 570.201I has no effect on CDBG–CV grants. Program income generated by the use of CDBG–CV funds is given special treatment, as discussed in III.B.6.(a). Therefore, notwithstanding the provisions of section 105(a)(8) of the HCD Act, program income is not a consideration for purposes of determining the amount of CDBG–CV funds that can be expended on public services. The calculation of the public services cap for fiscal year 2020 and 2019 annual formula CDBG grants is discussed in section IV.B.4.(a).

III.B.5.(f)(iv) Other Public Services Considerations. HUD reminds grantees to comply with other requirements in section 105(a)(8) of the HCD Act, and for grantees subject to entitlement CDBG regulations, 24 CFR 570.201I. Namely, CDBG–CV funds may only be used for those public service activities that are new or that represent a quantifiable increase above the level of an existing service that has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the state in which it is located) in the 12 calendar months before the submission of the action plan, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government.

Additionally, grantees are reminded that the purchase of personal property and equipment is generally ineligible. However, the entitlement CDBG regulation at 24 CFR 570.207(b)(1) (which may be used as guidance by state grantees), allows grantees to purchase or to pay depreciation in accordance with 2 CFR part 200, subpart E, for personal property, fixtures, and equipment when necessary when such items constitute all or part of a public service. Examples of use of equipment that constitute all or part of a public service include equipment and supplies owned by the grantee or subrecipient that provides the public service, *e.g.,* ventilators or other medical equipment and supplies that will be used in providing health care at a field clinic, or a vehicle outfitted with medical equipment to provide mobile health care.

III.B.5.(f)(v). Clarification on Application of Requirements in 2 CFR part 200. In response to the coronavirus pandemic, the Office of Management and Budget (OMB) released two memoranda that allow Federal agencies to grant exceptions to some requirements under 2 CFR part 200, the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.* HUD reminds grantees that the flexibilities in these memoranda do not automatically apply to grantees. HUD has not approved class exceptions to 2 CFR part 200 for CDBG–CV grants or CDBG grants, so the requirements in 2 CFR part 200 continue to apply.

The OMB memoranda were for limited purposes and were not intended to cover all grantees and activities. The March 9, 2020 memorandum, M–20–11, *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID–19)* (available at *https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-11.pdf*), allows Federal agencies to grant class exceptions in instances where the agency has determined that the purpose of the Federal awards is to support the continued research and services necessary to carry out the emergency response related to COVID–19. The March 19, 2020 memorandum, M–20–17, *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID–19) due to Loss of Operations* (available at *https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf*) allows HUD to make class exceptions for an expanded scope of recipients affected by the loss of operational capacity and increased costs due to the COVID–19 crisis. OMB indicated that it would

reassess the authority granted by these memoranda within 90 days.

III.B.6. Other Program Requirements

III.B.6.(a) Program Income

To expedite use of grant funds, HUD is clarifying the requirements for CDBG–CV grants on the treatment of program income at 24 CFR 570.504 (entitlement) and 24 CFR 570.489I–(f) (state) that is generated by the use of CDBG–CV funds. The receipt and expenditure of program income that is generated by the use of CDBG–CV funds shall be treated as annual formula CDBG program income and recorded as part of the financial transactions of the annual formula CDBG grant program. This clarification will facilitate expenditures of CDBG–CV grant funds for their intended purpose, while continuing to maintain appropriate controls on the use of program income.

III.B.6(a)(i) Use of program income before annual formula CDBG grant funds. Any program income generated from the use of CDBG–CV funds will be receipted in HUD's Integrated Disbursement and Information System (IDIS) as program income to the annual formula CDBG grant program.

III.B.6(a)(ii) Inapplicability of float-funded activities. Based on the treatment of income generated from the use of CDBG–CV funds as annual formula CDBG program income, HUD is waiving 24 CFR 570.301(b) and section 104(h) of the HCD Act for CDBG–CV grants. HUD is imposing the following alternative requirement: Grantees shall not use CDBG–CV funds for float-funded activities or guarantees.

III.B.6(a)(iii) Retention of program income by subrecipients. A grantee may permit subrecipients (including units of general local government receiving funds from a state) to retain program income from the use of CDBG–CV funds under this paragraph if the amount held does not exceed the subrecipient's projected cash needs for CDBG activities including activities to prevent, prepare for, and respond to coronavirus.

III.B.6.(b) Rules Applicable to State CDBG–CV Grants

The paragraphs in this section apply only to State CDBG–CV grantees.

III.B.6.(b)(i) Direct Action by States. The waivers and alternative requirements in this section and in sections III.B.6.(b)(ii)–(iv) permit a state grantee to use a portion of its funds to act directly to carry out activities through employees, contractors, and subrecipients in all geographic areas within its jurisdiction, including entitlement areas and tribal populations. HUD is issuing the waivers and alternative requirements in this section based in part on information in requests from states and in part to implement provisions of the CARES Act that permit grant funds allocated to states to be used in entitlement areas.

HUD has determined that this waiver and alternative requirement will facilitate and expedite the use of CDBG–CV funds by supporting states in their roles as significant coordinators of statewide and regional activities to prevent, prepare for, and respond to coronavirus. Additionally, these waivers and alternative requirements are designed to reduce administrative costs and streamline the delivery of assistance by maintaining a single set of grant requirements for all CDBG–CV allocations.

These waivers and alternative requirements are only available to a state if it complies with the following alternative requirements in this paragraph and in III.B.6.(b)(ii)–(iv):

Nonentitlement set aside: A state must set aside a portion of its grant for use by nonentitlement units of general local government. The nonentitlement set aside must be no less than an amount equal to the state's first CDBG–CV allocation and may be from any portion of the state's additional CDBG–CV allocation. This limitation is imposed for consistency with the CDBG–CV formulas, which include a direct allocation to entitlement areas and to states on behalf of nonentitlement areas to prevent, prepare for, and respond to coronavirus. The nonentitlement set aside fulfills the intent reflected by the formula to address needs in urban and rural areas, while giving states the flexibility to determine how to expend each allocation as it is made based on needs within its jurisdiction.

Inclusion in CDBG–CV Application: A state's proposal to act directly and to distribute or use CDBG–CV funds in entitlement areas must be published for public comment in its application for CDBG–CV funds or in a subsequent substantial amendment to the annual action plan that includes the CDBG–CV funds.

Activities carried out in tribal areas: A state grantee may carry out activities in tribal areas. States carrying out projects in tribal areas through employees, contractors, or subrecipients must obtain the consent of the Indian tribe with jurisdiction over the tribal area.

Other conforming changes: Requirements at section 106(d) of the HCD Act (42 U.S.C. 5306(d)) and 24 CFR 570.480(g) are waived to the extent necessary to allow a state to use its CDBG–CV funds for eligible activities that the state carries out directly. The standard at 24 CFR 570.480I and the provisions at section 104I(2) of the HCD Act (42 U.S.C. 5304I(2)) are modified to also include activities that the state carries out directly. Section 106(d) of the HCD Act is not otherwise waived, except as provided in this notice.

A state may carry out eligible activities directly, consistent with the entitlement program requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. Pursuant to section 102I of the HCD Act, one or more public agencies may be designated by the chief executive officer of a state to undertake activities assisted under this chapter. A state is responsible for ensuring that CDBG–CV funds are used in accordance with all program requirements. The use of interagency agreements, subrecipient agreements (including agreements with Indian tribes and designated public agencies, as described in section III.B.6.(b)(ii)) or contracts does not relieve the state of this responsibility. States are responsible for determining the adequacy of performance under subrecipient agreements and procured contracts, and for taking appropriate action when performance problems arise. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with all applicable requirements, including conflict of interest provisions in 24 CFR 570.489(g) and (h).

The national objective criteria in 24 CFR 570.483 are modified by the following alternative requirement when states carry out activities directly: The state must fulfill all requirements that 570.483 imposes on units of general local government to demonstrate compliance with national objective criteria.

The recordkeeping requirements at 24 CFR 570.490(b) are waived when states carry out activities directly, and the following alternative requirement shall apply: The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG–CV funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the state shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance

determinations for activities carried out directly; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the CDBG–CV application. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the race, ethnicity, and sex of persons who are applicants for, participants in, or beneficiaries of the activity.

The change of use of real property rule at 24 CFR 570.489(j) is modified to include instances when a state carries out activities directly. All references to ''unit of general local government'' shall be read as ''state, unit of general local government (UGLG) or state subrecipient.''

To include instances when a state carries out activities directly, 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients and local governments, as may be necessary or appropriate to meet the requirements of section 104I(2) of the HCD Act, as amended. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any subrecipients or local governments.

To include instances when a state carries out activities directly in accordance with the waiver in this paragraph, 24 CFR 570.489(g) is modified to revise the requirement that ''[t]he state shall establish requirements for procurement policies and procedures for units of general local government'' so that it applies to ''units of general local government and subrecipients.'' To facilitate grant administration by adopting state-wide procurement policies, a state agency designated to oversee the use of all its CDBG–CV funds pursuant to section 102I of the HCD Act may impose its procurement requirements on all uses of CDBG–CV funds by the state, including by other state agencies that administer a portion of the CDBG–CV grants, so long as those requirements comply with 24 CFR 570.489(g).

III.B.6.(b)(ii) Use of Subrecipients by States (Including Nonprofits and Tribes). HUD is adopting the following alternative requirement that shall apply when states carry out activities directly: States carrying out activities through subrecipients must comply with 24 CFR 570.489(m) relating to monitoring and management of subrecipients. The definition of subrecipient at 24 CFR 570.500(c) applies when states carry out activities through subrecipients, and the requirements of 24 CFR 570.489(g) (as modified by section III.B.6.(b)(i)) shall apply.

For purposes of this alternative requirement, the definition of subrecipients at 24 CFR 570.500I is modified to expressly include Indian tribes. Indian tribes that receive CDBG–CV funding from a state grantee must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301 *et seq.*). This conforming requirement is necessary because the state CDBG regulations do not anticipate states distributing funds through means other than a method of distribution to units of general local government.

III.B.6.(b)(iii) Activities Carried Out by States in Entitlement Areas. The provisions of 24 CFR 570.486(c) are waived to the extent that they allow States, either directly or through units of general local government, to use CDBG–CV funding for activities located in entitlement areas without contribution from the entitlement jurisdiction, consistent with the waiver and alternative requirements in sections III.B.6.(b)(i) and (ii). HUD is granting this waiver to facilitate and expedite the use of grant funds for consistency and ease of administration by granting the same geographic flexibilities to all allocations of CDBG–CV funds, since they will be administered under a single grant.

III.B.6.(b)(iv) Use of the ''upper quartile'' or ''exception criteria'' for LMI area benefit activities. Section 105(c)(2)(A) of the HCD Act authorizes HUD to permit an exception to the LMI area benefit national objective criteria that are normally satisfied when at least 51 percent of the population of an area are persons of low and moderate income. HUD is clarifying how this ''exception criteria'' applies when State CDBG–CV grantees carry out activities in entitlement jurisdictions as authorized by section III.B.6.(b)(iii). If the area in which the activity is carried out would benefit from the ''exception criteria'' that permit a grantee to use a percentage less than 51 percent to qualify activities under the LMI area benefit criteria, those exception criteria apply to the use of CDBG–CV funds by a state the same way that they apply to the use of CDBG funds by the entitlement grantee in the same area. CDBG–CV grantees are required to use the most recent data available in implementing the exception criteria. For more information on the data set, please visit *https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/.*

III.B.6.(b)(v) Elimination of State Administrative Match. To expedite the use of CDBG–CV funds, HUD is waiving the requirement for matching state administrative funds, subject to the requirements of section III.B.6.(b)(vi) below. Requiring states to match administrative funds may considerably slow down the expenditure of CDBG–CV funds in states struggling to accurately project and adjust their budgets given the challenges caused by coronavirus. The requirements at 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a) are waived to the extent necessary to eliminate the state match requirement for general administrative costs.

III.B.6.(b)(vi) Cap on State Administrative Costs and Technical Assistance. Pursuant to 24 CFR 570.489(a)(3)(iii), a state and its funded units of general local government and subrecipients are, in aggregate, permitted to expend no more than 20 percent of the CDBG–CV grant for planning, management, and administrative costs. Under 42 U.S.C. 5306(d)(5) and (6) and 24 CFR 570.489(a)(1) a state may not directly use more than $100,000 plus 3 percent of its annual grant for administrative and technical assistance costs combined. HUD is waiving 42 U.S.C. 5306(d)(5) and (6) and 24 CFR 570.489(a)(1) and establishing an alternative requirement that a state may use up to 7 percent of its CDBG–CV grant combined for general administration and technical assistance costs; of that 7 percent, a state may use up to 5 percent of CDBG–CV funds for general administration costs and up to 2 percent of the grant for technical assistance activities. The remainder of the amount may be used by units of general local government for administrative and technical assistance costs, provided that a state and its funded units of general local government and subrecipients expend no more than 20 percent of the CDBG–CV grant for planning, management, and administrative costs. A grantee must meet this alternative requirement over the life of its grant, as amended to incorporate additional allocations of CDBG–CV funds.

CDBG–CV grant funds shall not be used to pay planning and program administrative costs allocable to another grant under the CDBG annual formula program; however, CDBG–CV funds may be used to pay costs that benefit both the CDBG–CV grant and another CDBG award and can be distributed

between the grants in proportions that may be reasonably approximated.

III.B.6.(b)(vii) Procurement. Except as described in section III.B.6. to accommodate states acting directly, this notice does not modify procurement requirements at 24 CFR 570.489(g) for state grantees. As discussed above, the local procurement policies and procedures that apply to the use of annual formula CDBG grant funds may not be nimble enough to accommodate this urgent need to quickly procure goods and services necessary to carry out eligible activities. HUD recommends that CDBG–CV grantees review their existing procurement policies to explore the potential use of state or local waiver authority and emergency procedures that may expedite procurement processes.

Additionally, if the grantee plans to use CDBG–CV grants to carry out eligible activities that satisfy non-Federal cost share requirements under section 105(a)(9) of the HCD Act, the grantee should consider modifying procurement policies to authorize grantees to use procurement policies and procedures of the agencies paying the Federal cost share of the activity, to the extent that those policies and procedures are consistent with the procurement requirements on the use of CDBG–CV funds. Modifying procurement policies to allow the use of procurement requirements imposed by other Federal grants is easier for state grantees, but entitlement grantees that anticipate use of a substantial amount of CDBG–CV funds to satisfy non-Federal cost share may also be able to adopt a similar provision where the other Federal granting agency imposes the procurement requirements in 2 CFR part 200.

III.B.6.(c) Rules for Entitlements, Insular Areas, and Nonentitlement Hawaii Counties

III.B.6.(c)(i) Administrative and Planning Cost Caps. To expedite the use of grant funds, HUD is waiving requirements of 24 CFR 570.200(g) that are inconsistent with the treatment of program income in section III.B.6.(a) and the treatment of CDBG–CV funds as a standalone grant. The following alternative requirement applies to grants subject to subpart D (entitlement grants and grants to the nonentitlement counties of the State of Hawaii): No more than 20 percent of the total CDBG–CV grant shall be expended for planning and program administrative costs, as defined in 24 CFR 570.205 and 24 CFR 570.206, respectively. There is no program year obligation test for planning and administrative costs of CDBG–CV grants. Additionally, CDBG–CV funds shall not be included in the compliance determination of the program year obligation test applicable to annual formula CDBG funds. Additionally, program income, regardless of the source funding of the activity that generated the income, shall be included in the compliance determination of the administrative and planning cost cap applicable to annual formula CDBG grants and program income, separately from CDBG–CV funds.

CDBG–CV grant funds shall not be used to pay planning and program administrative costs allocable to another grant under the CDBG annual formula program; however, CDBG–CV funds may be used to pay costs that benefit both the CDBG–CV grant and another CDBG award and can be distributed between the grants in proportions that may be reasonably approximated.

III.B.6.(d) Compliance With Environmental Review Requirements

III.B.6.(d)(i) Overview of Environmental Review Requirements. Environmental regulations at 24 CFR 58.22 prohibit CDBG grantees, a recipient, and any other participant in the development process from committing HUD or non-HUD funds to a project until the environmental compliance review process has been successfully completed or until receipt of the Authority to Use Grant Funds, if applicable. In addition, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. Therefore, it is very important for grantees to begin and complete any required environmental compliance review as soon as possible. Grantees are urged to contact their Field Environmental Officer for more information about environmental review requirements.

III.B.6.(d)(ii) Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a state distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. Under the waiver and alternative requirement in paragraph III.B.6.(b), HUD will allow a State CDBG–CV grantee to carry out activities directly in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a state carries out activities directly, the state must submit the Certification and Request for Release of Funds to HUD for approval.

III.B.6.(d)(iii) Clarifying note on emergency environmental review procedures. HUD's environmental review regulations in 24 CFR part 58 include two provisions that may be relevant to environmental review procedures for activities to prevent, prepare for, and respond to coronavirus. The first is 24 CFR 58.34(a)(10), which provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. Except for the applicable requirements of 24 CFR 58.6, a responsible entity does not have to comply with the requirements of part 58 or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5 for exempt activities or projects consisting solely of exempt activities. Exempt activities include assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from imminent threats to public safety.

The second is a streamlined public notice and comment period in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, and respond to coronavirus. The application of these two provisions following a presidentially-declared or locally-declared public health emergency is discussed in the Notice, *Guidance on conducting environmental review pursuant to 24 Part 58 for activities undertaken in response to the public health emergency as a result of COVID–19* posted at *https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf.*

III.B.6.(e) Compliance With Labor Laws

CDBG–CV grants are subject to the Davis-Bacon prevailing wage requirements imposed by section 110(a) of the HCD Act. HUD cannot waive this or other labor laws. Under regulations of the Department of Labor (DOL) at 29 CFR 1.6(g), where Federal assistance is not approved prior to contract award (or the beginning of construction if there is no contract award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications. However, if there is no evidence that the owner intended to apply for the CDBG–CV assistance prior to the contract award or the start of the construction, HUD may request that DOL allow prospective,

rather than retroactive, application of the Davis-Bacon wage rates. DOL may allow prospective application of Davis-Bacon requirements where it finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and it finds no intent to apply for the federal assistance before contract award or the start of construction. The CDBG–CV Grantee should contact a HUD Labor Relations Specialist if such a situation arises.

III.B.6.(f) Relationship to Section 108 Loan Guarantees

Under the Section 108 Loan Guarantee Program, CDBG grantees can borrow up to five times their most recent CDBG grant by issuing federally guaranteed notes. To ensure that CDBG–CV funds are used for the purposes authorized by the CARES Act, HUD is issuing the following alternative requirement to sections 108(b) and (c) of the HCD Act (42 U.S.C. 5308(c)): CDBG–CV funds shall not be factored into a grantee's Section 108 borrowing authority.

A grantee may use CDBG–CV funds to make a direct payment of principal, interest, or any fees due under a Section 108 note only if the use of funds is to prevent, prepare for, and respond to coronavirus. The necessity of such use shall be documented by the grantee or the subrecipient that provided the assistance (*e.g.,* if Section 108 funds were used by the grantee to provide assistance to a for-profit business in the form of a loan and the business is unable to make a payment due to the reduction in revenue caused by coronavirus, any restructuring of that loan must be supported by modification to loan documents that document the relationship to coronavirus). When CDBG–CV funds are used to subsidize or replace principal, interest, or fees due under a loan previously made with guaranteed loan funds as part of an activity to assist a for-profit or a subrecipient, and the CDBG–CV assistance is necessary to respond to the impact of coronavirus (*e.g.,* a third-party business borrower whose loan is the intended source for repayment of a Section 108 loan is not collecting sufficient revenue due to local public health conditions), the documentation that the original assisted activity satisfies national objective criteria shall be sufficient to demonstrate that the use of the guaranteed loan funds and the additional CDBG–CV assistance meet a CDBG national objective.

This alternative requirement does not limit the Secretary's authority under section 108I of the HCD Act.

III.B.7. Period of Performance, Timeliness, and Closeout

III.B.7.(a) Period of Performance

CDBG–CV grantees must expend all CDBG–CV funds (including CDBG–CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) within the 6-year period of performance established by the CDBG–CV grant agreement. HUD is imposing this period of performance to ensure the use of CDBG–CV funds to prevent, prepare for, and respond to coronavirus. The CDBG regulations at 24 CFR 570.200(k) and 24 CFR 570.480(h) permit HUD to establish a period for expenditure and performance in a grant agreement that is shorter than the normal 8-year period. HUD is exercising its authority to establish a 6-year period of performance and expenditure deadline in the CDBG–CV grant agreement. Grant funds are not available for expenditure after the period of performance. In addition, to further ensure the expedited use of the funds, HUD is imposing an alternative requirement that each grantee must expend at least 80 percent of all CDBG–CV funds (including CDBG–CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) no later than the end of the third year of the period of performance established by the CDBG–CV grant agreement. If this three-year requirement is not met, and evidence meeting the criteria for extension described in section III.B.7.(c) below is not provided, an amount equivalent to the difference between the total amount expended at the end of the third year and 80 percent of all CDBG–CV funds will be recaptured from the CDBG–CV grant.

III.B.7.(b) Timeliness

CDBG–CV grants are available for limited purposes under the CARES Act. They are subject to a shortened period of performance. Under section III.B.6.(a), program income generated by the use of CDBG–CV funds is treated as program income to a grantee's annual formula CDBG program. For these reasons, HUD is waiving to the extent necessary to allow HUD to determine that every grantee has circumstances beyond its reasonable control the timely performance enforcement actions found at 24 CFR 570.902 (entitlement timely expenditure), and 24 CFR 570.494 (state timely distribution). CDBG–CV funds will not be included in determining compliance with the requirements of 24 CFR 570.902 and 570.494. However, as program income to the grantees' annual formula CDBG programs, income generated from CDBG–CV activities will be included in timely expenditure compliance determinations for each entitlement grantee's annual formula CDBG program. Grantees should consider the potential effects of additional program income to compliance with timeliness requirements applicable to their annual formula CDBG grant program when they select and design CDBG–CV assisted activities.

III.B.7.(c) Closeout

To facilitate the use of grant funds in a timely manner, HUD is waiving the CDBG closeout regulations at 24 CFR 570.509 for grantees subject to entitlement regulations and imposing an alternative requirement that HUD will close out grants in accordance with grant closeout requirements of 2 CFR 200.343. This approach is consistent with the state regulation at 24 CFR 570.489(o). This will help all grantees to expend grant funds within a short timeframe designed to maximize the ability of CDBG–CV funds to prevent, prepare for, and respond to coronavirus. Grantees subject to this alternative requirement must submit all financial, performance, and other reports as required by 24 CFR 91.520.

In general, HUD expects all grantees to comply with all grant requirements and fully close out a grant at the end of the period of performance. However, HUD recognizes that there are many things that could disrupt a grantee's intended timeline for activity completion: Litigation, disasters, limited construction seasons due to weather, or other extenuating circumstances. Therefore, HUD may authorize an extension of the three-year expenditure requirement or the overall period of performance if the grantee provides evidence of such extenuating circumstances that would warrant the extension and that they could demonstrate they would meet all program requirements within the extended expenditure period or period of performance.

HUD may consider, in closing out CDBG–CV grants, any requirements that remain applicable after closeout. These may include authority for HUD to monitor the recipient's compliance and performance after the closeout of the award with respect to requirements that are applicable after closeout, and HUD may take findings of noncompliance into account, with the closeout process, as unsatisfactory performance of the recipient, in the consideration of any future grant made under title I of the HCD Act. Examples of requirements that may survive closeout include: (i)

Closeout costs (*e.g.,* audit costs) and costs resulting from contingent liabilities described in the closeout agreement; (ii) use of real property assisted with CDBG funds in accordance with program regulations; (iii) taking measures that are adequate to enforce and implement mandatory flood insurance coverage requirements; and (iv) other provisions included in the grant closeout agreement.

III.B.8. Reporting

The reporting requirements that apply to the use of annual formula CDBG grants also apply to CDBG–CV grants. Section 104I of the HCD Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

III.B.8.(a) General Reporting Requirements

Reporting requirements for CDBG–CV grantees can be found at 42 U.S.C. 12708(a), 24 CFR 91.520, 24 CFR 570.507 (entitlement), 24 CFR 570.440(j) (insular areas), and 24 CFR 570.491 (state).

III.B.8.(b) Additional CARES Act Reporting

Section 15011 of the CARES Act requires that recipients of $150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a report containing: Information regarding the amount of funds received; the amount of funds obligated or expended for each project or activity; a detailed list of all such projects or activities, including a description of the project or activity; and detailed information on any subcontracts or subgrants awarded by the recipient. As outlined in OMB memorandum M–20–21, *Implementation Guidance for Supplement Funding in Response to the Coronavirus Disease (COVID–19)* (available at *https://www.whitehouse.gov/wp-content/uploads/2020/04/Implementation-Guidance-for-Supplemental-Funding-Provided-in-Response.pdf*), existing reporting requirements are anticipated to meet the requirements of Section 15011, but the content and format for this reporting is still under development and will need to be reviewed against current program practices. The Department will work in coordination with OMB to ensure that this requirement can be fulfilled by recipients of CARES Act funding in a manner that utilizes to the greatest extent possible existing reporting streams, providing the necessary transparency and accountability with minimal additional burden. If additional reporting is necessary, further advice or technical assistance will be provided by the Department.

III.B.9. Duplication of Benefits

The CARES Act requires HUD to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 42 U.S.C. 5121 *et seq.*).

Duplication of benefits occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs.

A grantee is required to develop and maintain adequate procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program. A grantee's policies and procedures are not adequate unless they include, at a minimum: (1) A requirement that any person or entity receiving CDBG–CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative; and (2) a method of assessing whether the use of CDBG–CV funds will duplicate financial assistance that is already received or is likely to be received by acting reasonably to evaluate need and the resources available to meet that need.

Most CARES Act assistance programs have more limited durations for availability of assistance or a more limited scope of eligible activities or entities than does CDBG–CV. HUD strongly encourages each CDBG–CV grantee to become familiar with the range of available assistance and uses and apply its more flexible CDBG–CV assistance to unmet needs or to gaps, with special attention to the coronavirus response, prevention, or preparation needs of LMI persons.

HUD will provide advice and technical assistance to grantees to facilitate compliance with this requirement.

III.B.10 Citizenship Requirements

Please note that the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services provides that the Immigration Reform and Control Act, 8 U.S.C. 1324a *et seq.* prohibits employers from hiring and employing an individual for employment in the U.S. knowing that the individual is not authorized with respect to such employment. This generally applicable law also applies to CDBG grantees and their subrecipients and/or contractors/subcontractors (including relating to employees recruited under Section 3). For more information, please see *https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/10-why-employers-must-verify-employment-authorization-and-identity-of-new-employees* and *https://www.uscis.gov/i-9-central/legal-requirements-and-enforcement.*

IV. Fiscal Year 2019 and Fiscal Year 2020 CDBG Grants

IV.A. General Requirements

Except as described in this notice or other applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program apply to fiscal year 2019 and 2020 CDBG grants, including regulations at 24 CFR part 570 subpart I (states), 24 CFR part 570 subparts A, C, D, E, J, K, and O (entitlements), and 24 CFR subpart F (insular areas and Hawaii counties).

IV.B. Flexibilities, Waivers, and Alternative Requirements

The following rules, waivers, and alternative requirements apply to fiscal year 2019 and 2020 CDBG grants. These include statutory authorities included in the CARES Act and other waivers and alternative requirements or clarifications that HUD is making for fiscal year 2019 and 2020 grants.

IV.B.1. Timeliness

Because of the coronavirus many local governments are operating under extenuating circumstances and may need additional time for certain administrative requirements, HUD is suspending for fiscal year 2020 all corrective actions, sanctions, and informal consultations for timeliness effective January 21, 2020. Grantees are advised that this suspension does not eliminate the timely expenditure

requirements set forth in 24 CFR 570.902 (entitlements). HUD will continue to run expenditure reports and will continue to notify grantees of deficiencies.

Based on government restrictions, closures, shelter-in-place orders, and social distancing guidance related to coronavirus, HUD has determined that all entitlement grantees have factors beyond their reasonable control that, to HUD's satisfaction, impact the carrying out of CDBG-assisted activities in a timely manner. As a result, HUD has determined that corrective actions related to timeliness are not appropriate at this time. HUD will monitor changing conditions. Before the end of the fiscal year, HUD will determine whether to extend this suspension for all or a portion of fiscal year 2021. HUD may consider regional and local conditions when determining when to begin scheduling informal consultations.

IV.B.2. Consolidated Plan, Citizen Participation, and CAPER

IV.B.2.(a) Expedited Citizen Participation and Virtual Hearings

Section III.B.4.(a) of section III apply to all fiscal year 2019 and 2020 annual formula CDBG grants, regardless of the use of funds. This section describes the program flexibilities provided by the CARES Act related to Expedited Citizen Participation and Virtual Hearings. Where this section refers to CDBG–CV funds, it shall apply equally to fiscal years 2019 and 2020 CDBG grants.

IV.B.2.(b). Deadline To Submit Consolidated Plans and FY 2020 Annual Action Plans

The deadline for grantees to submit action plans and other updates to their consolidated plans submissions for fiscal years 2019 and 2020 to include CDBG–CV funds is August 16, 2021.

IV.B.2.(c) CAPER Extension

On May 7, 2020, Acting Assistant Secretary John Gibbs issued a memorandum to all Community Planning and Development Field Office Directors, Deputy Directors and Program Managers with the subject ''Availability of a Waiver and Alternate Requirement for the Consolidated Annual Performance and Evaluation Report (Performance Report) for Community Planning and Development (CPD) Grant Programs in Response to the Spread of Coronavirus.'' This memorandum authorized a waiver of the regulatory requirement at 24 CFR 91.520(a) that grantees submit a performance report known as the Consolidated Annual Performance and Evaluation Report (CAPER) within 90 days of the end of a jurisdiction's program year. The waiver was granted under HUD's regulatory waiver authority at 24 CFR 5.110 and 24 CFR 91.600. Under this memorandum, for program year 2019 CAPERs, the requirement that grantees submit a performance report within 90 days after the close of a jurisdiction's program year is waived, subject to the condition that within 180 days after the close of a jurisdiction's program year the jurisdiction shall submit its performance report.

IV.B.2.(d) Other Consolidated Planning Waivers

HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(5) and 91.225(a)(5)) when fiscal year 2019 and 2020 CDBG funds are used to prevent, prepare for, and respond to coronavirus, because grantees may not have considered the needs associated with this special purpose funding when developing their current consolidated plan strategic plan and needs assessment. In conjunction, HUD is temporarily waiving 42 U.S.C. 5304(e) to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only until the grantee submits its next full (3–5 year) consolidated plan due after the 2020 program year.

HUD is imposing a related alternative requirement. The regulations at 24 CFR 91.225(b)(5) (entitlements) and 24 CFR 91.325(b)(5) (states) require grantees to certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan portion of the consolidated plan. Under this alternative requirement, grantees are not required to carry out the portions of their fiscal year 2019 and 2020 annual formula CDBG grants that are used to prevent, prepare for, and respond to coronavirus in a manner consistent with the certifications in 24 CFR 91.225(b)(5) and 24 CFR 91.325(b)(5), because HUD has changed the requirement related to consistency.

IV.B.3. Flexibilities That Apply to Coronavirus-Related Activities

The following flexibilities apply to all fiscal year 2019 and 2020 CDBG grants when those grants are used for activities to prevent, prepare for, and respond to coronavirus.

IV.B.3.(a) Calculation of the Public Services Cap. As described in paragraph III.B.5.(f)(iii), following enactment of the CARES Act, the public services cap described in section 105(a)(8) of the HCD Act and 24 CFR 570.201(e) has no effect on assistance available to the grantee for fiscal years 2019 and 2020, including the program income that would normally be included in the grantee's calculation of the program income cap for fiscal years 2019 or 2020, when the grantee uses CDBG grant funds to prevent, prepare for, and respond to coronavirus. For fiscal years 2019 and 2020, the cap shall still be calculated and shall apply to public service activities carried out for activities that do not prevent, prepare for, and respond to coronavirus. Additionally, CDBG–CV grant funds shall not be included in the public service cap compliance determination which is applicable to annual formula CDBG funds used for activities not related to coronavirus.

Program income generated by the use of CDBG–CV grants is considered program income to the grantee's annual formula CDBG program, as discussed in section III.B.6.(a).

The public services cap imposed by section 105(a)(8) of the HCD Act applies to ''the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this title *including program income*'' (emphasis added). The CARES Act provision that removes the public services cap applies to all ''activities to prevent, prepare for, and respond to coronavirus'' for the CDBG–CV grants and fiscal year 2019 and 2020 annual formula CDBG grants. The activities for grants are described in each grantee's annual action plan required by 24 CFR 91.220 (entitlements), 24 CFR 91.320 (states), or 24 CFR 570.440 and 24 CFR 91.235 (insular areas). In these regulations, the activities for grants include activities carried out with grant funds and program income expected to be made available. Therefore, removing the cap in section 105(a)(8) of the HCD Act for activities to prevent, prepare for, and respond to coronavirus also removes the public services cap on the use of the program income, and removes the corresponding regulatory cap in 24 CFR 570.201(e) (entitlements) for CDBG–CV funds and fiscal year 2019 and 2020 funds used to prevent, prepare for, and respond to coronavirus.

Program income generated by the use of CDBG–CV grants is considered program income to the grantee's annual formula CDBG program, as discussed in section III.B.6.(a). Additionally, program income, regardless of the source funding of the activity that generated the income, shall be included in the compliance determination of the public service cap applicable to the annual

formula CDBG grants and program income, separately from CDBG–CV funds. For purposes of calculating the public services cap, the treatment of program income generated by the CDBG–CV grant and received (*i.e.,* documented in IDIS) by the annual formula CDBG program shall be considered as any other program income received by the annual formula CDBG program.

IV.B.3.(b) Provisions in Section III that apply to Coronavirus-Related Activities. The following provisions in Section III apply to the use of fiscal year 2019 and 2020 CDBG funds for activities to prevent, prepare for, and respond to coronavirus; these provisions shall also apply to the use of Section 108 guaranteed loan funds when they are used together with fiscal year 2019 and 2020 CDBG funds for activities to prevent, prepare for, and respond to coronavirus. Where these paragraphs refer to CDBG–CV funds, they shall apply equally to fiscal years 2019 and 2020 CDBG grants.

- III.B.5.(d)(i) Use of Urgent Need National Objective.
- III.B.5.(d)(ii) Modification of Location-Based Presumption of LMI Benefit for Job Creation and Retention National Objective Criteria.
- III.B.5.(d)(iii) LMI Job Creation and Retention Records.
- III.B.5.(e)(i) Elimination of Aggregate Public Benefit Test.
- III.B.5.(e)(ii) Modification of Individual Public Benefit Standards.
- III.B.5.(f)(i) Extension of Emergency Payments.
- III.B.5.(f)(ii) Opportunity Zones and Related Flexibilities for Economic Development.
- III.B.5.(f)(iii) Public Services Cap.
- III.B.5.(f)(iv) Other Public Services Considerations.
- III.B.5.(f)(v) Clarification on Application of Cost Principles.
- III.B.6.(d)(iii) Clarifying note on emergency environmental review procedures.
- III.B.9. Duplication of Benefits (applies for programs and activities with annual formula CDBG funds when the grantee uses these funds to carry out programs to respond to losses caused by disasters and emergencies).
- III.B.10. Citizenship Requirements.

IV.B.4. Provisions That Do Not Apply to FY 19 and FY 20 Grants

Waivers and alternative requirements and other provisions in the following paragraphs of Section III do *not* apply to fiscal year 2019 CDBG Grants and fiscal year 2020 CDBG grants:

- III.A. Allocations of CDBG–CV Funds
- III.B.1. General Grant Requirements
- III.B.2. Responsible Use of CARES Act Funds
- III.B.3. Overview of Process to Receive CDBG–CV Grants
- III.B.4.(b) CDBG–CV Application Content and Submission
- III.B.5.(a) Use of Funds for CARES Act Purposes
- III.B.5.(b) Reimbursements
- III.B.5.(c) Terms and Conditions Made Applicable by the CARES Act
- III.B.5.(d)(iv) Overall Benefit to LMI Persons.
- III.B.6.(a) Program Income
- III.B.6.(b) Rules Applicable to State CDBG–CV Grants
- III.B.6.(c) Rules for Entitlements, Insular Areas, and Nonentitlement Hawaii Counties
- III.B.6.(d)(ii) Clarifying note on the process for environmental release of funds when a state carries out activities directly.
- III.B.6.(e) Compliance with Labor Laws
- III.B.6.(f) Relationship to Section 108 Loan Guarantees
- III.B.7. Period of Performance, Timeliness, and Closeout
- III.B.8. Reporting

Paperwork Reduction Act: The information collection requirements in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2506–0085. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance numbers for the CDBG–CV grants under the CARES Act are: 14.218 (Community Development Block Grants/Entitlement Grants); 14.225 (Community Development Block Grants/Special Purpose Grants/Insular Areas); and 14.228 (Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii) (formerly CDBG Grant/Small Cities Program).

Environmental Impact: A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at: *https://www.hud.gov/grants/.* The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

John Gibbs,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2020–18242 Filed 8–19–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2020–N106; FVHC98220410150–XXX–FF04H00000]

Louisiana Trustee Implementation Group Deepwater Horizon Oil Spill Draft Restoration Plan and Environmental Assessment #7: Wetlands, Coastal, and Nearshore Habitats; and Birds

AGENCY: Department of the Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA); the National Environmental Policy Act of 1969 (NEPA); the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS) and Record of Decision; and the Consent Decree, the federal and state natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the *Louisiana Trustee Implementation Group Draft Restoration Plan #7 and Environmental Assessment: Wetlands, Coastal and Nearshore Habitats; and Birds* (RP/EA #7). In the Draft RP/EA #7, the LA TIG proposes projects to help restore bird habitat and marshes injured as a result of the *Deepwater Horizon* (DWH) oil spill in the Louisiana Restoration Area under the ''Wetlands, Coastal and Nearshore Habitats'' and ''Birds'' restoration types described in the Final PDARP/PEIS. The approximate cost to implement the LA TIG's proposed project with five preferred alternatives is $234,100,000. We invite public comments on the Draft RP/EA #7.

DATES: We will consider public comments on the Draft RP/EA #7 received on or before September 22, 2020.

The LA TIG will host a public webinar on September 3, 2020, at 3:00 Central. The public may register for the webinar at *https://attendee.gotowebinar.com/register/6495772168532544525.* After registering, participants will receive a confirmation email with instructions for joining the webinar. Instructions for commenting will be provided during the webinar. Shortly after the webinar is concluded, the presentation material will be posted on the web at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

ADDRESSES: *Obtaining Documents:* You may download the Draft RP/EA #7 from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana*

Alternatively, you may request a CD of the Draft RP/EA (see **FOR FURTHER INFORMATION CONTACT**). Copies of the Draft RP/EA are also available for review during the public comment period at the locations listed in the following table.

Library	Address	City	Zip
St. Tammany Parish Library	310 W. 21st Avenue	Covington	70433
Terrebonne Parish Library	151 Library Drive	Houma	70360
New Orleans Public Library, Louisiana Division	219 Loyola Avenue	New Orleans	70112
East Baton Rouge Parish Library	7711 Goodwood Boulevard	Baton Rouge	70806
Jefferson Parish Library, East Bank Regional Library.	4747 W. Napoleon Avenue	Metairie	70001
Jefferson Parish Library, West Bank Regional Library.	2751 Manhattan Boulevard	Harvey	70058
Plaquemines Parish Library	8442 Highway 23	Belle Chasse	70037
St. Bernard Parish Library	1125 E. St. Bernard Highway	Chalmette	70043
St. Martin Parish Library	201 Porter Street	St. Martinville	70582
Alex P. Allain Library	206 Iberia Street	Franklin	70538
Vermilion Parish Library	405 E. St. Victor Street	Abbeville	70510
Martha Sowell Utley Memorial Library	314 St. Mary Street	Thibodaux	70301
South Lafourche Public Library	16241 E. Main Street	Cut Off	70345
Calcasieu Parish Public Library Central Branch	301 W. Claude Street	Lake Charles	70605
Iberia Parish Library	445 E. Main Street	New Iberia	70560
Mark Shirley, LSU AgCenter	1105 West Port Street	Abbeville	70510

Submitting Comments: You may submit comments by one of the following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *During the public webinar:* Written comments may be provided by the public during the webinar. Webinar information is provided in **DATES**.

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov*, via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ.

No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

Background

The Final PDARP/PEIS provides for TIGs to propose restoration projects using a planning process that involves phasing restoration projects across multiple restoration plans. A TIG may propose funding a planning phase (*e.g.,* initial engineering and design (E&D)) in a restoration plan for a conceptual project (phase 1). This allows the TIG to develop information needed to fully consider a subsequent implementation phase of the project in a future restoration plan (phase 2). In the Draft RP/EA #7, the LA TIG considers alternatives to fund E&D for conceptual projects and also to fund projects for implementation.

Overview of the LA TIG Draft RP/EA #7

The Draft RP/EA #7 provides the LA TIG's analysis of alternatives under the ''Wetlands, Coastal, and Nearshore Habitats'' restoration type and the ''Birds'' restoration type. Under the ''Wetlands, Coastal and Nearshore Habitats'' restoration type, the preferred alternatives include a conceptual project that would undergo E&D if selected, and two alternatives that are analyzed for full implementation if selected. These alternatives are: (1) Bird's Foot Delta Hydrologic Restoration project (E&D), (2) Terrebonne Basin Ridge and Marsh Creation Project: Bayou Terrebonne Increment (Terrebonne project) (full implementation) and (3) Grande Cheniere Ridge Marsh Creation (full implementation).

The Terrebonne project was approved and funded for E&D in the 2017 *Louisiana Trustee Implementation Group Final Restoration Plan #1: Restoration of Wetlands, Coastal, and Nearshore Habitats; Habitat Projects on Federally Managed Lands; and Birds.* The other, Bayou Grand Cheniere Ridge and Marsh Creation project underwent E&D through a separate funding process. Both projects have reached a stage in their E&D where sufficient information has been developed for analysis under NEPA and the OPA NRDA regulations.

Under the ''Birds'' restoration type, the LA TIG proposes conceptual projects that would undergo E&D if selected for funding. The preferred ''Birds'' alternatives are (1) Isle au Pitre Restoration, and (2) Terrebonne Houma Navigation Canal Island Restoration.

Next Steps

As described above in **DATES**, the Trustees will host a public webinar to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a final RP/EA #7.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Administrative Record

The documents comprising the Administrative Record for RP/EA #7 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR 1500–1508.

Mary Josie Blanchard,

Department of the Interior, Director of Gulf of Mexico Restoration.

[FR Doc. 2020–18205 Filed 8–19–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10488; 20X.LLAK944000.L14100000.HY0000.P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface and subsurface estates in certain lands to Sealaska Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA).

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Matthew R. Lux, BLM Alaska State Office, 907–271–3176, or *mlux@blm.gov.* The BLM Alaska State Office may also be contacted via Telecommunications Device for the Deaf (TDD) through the Federal Relay Service at 1–800–877–8339. The relay service is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Sealaska Corporation. The decision approves conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). The lands are located on Baranof Island within T. 60 S., R. 65 E., Copper River Meridian, Alaska, and contain 12.85 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to Sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the *Daily Sitka Sentinel* newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt,

and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 21, 2020 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Matthew R. Lux,

Land Law Examiner, Adjudication Section.

[FR Doc. 2020–18293 Filed 8–19–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000. XZ0000.LXSSH1050000.20X.HAG 20–0075]

Notice of Public Meetings for the John Day-Snake Resource Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior Bureau of Land Management's (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as indicated below. If public health restrictions remain in place the meeting will be held virtually.

DATES: The John Day-Snake RAC will meet Thursday, October 15, 2020, from 8 a.m. to 4:30 p.m.; and Friday, October 16, 2020, from 8 a.m. to noon. A public comment period will be offered at 3:15 p.m. on Thursday, October 15, 2020.

ADDRESSES: The meeting will be held at the Wallowa County Fairgrounds, 668 NW 1st St., Enterprise, Oregon.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, Oregon 97814; 541–219–6863; *lbogardus@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member John Day-Snake RAC was chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. Members provide advice to the BLM and, as needed, the U.S. Forest Service resource managers regarding management plans and proposed resource actions on public land in Central and Eastern Oregon. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested prior to the start of each meeting.

Standing agenda items include management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review and/or recommendations regarding proposed actions by the Vale or Prineville BLM districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco, and Deschutes National Forests; and any other business that may reasonably come before the RAC. A final agenda will be posted online at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac* at least one week prior to the meeting.

The Designated Federal Officer (DFO) will attend the meeting, take minutes, and publish these minutes on the RAC web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac.*

All meetings are open to the public in their entirety. The public may send written comments to the RAC for consideration. Comments can be mailed to: BLM Vale District; Attn. Don Gonzalez; 100 Oregon St., Vale, Oregon 97918. Interested persons may make oral or written presentations to the Council during the business meeting or file written statements. Such requests should be made to the DFO prior to the public comment period. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Authority: 43 CFR 1784.4–2

Donald N. Gonzalez,

Vale District Manager.

[FR Doc. 2020–18310 Filed 8–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES930000/L51100000/LVEMM1450000/ GA0000/xxx]

Notice of Availability of the Environmental Assessment for the Warrior Met Coal, Inc. Lease-by-Application ALES–55797, Tuscaloosa County, AL; Notice of Public Hearing, and Request for Comment on Environmental Assessment, Maximum Economic Recovery, and Fair Market Value

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearing.

SUMMARY: The Bureau of Land Management (BLM) Eastern States Office (ESO) announces that an Environmental Assessment (EA) for the Warrior Met Coal, Inc. Coal Lease-by-Application (LBA), serial number ALES–55797, is available for public review and comment. The BLM is also announcing that it will hold a virtual public hearing to receive comments on the LBA, EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources contained in the proposed LBA lease tract. You can register to attend the virtual public meeting using the link provided below. Once registered, you will receive instructions for participating online or by phone.

DATES: To maximize the opportunity for public input while prioritizing the health and safety of BLM employees and the interested public, BLM will host the public hearing virtually via Zoom. The date and information on how to login and participate in this virtual public hearing will be announced at least 15 days in advance through local media and on the BLM website at *https://eplanning.blm.gov/eplanning-ui/project/53496.* Once registered, you will receive instructions for participating online or by phone. Written or electronic comments should be submitted or postmarked no later than September 24, 2020.

ADDRESSES: Comments related to the LBA, EA, FMV, and MER, may be uploaded to the BLM's ePlanning website for Warrior Met Coal, Inc. LBA–

ALES–55797, linked here: *https://eplanning.blm.gov/eplanning-ui/project/53496* or mailed to Sabry Hanna at the BLM Eastern States Office address below. Comments may also be faxed to 202–912–7186, Attention: Sabry Hanna. Submitted comments related to the Warrior Met Coal, Inc. LBA, EA, FMV, and MER for the tract will be available for public inspection at the BLM-Eastern States Office, Division of Lands and Minerals, 5275 Leesburg Pike, Falls Church, VA, 22041.

Please note that any details and updates made to any aspect of the hearing will be posted on the BLM ePlanning web page.

In accordance with the Federal coal management regulations, 43 CFR 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on FMV and MER and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to Mr. Hanna in writing or faxed in response to this solicitation for public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Sabry Hanna, Solid Minerals Program Lead, phone: 202–912–7720, email: *shanna@blm.gov,* or at the address provided in the **ADDRESSES** section. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hanna during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Hanna. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: An application to lease Federal coal in Tuscaloosa County, Alabama, for 5,704.52 acres of Federal coal reserves, was filed with the BLM on August 13, 2009. The EA analyzes and discloses the potential direct, indirect, and cumulative impacts of leasing and subsequent mining of the proposed LBA tract. The tract contains an estimated 24 million tons of coal recoverable by underground mining. The lands are described as follows:

Huntsville Meridian, Alabama

T. 18 S., R. 8 W.,
- sec. 17, NE¼, SE¼, SW¼, E½NW¼, and SW¼NW¼;
- sec. 18, SE¼, E½SW¼, and SW¼ SW¼;
- sec. 28, W½SW¼ and SE¼NW¼;
- sec. 33, SW¼ NW¼.

T. 19 S., R. 8 W.,
- sec. 4, SE ¼NW¼;
- sec. 11, E½NW¼;
- sec. 18, SW¼ and W½NW¼.

T. 18 S., R. 9 W.,
- sec. 21, NE¼SE¼;
- sec. 22, SW¼NE¼, S½SE¼, NW¼SE¼, SW¼, and SE¼NW¼;
- sec. 24, NE¼, E½SE¼, NW¼SE¼, SW¼, E½NW¼, and SW¼NW¼;
- sec. 26, NE¼, SE ¼, SW¼, and E½NWI/4;
- sec. 27, W½NE¼, SE¼, SW¼, and NW¼;
- sec. 28, N½SE ¼;
- sec. 33, E½NE¼ and NE¼SE ¼;
- sec. 34, NE¼, SE¼, N½SW¼, and NW¼;
- sec. 35, N½NE¼, SE¼NE¼, E½SE¼, SW¼SE¼, W ½ SW ¼ , N½NW¼ and SW ¼ NW¼.

T. 19 S., R. 9 W.,
- sec. 1, NE¼ and E½NW¼;
- sec. 12, NE¼, SE¼, E½SW¼, and E½NW¼;
- sec. 14, SE¼ and NW¼

Total Acres: 5,704.52 acres.

Through this notice, the BLM is inviting the public to provide comments regarding the LBA and EA, and, also, to submit comments on the FMV and MER for the proposed LBA tract. All public comments, whether written or oral, will receive consideration prior to the BLM's decision regarding the leasing of the Federal coal contained in the tracts.

The BLM usually holds a public hearing in the local community where the tracts are located. However, due to the COVID–19 National Emergency and the uncertainty of Federal, State, and local social distancing guidelines, the BLM is holding the virtual public hearing to ensure staff and interested community members can participate safely. The presentation and comments received during the virtual meeting will be recorded. All public comments, whether written or oral, will receive consideration prior to the BLM's decision regarding the leasing of the Federal coal. Public comments on the EA should address the potential environmental impacts of the proposed action. Public comments on the FMV and MER for the proposed lease tract may address, but do not have to be limited to, the following:

1. The quality and quantity of the Federal coal resource;

2. The mining method or methods to be employed to obtain the MER of the coal resource, including the name of the coal bed(s) to be mined, timing and rate of production, restriction of mining, and the inclusion of the tracts in an existing mining operation;

3. The price that the mined coal would bring when sold;

4. Costs, including mining and reclamation, and the anticipated timing of production;

5. The percentage rate at which anticipated income streams should be discounted, either with inflation, or in the absence of inflation, in which case the anticipated rate of inflation should be given;

6. Depreciation, depletion, amortization, and other tax accounting factors; and

7. The value of any privately held mineral or surface estate in the mining area.

The Fair Market Value of the coal developed by BLM may or may not change as a result of comments received from the public and changes in the market conditions between now and when final economic evaluations are completed.

Any proprietary information or data that you submit to the BLM must be marked as confidential to assure the data will be treated in accordance with the applicable laws and regulations governing the confidentiality of such information or data. A copy of the comments submitted by the public on the LBA, EA, FMV, and MER for the tracts, except those portions identified as proprietary and that meet one of the exemptions in the Freedom of Information Act, will be available for public inspection at the address listed in the **ADDRESSES** section, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public at any time. While you may request in your comment to withhold your personal identifying information from public review, the BLM cannot guarantee that it can do so.

(Authority: 40 CFR 1506.6; 43 CFR 3422.1, 3425.3, and 3425.4.)

Mitchell Leverette,

State Director.

[FR Doc. 2020–18211 Filed 8–19–20; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 20X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on September 21, 2020.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in the SW1/4NE1/4 of section 12 in Township 1 North, Range 102 West, Sixth Principal Meridian, Colorado, was accepted on July 21, 2020.

The plat and field notes of the dependent resurvey and survey in Township 36 North, Range 1 West, New Mexico Principal Meridian, Colorado, was accepted on August 10, 2020.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2020–18300 Filed 8–19–20; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030729; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes, and has determined that a cultural affiliation between the associated funerary objects and present-day Indian Tribes can reasonably be traced. Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request with information in support of the request to the TVA at the address in this notice by September 21, 2020.

ADDRESSES: Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Tennessee Valley Authority, Knoxville, TN. The associated funerary objects were removed from an archeological site in Marshall County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the associated funerary objects was made by TVA professional staff in consultation with representatives of the Absentee Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Associated Funerary Objects

The site listed in this notice, archeological site 1MS32, was excavated as part of TVA's Guntersville Reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Details regarding these excavations may be found in ''*An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama,*'' by William S. Webb and Charles G. Wilder. Human remains and associated funerary objects from site 1MS32 were listed in a Notice of Inventory Completion in 2019 (84, FR, 18082–18084, April 29, 2019). All the cultural items listed in that notice have been transferred to the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta

Tribe of Louisiana; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation and the United Keetoowah Band of Cherokee Indians in Oklahoma. Recently, additional associated funerary objects were discovered during a review of TVA's archeological collection at the AMNH.

On July 21, 1937, excavation of burial 44 took place at the McKee Island site, 1MS32, in Marshall County, AL, following TVA's acquisition of the site on November 12, 1936. The two associated funerary objects listed in this notice are copper collars.

Site 1MS32 was a midden-rich village extending 800 feet along a ridge of the now-inundated McKee Island. While there are no radiocarbon dates from this site, Jon Marcoux's study of glass beads from 1MS32 indicates a historic occupation in the range of A.D. 1650–1750. Similarly, analysis of brass bells recovered from this site suggests an occupation range from the late 1600s through the 1700s. During this period, multiple tribes were using the Guntersville Reservoir area. Chronicles from Spanish explorers of the 16th century and French explorers of the 17th and 18th century indicate the presence of chiefdom-level tribal entities in the southeastern United States that resemble the historic Native American chiefdoms. Linguistic analysis of place names noted by multiple Spanish explorers indicates that Koasati-speaking Muskogean groups inhabited northeastern Alabama. Early maps and research into the historic Native American occupation of northeastern Alabama indicate that in the 17th and 18th centuries, the Koasati (as they were called by the English) or the Kaskinampo (as they were called by the French) were found at multiple sites in Jackson and Marshall Counties. Oral history, traditions, and expert opinions of the descendants of the Koasati/Kaskinampo and Muscogee (Creek) indicate that this portion of the Tennessee River valley was the homelands of their Tribes. Oral traditional information also indicates that by the middle 1700s, the Koasati/Kaskinampo were leaving the Tennessee River valley and moving south.

Both British and American historians indicate that some Cherokee were leaving their traditional Tribal lands in the Appalachian Mountains and the Little Tennessee River watershed in the 1700s. In the 1770s, a group of Cherokee, often designated the Chickamauga in historical documents, had relocated to areas northeast of present-day Chattanooga, Tennessee. Reprisals by American militia for Cherokee support of the British during the American Revolution forced these Cherokee further down the Tennessee River; by 1785–1790, there were named Cherokee villages in the Guntersville Reservoir area. At the same time, the Koasati, Muscogee (Creek), and Cherokee all hunted in the Tennessee Valley. Consequently, a relationship of shared group identity can reasonably be traced between the above earlier groups and their present-day descendant tribes, which include the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Determinations Made by the Tennessee Valley Authority

Officials of the Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3003(d)(2)(C), while the Native American associated funerary objects are not clearly identifiable as being culturally identifiable to a single Indian Tribe, the Tennessee Valley Authority has determined by a reasonable belief that, given the totality of circumstances, these objects are culturally affiliated with the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Tribes may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: August 3, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18234 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030662; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Massachusetts Amherst, Department of Anthropology, Amherst, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Massachusetts Amherst, Department of Anthropology, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Massachusetts Amherst. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Massachusetts Amherst at the address in this notice by September 21, 2020.

ADDRESSES: Julie Woods, Repatriation Coordinator, University of Massachusetts Amherst, 215 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, telephone (413) 545–2702, email *woods@umass.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains under the control of the University of Massachusetts Amherst, Amherst, MA. The human remains were removed from the Grand Gulch area of San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Massachusetts Amherst, Department of Anthropology, professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as Pueblo of Santo Domingo); Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of the Shoshone Nation (previously listed as Northwestern Band of Shoshoni Nation and the Northwestern Band of Shoshoni Nation of Utah (Washakie)); Ohkay Owingeh, New Mexico (previously listed as Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (previously listed as Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe (previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); Ysleta del Sur Pueblo (previously listed as Ysleta Del Sur Pueblo of Texas); and the Zuni Tribe of the Zuni Reservation, New Mexico. An invitation to consult was extended to the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California (hereafter referred to as ''The Consulted and Invited Tribes'').

History and Description of the Remains

In the 1890s, human remains representing, at minimum, two individuals were removed from the Grand Gulch area of San Juan County, UT. The human remains were excavated during the Hyde Exploring Expedition, which was sponsored by the American Museum of Natural History (AMNH) in New York City. In 1902, Professor F. W. Putnam, Curator of Anthropology (then of AMNH) and supervisor of the Expedition, along with his former associate, Dr. Aleš Hrdlička (then of AMNH and later of the United States National Museum [Smithsonian Arts and Industries Building]), gave the human remains to Dr. Harris Hawthorne Wilder, Professor of Zoology at Smith College (1892–1928). On January 16, 1902, AMNH sent the human remains to Smith College to become part of the Wilder Collection. During the late 1970s, Smith College disbanded the Wilder Collection and transferred some of the human remains to the University of Massachusetts Amherst (UMass), including the individuals from Grand Gulch. UMass accessioned some of these human remains in 1986–1987; others were never accessioned.

The human remains belong to an adult male and an adult female. The male's approximate age was 45 and the female's approximate age was 60. Dr. Wilder created a plastilina (also known as plasticine) bust (146) and a cast made from the bust. Dr. Wilder utilized the cranium and post cranial elements of the female to make the bust. The cranium, neck, and shoulders were never cataloged, and were reported to have been encased in the bust. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the University of Massachusetts Amherst, Department of Anthropology

Officials of the University of Massachusetts Amherst, Department of Anthropology, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry based on provenance, provenience, and preservation.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as Ysleta Del Sur Pueblo of Texas); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Julie Woods, Repatriation Coordinator, University of Massachusetts Amherst, 215 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, telephone (413) 545–2702, email *woods@umass.edu,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The University of Massachusetts Amherst, Department of Anthropology, is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: July 21, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18230 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030744; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the TVA at the address in this notice by September 21, 2020.

ADDRESSES: Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Tennessee Valley Authority, Knoxville, TN. The associated funerary objects were removed from the Cox site, 1JA176, in Jackson County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the associated funerary objects was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Associated Funerary Objects

The site listed in this notice—1JA176, in Jackson County, AL—was excavated as part of TVA's Guntersville Reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Details regarding this excavation may be found in ''*An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama,*'' by William S. Webb and Charles G. Wilder.

Human remains and associated funerary objects from 1JA176 were listed in a Notice of Inventory Completion published in the **Federal Register** on March 31, 2014 (79 FR 18056–18057, March 31, 2014). Pursuant to 43 CFR 10.11(c)(2)(i), all the cultural items listed in that notice have been transferred to The Muscogee (Creek) Nation. Recently, additional associated funerary objects from this site were found during an improvement in the curation of TVA's archeological collections at AMNH.

From April 27, 1938, to November 10, 1939, excavation was conducted at the Cox site, 1JA176, in Jackson County, AL, following TVA's acquisition of the site on July 19, 1937. The site comprised a conical mound containing multiple stratigraphic zones that is believed to have originated as a truncated pyramid, as well as a village where most of the burial units were located. It was occupied during the Woodland period (300 B.C.–A.D.1000) and the Crow Creek phase of the Mississippian period (ca. A.D. 1400–1600). The two associated funerary objects are one animal bone and one Ledbetter projectile point. The human remains with which these funerary objects are associated could not be assigned to a specific occupation.

Determinations Made by the Tennessee Valley Authority

Officials of the Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma. The Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma have declined to accept transfer of control of the associated funerary objects.
- Pursuant to 43 CFR 10.11(c)(4), the Tennessee Valley Authority has agreed to transfer control of the associated funerary objects to The Muscogee (Creek) Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Muscogee (Creek) Nation may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: August 4, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18233 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030628; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes. Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains may contact the Peabody Museum of Archaeology and Ethnology, Harvard University. Repatriation of the human remains to the Indian Tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian Tribe that believes it has a cultural affiliation with the human remains should contact the Peabody Museum of Archaeology and Ethnology, Harvard University at the address below by September 21, 2020.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Bristol County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Wampanoag Repatriation Confederation on behalf of the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group.

History and Description of the Remains

In 1924, human remains representing, at minimum, seven individuals were removed from burials on the Cummings Farm in Dartmouth, Bristol County, MA. These individuals were excavated by Harry Lionel Shapiro on behalf of the Peabody Museum of Archaeology and Ethnology, Harvard University. No known individuals were identified. No associated funerary objects are present.

Based on biological and archeological information in the possession of the Peabody Museum of Archaeology and Ethnology, the human remains are Native American. The interments most likely date to the Historic/Contact period (*i.e.,* post-A.D. 1500). Copper stains present on some of the human remains from this site suggest that the human remains were interred sometime after contact. Oral traditional information and historical documentation indicate that Dartmouth, MA, is within the aboriginal and historic homeland of the Wampanoag Nation.

In 1874, human remains representing, at minimum, one individual were removed from a ''well known Indian burial place'' in Westport, Bristol County, MA, by Mr. George H.E. Trouvelot, a medical student. The individual was donated to the Warren Anatomical Museum. In 1959, these human remains were donated to the Peabody Museum of Archaeology and Ethnology by the Warren Anatomical Museum as part of a large accession. No known individuals were identified. No associated funerary objects are present.

The interment most likely dates to the Historic/Contact period (post-A.D. 1500). The original catalogue entry describes this individual as having been removed from ''a well known Indian burial place'' with about 30 graves. The individuals were buried horizontally, and there were stone slabs at the head and foot of each burial. Pre-contact Native American burials were generally flexed, rarely occurred in clusters, and were rarely marked by stones. Native American cemeteries with headstones and footstones appear only after the arrival of Europeans in North America. Oral traditional information and historical documentation indicate that Westport, MA, is within the aboriginal and historic homeland of the Wampanoag Nation.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah), Indian Tribes that represent people of Wampanoag descent.

Additional Requestors and Disposition

Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.) and the Wampanoag Tribe of Gay Head (Aquinnah) may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying the Mashpee Wampanoag Tribe (previously listed as Mashpee Wampanoag Indian Tribal Council, Inc.); Wampanoag Tribe of Gay Head (Aquinnah); and the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group, that this notice has been published.

Dated: July 14, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18228 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030664; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Bishop Museum of Science and Nature Inc., Bradenton, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bishop Museum of Science and Nature Inc., has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Bishop Museum of Science and Nature, Inc. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Bishop Museum of Science and Nature Inc. at the address in this notice by September 21, 2020.

ADDRESSES: Matthew D. Woodside, Chief Curator, Bishop Museum of Science and Nature Inc., P.O. Box 9265, Bradenton, FL 34205, telephone (941) 216–3477, email *mwoodside@bishopscience.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Bishop Museum of Science and Nature Inc., Bradenton, FL. The human remains were removed from Collier, Glades, Levy, Manatee, and Sarasota Counties, FL, and from unknown counties in the State of Florida.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Bishop Museum of Science and Nature Inc. professional staff, along with Laura Van Voorhis of the Bone Chemistry Lab and C.A. Pound Human ID Lab, Department of Anthropology, University of Florida, in consultation with representatives of the Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Over the course of his adult life, Manatee County, FL, resident Walter Montague Tallant (1892–1963) collected Native American objects and human remains that are now under the control of the Bishop Museum of Science and Nature. Mr. Tallant moved to Manatee County in 1905, when his family relocated from Christiansburg, VA, and began collecting Native American objects. In 1935, some of the objects were displayed at the Manatee County Chamber of Commerce offices, then located in the Memorial Pier building in Bradenton, FL. In 1946, Mr. Tallant sold a portion of his collection, which we believe included human remains, to the Manatee Junior Chamber of Commerce. This collection led to the creation of the South Florida Museum on December 23, 1946, as a 501(C)3 non-profit institution. In April 2019, the South Florida Museum was renamed the Bishop Museum of Science and Nature.

In 1966, after completion of a new museum building, the collection was relocated to the new facility. From 1966 through 1990, additional human remains were given to the Museum by unknown individuals who had removed them from a number of locations, including 20 known pre-Contact occupation areas in Manatee and surrounding counties, such as temple or platform mounds of the Safety Harbor and Weeden Island Culture Periods. In 2016, Laura Van Voorhis of the Bone Chemistry Lab and C.A. Pound Human ID Lab in the Department of Anthropology at the University of Florida, working with Museum staff, inspected and assessed the human remains and assisted Museum staff in preparing an inventory and osteology report.

At an unknown date, human remains representing, at minimum, one individual were removed from ''Lake Tafford'' in Collier County, FL. The human remains consist of one partial cranium belonging to an adult of unknown sex. The cranium is inscribed ''4–2–89,'' ''W.C.C.,'' and ''Lake Tafford, Collier County.'' No known individual was identified. No associated funerary objects are present.

''Lake Tafford'' likely refers to the Lake Trafford Burial Mound (8CR80) located west of Lake Trafford in Collier County. The mound is part of a complex of 19 mounds; the other 18 mounds are non-mortuary. Ceramic types found at the site indicate a Late Woodland Period (A.D. 500–1000) occupation, while Safety Harbor Incised and Fort Walton Incised ceramics, and a number of gold objects indicate activity during the Mississippian Period and early Historic Period (A.D. 900–1700).

In 1939, human remains representing, at minimum, three individuals were removed from ''Green Tree Mound'' in Glades County, FL. One partial cranium is inscribed ''5–13–39 WCC'' and two partial crania are inscribed ''WCC'' and ''2–13–39 WCC.'' All three individuals are adults of unknown sex. No known individuals were identified. No associated funerary objects are present. The ''Green Tree Mound'' could not be found in the Florida Master Site File (FMSF) administered by the Florida Department of State, Bureau of Historic Preservation, Division of historical Resources.

At an unknown date, but probably 1938, human remains representing, at minimum, two individuals were removed from ''Shell Mound'' in Levy County, FL. One complete cranium is inscribed ''Shell Mound'' and ''1–12–38, W.C.C,'' and a partial cranium is inscribed ''Shell Mound''. Both individuals are adults of unknown sex. No known individuals were identified. No associated funerary objects are present.

As archeological excavations at Shell Mound (8LV42) have not located any human remains, these human remains are probably from the nearby Palmetto Mound (8LV2), also known as the Culpepper site, Palmetto Island, Pine Key Mound, Rattlesnake Island, Graveyard Island, and Hog Island. Walter Montague Tallant's journal and photograph albums indicate he removed objects from Palmetto Mound in the late 1930s. Palmetto Mound dates to 700

B.C.—A.D. 1300, based on radiocarbon dates and pottery types.

In the 1980s, and possibly earlier, human remains representing, at minimum, seven individuals were removed from ''Snead Island Mound'' or ''Snead's Island'' in Manatee County, FL. On September 14,1989, Mrs. A.W. Pervis, Jr. donated one fragmented, complete skull belonging to an adult male and tibia and femur remains from ''Snead's Island'' to the Museum. The sites Snead Island 1 (8MA18), Snead Island III (8MA20), Snead Island Burial Mound (8MA85), and possibly Emerson Point (8MA1137) have been reported to contain human remains. Walter Montague Tallant is reported to have excavated at 8MA18 and 8MA85. Based on artifact types, the earliest occupation of 8MA18 predated A.D. 700 and continued into the Historic Period. Stokes Brushed pottery associated with the Seminoles was found at 8MA18, and a fish camp that employed Cubans and Seminoles reportedly operated there in the 1840s. The 8MA85 site is described as a sand burial mound with plain, non-diagnostic pottery.

At an unknown date, but probably 1937, human remains representing, at minimum, three individuals were removed from ''Tidy Island'' in Manatee County, FL. Walter Montague Tallant is believed to have excavated five or six human remains from two burial mounds on Tidy Island in 1937. The human remains include one incomplete cranium belonging to an adult of unknown sex, one radius, and two incomplete crania belonging to adults of unknown sex. No known individuals were identified. No associated funerary objects are present. The Cow Point Midden (8MA12) on Tidy Island is the likely source of these human remains. The site contains a shell midden and two burial mounds. It is dated to approximately 500 B.C.—A.D. 800 or later, based on the ceramics.

In 1938, human remains representing, at minimum, one individual were removed from ''Treasure Island'' in Sarasota County, FL. One incomplete cranium belonging to an adult of unknown sex and inscribed ''1938, W.C.C'' was given to the Museum by an unknown person at an unknown date. No known individual was identified. No associated funerary objects are present. The ''Treasure Island'' site in Sarasota County might actually be the John's Pass Mound (8PI4) on Treasure Island in Pinellas County, a burial mound dated to the Safety Harbor Period (A.D. 900—1700).

At an unknown date, human remains representing, at minimum, one individual were removed from ''Phillippi Creek.'' One complete cranium belonging to an adult of unknown sex was given to the Museum by an unknown person at an unknown date. No known individual was identified. No associated funerary objects are present. According to the FMSF, two archeological sites are reported along the Phillippi Creek in Sarasota County. However, neither the Phillippi Flake Scatter (8SO616) nor the Prodie Midden Site (8SO617) is known to contain human remains.

At an unknown date, human remains representing, at minimum, one individual were removed from ''Riverview Landing.'' One frontal belonging to an adult, probably male, as well as other teeth and human remains were given to the Museum by an unknown person at an unknown date. No known individual was identified. No associated funerary objects are present. Riverview Pointe in Manatee County may be the general location where the human remains were removed. The Riverview Pointe Midden (8MA981) contains no human remains, unlike the nearby Shaw's Point (8MA7) site. The latter site reportedly contains early Deptford, Weeden Island, Safety Harbor, and Leon-Jefferson pottery from the Early Woodland to early Historic Period (ca. 500 B.C.–A.D. 1700).

At an unknown date, human remains representing, at minimum, three individuals were removed from ''Midway Island'' in Collier County, FL. On January 15, 2013, one complete skull belonging to an adult male and marked ''Coll Co 1961'' and three mandibles were placed under the control of the Museum by Mrs. Patty Tallant Hare, Walter Montague Tallant's daughter. No known individuals were identified. No associated funerary objects are present. The ''Midway Island'' site could not be found in the FMSF.

At an unknown date, human remains representing, at minimum, 46 individuals were removed by unknown persons from unknown counties in the State of Florida. The Museum does not possess any accession information for these remains. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Bishop Museum of Science and Nature Inc.

Officials of the Bishop Museum of Science and Nature Inc. have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 68 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Matthew D. Woodside, Chief Curator, Bishop Museum of Science and Nature Inc., P.O. Box 9265, Bradenton, FL 34205, telephone (941) 216–3477, email *mwoodside@bishopscience.org,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Bishop Museum of Science and Nature Inc. is responsible for notifying The Tribes that this notice has been published.

Dated: July 21, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18235 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030623; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of associated funerary objects, in consultation with the appropriate Federally-recognized Indian Tribes, and has determined that a cultural affiliation between the associated funerary objects and present-day Federally-recognized Indian Tribes can reasonably be traced. Lineal descendants or representatives of any Federally-recognized Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request to the TVA. If no additional requestors come forward, transfer of control of the associated funerary objects to the Federally-recognized Indian Tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Federally-recognized Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request with information in support of the request to the TVA at the address in this notice by September 21, 2020.

ADDRESSES: Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of Tennessee Valley Authority, Knoxville, TN. Transfer of control of the human remains with which these funerary objects are associated, as well as additional associated funerary objects, has already occurred. The associated funerary objects listed in this notice were discovered during a recent review of the TVA archeological collection housed at the Alabama Museum of Natural History. The associated funerary objects were removed from archeological sites in Jackson and Marshall Counties, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the funerary objects was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Associated Funerary Objects

The four sites listed in this notice—1JA27, 1JA102, 1MS55, and 1MS91—were excavated as part of TVA's Guntersville Reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama, using labor and funds provided by the Works Progress Administration. Details regarding these excavations and sites may be found in a report, ''*An Archaeological Survey of Guntersville Basin on the Tennessee River in Northern Alabama,*'' by William S. Webb and Charles G. Wilder.

Human remains and other associated funerary objects from 1JA27 were listed in a Notice of Inventory Completion published in the **Federal Register** on September 5, 2017 (82 FR 41985–41987). Human remains and other associated funerary objects from 1JA102 and 1MS91 were listed in a Notice of Inventory Completion published in the **Federal Register** on September 1, 2016 (81 FR 60381–60383). Human remains and other associated funerary objects from 1MS55 were listed in a Notice of Inventory Completion published in the **Federal Register** on April 29, 2019 (84 FR 18080–18081). Transfer of control of the cultural items listed in those notices to the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Muscogee (Creek) Nation has already occurred. The associated funerary objects listed in this notice were discovered during a recent review of the TVA archeological collection housed at AMNH.

From March to April of 1938, a Furrs Cordmarked rim and a Bell Plain Effigy Bottle were removed from burial units 2 and 3, respectively, at the Hardin site (1JA27) in Jackson County, AL, after TVA acquired the site on October 16, 1936. Excavations revealed two primary occupations during the Late Woodland Flint River phase (A.D. 500–1000) and the Mississippian Henry Island phase (A.D. 1200–1450). The associated funerary objects listed in this notice were originally found with the human remains that were from the Henry Island phase.

From September 1938 to January 1939, one Bell Plain effigy bowl was removed from burial unit 10 at 1JA102, Sublet Ferry site, in Jackson County, AL. Excavations commenced after TVA acquired a permit for archeological exploration on June 11, 1938. Excavations revealed this site to be a shell midden overlying a dark midden soil. Both Woodland and Mississippian occupations were identified. The associated funerary object listed in this notice was from the Henry Island phase of the Mississippian period.

From September 1937 to May 1938, one Bell Plain jar was removed from burial unit 39 at the Henry Island site, 1MS55, in Marshall County, AL. TVA purchased the site on November 2, 1936. This site was composed of two earthen mounds and an associated village midden. Although there are no radiocarbon dates from this site, artifacts from the excavation suggest occupations during the Copena (A.D. 100–500), Flint River (A.D. 500–1000), Henry Island (A.D. 1200–1500), and Crow Creek (A.D. 1500–1650) phases. The associated funerary object listed in this notice was removed from a Henry Island phase burial.

From June 1938 to May 1939, one brass bell was removed from burial unit 25 (Unit I), and 17 glass beads, one carbonized textile sample and one carbonized basketry sample were removed from burial unit 5 (Unit II) at the Columbus City Landing site, 1MS91. This site is northeast of the city of Guntersville in Marshall County, AL. Excavation commenced after TVA purchased the land on March 8, 1937. There were excavations in both the village (Unit I) and adjacent mounds (Unit II). Artifacts recovered from this excavation revealed that the primary occupations were during the Middle Woodland (A.D. 100–500), Mississippian (A.D. 1200–1500), and historic periods. The associated funerary objects listed in this notice were removed from historic Native American burials.

A relationship of shared group identity can reasonably be traced between present-day Indian Tribes and the cultural items of the earlier culture identified as Mississippian. The preponderance of the evidence indicates that the cultural items from the Henry Island phase at 1JA27, 1JA102, and 1MS55 and the historic period at 1MS91 are culturally affiliated with Native Americans descendants of the Koasati/Kaskinampo. These descendants include the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Muscogee (Creek) Nation.

Chronicles from Spanish explorers of the 16th century and French explorers of the 17th and 18th century indicate the presence of chiefdom level tribal entities in the southeastern United States which resemble the Mississippian chiefdoms. Linguistic analysis of place

names noted by multiple Spanish explorers indicates that Koasati speaking groups inhabited northeastern Alabama. Early maps and research into the historic Native American occupation of northeastern Alabama indicates that the Koasati (as called by the English) or the Kaskinampo (as called by the French) were found at multiple sites in Jackson and Marshall Counties in the 17th and 18th centuries. Oral history, traditions, and expert opinions of the descendants of Koasati/Kaskinampo indicate that this portion of the Tennessee River valley was a homeland of their Tribe. The subsequent involuntary diaspora of these peoples resulted in descendants of the Koasati/Kaskinampo living among multiple Indian Tribes.

Determinations Made by the Tennessee Valley Authority

Officials of the Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the 24 associated funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary objects listed in this notice and the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; and The Muscogee (Creek) Nation (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Federally-recognized Indian Tribe not identified in this notice that wish to request transfer of control of the associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Tribes may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: July 13, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18232 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030663; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Mount Holyoke College, South Hadley, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Mount Holyoke College has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Mount Holyoke College. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Mount Holyoke College at the address in this notice by September 21, 2020.

ADDRESSES: Aaron F. Miller, Mount Holyoke College, 50 College Street, South Hadley, MA 01075–1499, telephone (413) 538–3394, email *afmiller@mtholyoke.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Mount Holyoke College, South Hadley, MA. The human remains were removed from an unidentified location in the vicinity of Holyoke, Hampden County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

From 2015 to 2020, consultation on these human remains was carried out between representatives of Mount Holyoke College (Sonya Stephens, President of Mount Holyoke College, Lenore Reilly, Senior Advisor to the President, and Aaron Miller, Associate Curator of Visual and Material Culture and NAGPRA Coordinator at the Mount Holyoke College Art Museum) and representatives of the Stockbridge Munsee Community, Wisconsin; Wampanoag Tribe of Gay Head (Aquinnah); and the following non-federally recognized Indian groups: the Abenaki Nation of New Hampshire; Cowasuck Band of the Pennacook–Abenaki People; Elnu Abenaki Tribe; and the Webster/Dudley Band of the Chaubunagungamaug Nipmuck Indians (hereafter referred to as ''The Consulted Tribes and Groups'').

History and Description of the Remains

Sometime prior to 1918, human remains representing, at minimum, one individual were removed from an unidentified location in the vicinity of Holyoke, Hampden County, MA. On January 10, 1918, Alice E. Hunt and George E. Hunt of Holyoke, MA, donated the human remains to Mount Holyoke College. A letter from the Hunts to Professor Turner mentions the skeleton ''of a squaw aged 35 years.'' A 1948 article in the *Mount Holyoke News* referenced the human remains as being ''an Indian Squaw about 150 years old'' and given by ''a family of doctors in Holyoke who had had her in the family for generations.'' In 2006, an osteologist examined the human remains and concluded that they belong to a female 20–23 years old, and are of probable Native American ancestry. No known individual was identified. No associated funerary objects are present.

In Holyoke and the surrounding area, a great deal of archeological excavation took place in the late 19th and early 20th centuries, during which multiple graves were exhumed. Based on historical and oral traditional information, the area of Holyoke was occupied by the Stockbridge Munsee Community, Wisconsin.

Determinations Made by Mount Holyoke College

Officials of Mount Holyoke College have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Stockbridge Munsee Community, Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Aaron F. Miller, Mount Holyoke College, 50 College Street, South Hadley, MA 01075–1499, telephone (413) 538–3394, email *afmiller@mtholyoke.edu,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Stockbridge Munsee Community, Wisconsin may proceed.

Mount Holyoke College is responsible for notifying The Consulted Tribes and Groups that this notice has been published.

Dated: July 21, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18229 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030625; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology Museum at the University of California, Davis, Davis, CA: Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The University of California, Davis (UC Davis) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 13, 2008. This notice corrects the minimum number of individuals and number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UC Davis at the address in this notice by September 21, 2020.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of California, Davis, Davis, CA. The human remains and associated funerary objects were removed from Colusa County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (73 FR 47228–47229, August 13, 2008). Additional human remains were newly identified after review of faunal collections. In addition, human remains from this site previously identified as culturally unidentifiable were re-evaluated in consultation and determined to be culturally affiliated. Based on consultation and review of the original field records, associated funerary objects were added. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (73 FR 47228, August 13, 2008) column two, paragraph four, sentence one is corrected by substituting the following sentence:

In 1973, human remains representing a minimum of 12 individuals were removed from Miller Mound (CA–COL–1), Colusa County, CA by the University of California, Davis archeological field school.

In the **Federal Register** (73 FR 47228, August 13, 2008) column two, paragraph four, sentence three is corrected by substituting the following sentences:

The 40,272 associated funerary objects (contained in 733 lots) are approximately 5,422 beads (in 77 lots) of clamshell disc beads and other shell beads, approximately 34,368 beads (in 174 lots) of historic beads (some lots include clamshell disc beads, which are counted within these historic lots), 170 abalone pendants, 33 *Olivella* beads, one piece of worked shell, two bone beads, two magnesite cylinders, one stone pendant, five stone discs, 44 bone awls, five bone or antler flakers, two bone harpoons, one bone needle, one bone spatulate, five pieces of miscellaneous worked bone, 30 projectile points, one chert drill, 32 pieces of chip stone (including bifaces, flakes, and debitage), six ground stone and ground stone fragments, seven buttons, 44 historic coins (three of which include attached clamshell beads not included in the clamshell count), one piece of historic glass, three historic nails, 24 metal fragments (including a crushed metal pot), one leather bag or hat, eight textile and textile/bead fragments, one ceramic fragment, three fire-cracked rock fragments, one lot of ochre, seven lots of unmodified shell, 32 lots of animal bone fragments, two pieces of charcoal, and seven lots of seeds. (Two clamshell disc beads, three lots of historic beads (174 beads), two abalone pendants, two *Olivella* beads, one bone awl, four bone or antler flakers, two projectile points, one chip stone object, and one lot of animal bone fragments are currently missing.)

In the **Federal Register** (73, FR 47228, August 13, 2008) column three, paragraph one is corrected by substituting the following paragraph:

Based on burial context and site characteristics, the human remains described above from the Miller Mound site are determined to be Native American. The Miller Mound site was documented as a historic village site inhabited by River Patwin. The antiquity of the site as a whole may range between the Middle Period to the Historic (200 B.C.–A.D. 1872). The burials described in this Notice are determined to have originated from the Protohistoric (Phase 2 of the Late Period) and Historic periods. Geographical, historical, archeological, anthropological, linguistic and biological evidence suggest continuity of populations between Late and Historic periods (Golla 2011, Johnson 1978, Kroeber 1925, 1978,

Moratto 1984, Newman 1957). The human remains and associated funerary objects described above are reasonably believed to be culturally affiliated with Patwin tribes.

In the **Federal Register** (73, FR 47228, August 13, 2008) column three, paragraph two, sentence one is corrected by substituting the following sentence:

In 1969 and 1971, human remains representing a minimum of sixteen individuals were removed from CA–COL–11, Colusa County, CA by two University of California, Davis archeological field schools.

In the **Federal Register** (73, FR 47228, August 13, 2008) column three, paragraph two, sentence four is corrected by substituting the following sentences:

The 502 individual and lots of associated funerary objects are five bird bone tubes, eight bone awls, two flake tools, 27 lots of debitage and flakes, 142 lots of clamshell beads (includes bead blanks and refuse), one clay fragment, six glass beads, one groundstone tablet, six *Haliotis* pendants or ornaments, five historic beads, two incised bird bones, three lots of freshwater shell, 10 lots of non-human bone, 19 lots of ochre, one point blank, six projectile points, one utilized flake, 120 *Olivella* beads, three pestles, two quartz crystals, one worked sandstone, one lot of sediment described as ''grave fill'', three seeds, one shell bead, one steatite bead, 18 unmodified shell fragments, 61 lots of worked bone, one lot of charcoal described as ''Burial-wood for dating'', one broken mortar (in two pieces), 17 lots of pinenuts and pinenut hulls, 24 lots of wood, and three lots of soil. (12 lots of clamshell beads, one glass bead, one *Haliotis* ornament, one lot of ochre, three projectile points, 12 *Olivella* beads, three lots of worked bone, and one lot of pinenuts are currently missing.)

In the **Federal Register** (73, FR 47229, August 13, 2008) column one, paragraph three, sentence one is corrected by substituting the following sentence:

Officials of the Department of Anthropology Museum at the University of California, Davis have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 32 individuals of Native American ancestry.

In the **Federal Register** (73, FR 47229, August 13, 2008) column one, paragraph three, sentence two is corrected by substituting the following sentence:

Officials of the Department of Anthropology Museum at the University of California, Davis also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 40,817 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu,* by September 21, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Band of Wintun Indians (previously listed as Cortina Indian Rancheria and the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha Dehe Wintun Nation, California (previously listed as Rumsey Indian Rancheria of Wintun Indians of California), hereafter referred to as ''The Tribes'' may proceed.

The University of California, Davis is responsible for notifying The Tribes that this notice has been published.

Dated: July 13, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–18231 Filed 8–19–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1528 (Preliminary)]

Seamless Refined Copper Pipe and Tube From Vietnam

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of seamless refined copper pipe and tube from Vietnam, provided for in subheading 7411.10.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under § 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 30, 2020, the American Copper Tube Coalition, consisting of Mueller Group, Collierville, Tennessee, and Cerro Flow Products, LLC, Sauget, Illinois, filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of seamless refined copper pipe and tube from Vietnam. Accordingly, effective June 30, 2020, the Commission instituted antidumping duty investigation No. 731–TA–1528 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2020 (85 FR 40680). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 47181 (August 4, 2020).

of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on August 14, 2020. The views of the Commission are contained in USITC Publication 5108 (August 2020), entitled *Seamless Refined Copper Pipe and Tube from Vietnam: Investigation No. 731–TA–1528 (Preliminary).*

By order of the Commission.

Issued: August 14, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–18201 Filed 8–19–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–652 and 731–TA–1524–1526 (Preliminary)]

Silicon Metal From Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Bosnia and Herzegovina, Iceland, and Malaysia, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of subject merchandise from Kazakhstan alleged to be subsidized by the Government of Kazakhstan.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 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 the investigations.

Background

On June 30, 2020, Globe Specialty Metals, Inc., Beverly, Ohio, and Mississippi Silicon LLC, Burnsville, Mississippi, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of silicon metal from Kazakhstan and LTFV imports of silicon metal from Bosnia and Herzegovina, Iceland, and Malaysia. Accordingly, effective June 30, 2020, the Commission instituted countervailing duty investigation No. 701–TA–652 and antidumping duty investigation Nos. 731–TA–1524–1526 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 2020 (85 FR 41063). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 14, 2020. The views of the Commission are contained in USITC Publication 5107 (August 2020), entitled *Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia: Investigation Nos. 701–TA–652 and 731–TA–1524–1526 (Preliminary).*

By order of the Commission.

Issued: August 14, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–18210 Filed 8–19–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–653 and 731–TA–1527 (Preliminary)]

Standard Steel Welded Wire Mesh From Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of standard steel welded wire mesh from Mexico, provided for in subheadings 7314.20.00 and 7314.39.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Mexico.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 45173 and 85 FR 45177 (July 27, 2020).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 45167 (July 27, 2020) and 85 FR 45181 (July 27, 2020).

under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 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 the investigations.

Background

On June 30, 2020, Insteel Industries Inc., Mount Airy, North Carolina; Mid South Wire Company, Nashville, Tennessee; National Wire LLC, Conroe, Texas; Oklahoma Steel & Wire Co., Madill, Oklahoma; and Wire Mesh Corp., Houston, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of standard steel welded wire mesh from Mexico and LTFV imports of standard steel welded wire mesh from Mexico. Accordingly, effective June 30, 2020, the Commission instituted countervailing duty investigation No. 701–TA–653 and antidumping duty investigation No. 731–TA–1527 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2020 (85 FR 40681). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 14, 2020. The views of the Commission are contained in USITC Publication 5109 (August 2020), entitled *Standard Steel Welded Wire Mesh from Mexico: Investigation Nos. 701–TA–653 and 731–TA–1527 (Preliminary).*

By order of the Commission.
Issued: August 14, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–18212 Filed 8–19–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities; Proposed Collection Comments Requested; New Data Collection: Office for Victims of Crime (OVC) Tribal Financial Management Center (TFMC) Needs Assessment and Evaluation OMB Package

AGENCY: Office for Victims of Crime, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Office for Victims of Crime will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 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.

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of information collection:* New Data Collection.
2. *The title of the form/collection:* OVC TFMC Needs Assessment and Evaluation Package.
3. *The agency form number:* N/A. Office for Victims of Crime, Office of Justice Programs, Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary Respondents: Tribal agencies/entities. Other Possible Respondents: State, Local, and Federal Government; Not-for-profit institutions; other Businesses.

Abstract: OVC TFMC Needs Assessment and Evaluation Package is designed to collect the data necessary to address two objectives. First, to provide information about the capacity of American Indian and Alaska Native (AI/AN) communities to manage the financial aspects of federal awards. This information will help OVC TFMC tailor its resources to support AI/AN communities as they develop and maintain the capacity to successfully manage the financial aspects of their federal awards. Second, this data will allow for the continuous assessment of the satisfaction and outcomes of assistance provided through OVC TFMC for both monitoring and accountability purposes. OVC TFMC will give these forms to recipients of training and technical assistance, users of the website and the virtual support center, tribal advisory council, and other professionals assisting with, or receiving assistance from, OVC TFMC.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 9,750 respondents who will require an average of 13 minutes to complete the needs assessment or evaluation forms (ranging from 1 to 60 minutes across evaluation forms, interview guides, and needs assessment surveys).

6. *An estimate of the total public burden (in hours) associated with the*

collection: The total public burden hours for this information collection are estimated to be 3,063 hours (1,021 hours annually).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–18295 Filed 8–19–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of Previously Approved Collection OJP Solicitation Template

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until September 21, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Justice Programs, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension to 1121–0329.

2. *The Title of the Form/Collection:* OJP Solicitation Template.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number available. Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system. The approved solicitation template collection also includes the OJP Budget Detail Worksheet; the Coordinated Tribal Assistance Solicitation (CTAS) Tribal Narrative Profile, Budget Detail Worksheet (BDW) and Demographic Form; and the Financial Management and System of Internal Controls Questionnaire (FCQ). The extension request includes a more streamlined version of the solicitation template collection, whereas the agency moved static instructions and guidance that do not frequently change from year to year to a Grant Application Resource Guide web page. The result is a more concise, user-friendly solicitation document that draws closer attention to the program-specific details and requirements in order to reduce confusion for the applicant. Additionally, it enables the agency to revise static guidance on the web page as necessary, reducing the need to re-issue program solicitations already released to the public.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application under the OJP and CTAS Standard Solicitation Template include a program narrative; budget details and narrative, via the OJP standard BDW; Applicant Disclosure of Pending Applications; Applicant Disclosure of High Risk Status; and the FCQ. With the exception of the Tribal Narrative Profile and added Demographic form, the mandatory requirements for an application under the CTAS Solicitation Template are the same as those for OJP. Optional requirements can be made mandatory depending on the type of program to include, but not limited to: Documentation related to Administration priority areas of consideration (*e.g.,* Documentation of Enhanced Public Safety in Qualified Opportunity Zones), project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, and research and evaluation independence and integrity. The estimated public reporting burden for this collection of information remains at up to 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most time intensive types of application solicited by OJP.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–18296 Filed 8–19–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Connecticut and Minnesota

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Connecticut and Minnesota.

The following changes have occurred since the publication of the last notice regarding the States' EB status:

Based on the data released by the Bureau of Labor Statistics on July 17, 2020, the seasonally-adjusted total unemployment rates for Connecticut and Minnesota rose to exceed the 8.0% threshold necessary to trigger ''on'' to a high unemployment period in EB. The payable period for these states under the high unemployment period begins August 2, 2020, and eligibility for claimants has been extended from up to 13 weeks of potential duration to up to 20 weeks of potential duration in the EB program.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2020–18272 Filed 8–19–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

[Agency Docket Number DOL–2020–0005]

Request for Comments for Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR'') Report

AGENCY: Bureau of International Labor Affairs, United States Department of Labor and Office of the United States Trade Representative.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor and the United States Trade Representative in preparing a report on labor capacity-building efforts under Chapter 16 (''the Labor Chapter'') and Annex 16.5 of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR''). Comments are also welcomed on efforts made by the CAFTA–DR countries to implement the labor obligations under the Labor Chapter and the recommendations contained in a paper entitled, ''The Labor Dimension in Central America and the Dominican Republic—Building on Progress: Strengthening Compliance and Enhancing Capacity'' (the ''White Paper''). This report is required under the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA–DR Implementation Act). The reporting function and the responsibility for soliciting public comments required under this Act were assigned to the Secretary of Labor in consultation with the United States Trade Representative (USTR). The upcoming report will consolidate reporting periods to cover January 1, 2016, through February 29, 2020. Public comments received in response to the November 21, 2017, **Federal Register** Notice soliciting input on labor capacity-building efforts under the CAFTA–DR will be taken under consideration for this upcoming report.

DATES: Written comments are due no later than 5 p.m. (ET) September 21, 2020.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* the Federal e-rulemaking portal. Comments may also be submitted by postal or electronic mail to Giorleny Altamirano Rayo, Advisor, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5006, Washington, DC 20210, *Rayo.Giorleny.D@DOL.gov.* Comments that are mailed must be received by the date indicated for consideration. Also, please note that due to security concerns, postal delivery in Washington, DC, may be delayed. Therefore, in order to ensure that comments receive full consideration, the Department encourages the public to submit comments via the internet as indicated above. Please submit only one copy of your comments by only one method. Also, please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such information will become viewable by the public on the *http://www.regulations.gov* website. It is each commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment. If you are unable to provide submissions by either of these means, please contact Giorleny Altamirano Rayo (202–693–4868) to arrange for an alternative method of submission.

FOR FURTHER INFORMATION CONTACT: Giorleny Altamirano Rayo, Advisor, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5006, Washington, DC 20210. Email: *Rayo.Giorleny.D@DOL.gov,* Telephone: 202–693–4868.

SUPPLEMENTARY INFORMATION:

1. Background Information

During the legislative approval process for the CAFTA–DR, the

Administration and the Congress reached an understanding on the need to support labor capacity-building efforts linked to recommendations identified in the ''White Paper'' of the Working Group of the Vice Ministers Responsible for Trade and Labor in the countries of Central America and the Dominican Republic. CAFTA–DR-specific trade capacity-building funds were appropriated through fiscal year 2010 and subsequently, the Bureau of International Labor Affairs used its own appropriation to support technical assistance projects in CAFTA–DR partner countries through fiscal year 2020. For more information, see the full text of the CAFTA–DR at *https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text* and the ''White Paper'' at *http://www.sice.oas.org/labor/White%20Paper_e.pdf.*

Under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), the President must report biennially to the Congress on the progress made by the CAFTA–DR countries in implementing the labor obligations and the labor capacity-building provisions found in the Labor Chapter and in Annex 16.5, and in implementing the recommendations contained in the ''White Paper.'' Section 403(a)(4) requires that the President establish a mechanism to solicit public comments on the matters described in section 403(a)(3)(D) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a)(4) (listed below in 2).

By Proclamation, the President delegated the reporting function and the responsibility for soliciting public comments under section 403(a) of the CAFTA–DR Implementation Act, 19 U.S.C. 4111(a), to the Secretary of Labor, in consultation with the USTR (Proclamation No. 8272, 73 FR 38,297 (June 30, 2008)). This notice serves to request public comments as required by this section.

2. The Department of Labor Is Seeking Comments on the Following Topics as Required Under Section 403(a)(3)(D) of the CAFTA–DR Implementation Act

a. Capacity-building efforts by the United States government envisaged by Article 16.5 of the CAFTA–DR Labor Chapter and Annex 16.5;

b. Efforts by the United States government to facilitate full implementation of the ''White Paper'' recommendations; and

c. Efforts made by the CAFTA–DR countries to comply with Article 16.5 of the Labor Chapter and Annex 16.5 and to fully implement the ''White Paper'' recommendations, including progress made by the CAFTA–DR countries in affording to workers internationally recognized worker rights through improved capacity.

3. Requirements for Submission

Persons submitting comments must do so in English and must make the following note on the first page of their submissions: ''Comments regarding the CAFTA–DR Implementation Act.'' In order to be assured consideration, comments should be submitted by 5 p.m. (ET), September 21, 2020. The Department of Labor encourages commenters to make on-line submissions using the *www.regulations.gov* website. When entering this site, enter ''Request for Comments on Labor Capacity-Building Efforts Under the Dominican Republic-Central America-United States Free Trade Agreement'' on the home page search bar and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now.'' (For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use This Site'' (found on the bottom of the home page under ''Help'').) The *www.regulations.gov* website allows users to provide comments by filling in a ''Type Comment field,'' or by attaching a document using an ''Upload File'' field. The Department prefers that uploaded submissions be in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the submission itself. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself and not as separate files.

As noted, the Department strongly urges submitters to file comments through the *www.regulations.gov* website.

Comments will be open to public inspection. Comments may be viewed on the *www.regulations.gov* website.

Authority: The authority for this notice is granted by the Federal Advisory Committee Act (5 U.S.C. App. 2) and the Executive Order No. 13889 of September 27, 2019.

Grant B. Lebens,

Chief of Staff, Bureau of International Labor Affairs.

[FR Doc. 2020–17889 Filed 8–19–20; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Alien Employment Certification

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 21, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at (202) 693–0456, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection permits DOL to meet its statutory responsibilities for program administration, management, and oversight under the Immigration and Naturalization Act. The Form ETA 750, part A and part B collects information needed for the professional athlete permanent labor certification program. The Form ETA 750 Part B is required by the Department of Homeland Security for aliens applying for the National Interest Waiver of the job offer requirement. Part B provides detailed information about an alien's education and work history as required and explained in 8 CFR 204.5(k)(4)(ii). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 2, 2020 (85 FR 18589).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three years. OMB authorization for an ICR cannot be for more than three years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Application for Alien Employment Certification.

OMB Control Number: 1205–0015.

Affected Public: Private Sector-Business or other for-profits; Not-for-profit institutions.

Total Estimated Number of Respondents: 9,645.

Total Estimated Number of Responses: 9,645.

Total Estimated Annual Time Burden: 17,448 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Crystal R. Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–18274 Filed 8–19–20; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Proposed Needs Assessment Study: Measures That Matter—Assessing Public Libraries' Activities Related to Workforce Development

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation 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.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 19, 2020.

ADDRESSES: Send comments to: Dr. Connie Bodner, Director, Office 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, by email at *cbodner@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Dr. Mathew Birnbaum, Supervising Social Science Researcher, Office of Impact Assessment and Learning, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by Telephone: 202–653–4760, by email at *mbirnbaum@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: By this notice, IMLS is soliciting comments concerning a plan to conduct a needs assessment study entitled ''Measures that Matter: Assessing Public Library Activities Related to Workforce Development.'' The study is intended to develop a meaningful approach to measuring the contributions of library-based workforce development activities. It also is intended to assess whether this approach could be used to measure additional library activities that seek to contribute to other dimensions of social wellbeing in the nation's communities. A copy of the proposed information collection request can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

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 transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

In partnership with the Chief Officers of State Library Associations (COSLA), IMLS launched Measures that Matter in 2016, an initiative for coordinating conversations about existing approaches to gathering and using data to improve alignment of public library services, programs, and collections with communities' needs and emerging opportunities. An outgrowth of this effort, this proposed 18-month assessment seeks to pilot an approach for measuring the contributions of library-based workforce development activities and also for ascertaining whether this approach can be used for measuring other library activities intended to influence various dimensions of community wellbeing. This proposed investigation will identify a representative sample of libraries and complete case studies about them using a mix of research methods involving reviews of secondary and administrative data, surveys, interviews and focus groups.

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 through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Agency: Institute of Museum and Library Services.

Title: Proposed Needs Assessment Study: Measures that Matter—Assessing Public Libraries' Activities Related to Workforce Development.

OMB Number: 3137–TBD.

Frequency: Once.

Affected Public: Public library staff at local and state levels, public officials and service providers involved with workforce development efforts at the libraries, and residents participating in the libraries' workforce development activities.

Number of Libraries in Sample: 10–15.

Estimated Number of Respondents: 600–900.

Estimated Average Burden per Response: TBD.

Estimated Total Annual Burden: TBD.

Total Annualized Capital/Startup Costs: N/A.

Total Annual Costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 17, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–18302 Filed 8–19–20; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 21, 2020. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2021–004

1. *Applicant:* Grant Ballard, Point Blue Conservation Science, 3820 Cypress Dr. #11, Petaluma, CA 94954.

Activity for Which Permit Is Requested: Take, Harmful Interference, Enter Antarctic Specially Protected Areas (ASPAs), Import into USA. The applicant proposed to enter ASPA 121, Cape Royds, ASPA 124, Cape Crozier, and ASPA 105, Beaufort Island, to conduct research on the role of environmental factors on foraging, diet, growth, and survival of Adelie penguins. Research activities would include installing weighbridges, resighting banded birds, and following birds through incubation and chick-rearing until late January. The applicant and agents would attach logging and tracking devices on breeding adults and collect fecal samples from adults and chicks during the brooding and guarding stage, then would attach long-term GPS-Argos tags and geolocating dive recorders on adult penguins. The applicant and agents would measure and band 200 chicks at Cape Royds and 500 chicks at Cape Crozier each season, and would deploy GPS-Argos tags on molted juveniles. The applicant and agents would also conduct similar research at Cape Bird, but the work would be conducted outside the ASPA boundary. To survey the large colonies at Cape Royds and Cape Crozier in a timely manner, the applicant and agents would employ multiple, self- and collectively-aware remotely piloted aircraft (RPAS) simultaneously. The RPAS will be piloted by trained, experienced, and certified operators and the operations will also involve additional visual observation of penguin behavior. For the surveys, the RPAS launch site would be at least 20 meters away from nesting birds and the RPAS would be operated at 50 meters above ground level and nest birds to help ensure minimal disturbance. Surveys at Cape Crozier have the potential to disturb south polar skuas nesting near the penguin colony. Images obtained from the surveys would be used to estimate the number of nesting adults and chicks, as well as nesting density. The applicant and agents would access the general areas by helicopter and would enter the ASPAs on foot. The applicant would maintain a webcam (PenguinCam) positioned slightly inside the Cape Royds ASPA boundary.

Location: ASPA 121, Cape Royds, Ross Island; ASPA 124, Cape Crozier, Ross Island; ASPA 105, Beaufort Island; Cape Bird (outside ASPA boundary).

Dates of Permitted Activities: October 15, 2020–February 15, 2025.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2020–18227 Filed 8–19–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

ADDRESSES: Comments should be addressed to Branch Chief, Executive Services, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Munz at the above address or (703) 292–2478.

SUPPLEMENTARY INFORMATION: The membership of the National Science

Foundation's Senior Executive Service Performance Review Board is as follows:

F. Fleming Crim, Chief Operating Officer, Chairperson
Wonzie Gardner, Chief Human Capital Officer and Office Head, Office of Information and Resource Management
Karen Marrongelle, Assistant Director, Directorate for Education and Human Resources
Suzanne C. Iacono, Office Head, Office of Integrative Activities
Janis Coughlin-Piester, Deputy Office Head, Office of Budget, Finance and Award Management
Joanne Tornow, Assistant Director, Directorate for Biological Sciences
Erwin Gianchandani, Deputy Assistant Director, Directorate for Computer and Information Science and Engineering
William Malyszka, Division Director, Division of Human Resource Management and PRB Executive Secretary

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: August 17, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–18247 Filed 8–19–20; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; System of Records

AGENCY: Employee Services, Strategic Workforce Planning, Office of Personnel Management.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to establish a new OPM system of records titled ''Federal Competency Assessment Records.'' This system of records contains information that OPM collects, maintains, and uses in the operation of competency assessment tools, including the OPM Competency Exploration for Development and Readiness (CEDAR) tool. These records are collected and used for training and development purposes but are not to be used for employee performance ratings or for hiring and promotion decisions. This system of records will be included in the OPM's inventory of record systems.

DATES: Please submit comments on or before September 21, 2020. This new system is effective upon publication in the **Federal Register**, with the exception of the routine uses, which are effective September 24, 2020.

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

- Federal Rulemaking Portal: *http://www.regulations.gov*.

All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Kelly Cowdery, Forecasting and Methods, Strategic Workforce Planning, Employee Services, Office of Personnel Management at *cedar@opm.gov* or 202–606–1000. For privacy questions, please contact Kellie Cosgrove Riley, Chief Privacy Officer, Office of Personnel Management at *privacy@opm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Office of Personnel Management (OPM) proposes to establish a new system of records titled ''OPM/Central-22 Federal Competency Assessment Records.'' This system of records is being established in order to develop and make available to Federal agencies various competency assessment tools, in part, to meet the mandates of the Program Management Improvement Accountability Act (PMIAA). The PMIAA requires that OPM conduct a competency assessment of program managers and project managers throughout the Federal government to identify competency gaps.

Competency assessment-related tools assist agencies in addressing functions of the Human Capital Framework (HCF) (5 CFR part 250(b)), and in addition to fulfilling legislative requirements of the PMIAA. The competency exploration and assessment tools were built with the intent of being used government-wide for many different occupations, in addition to meeting the program manager and project manager assessment requirements of the PMIAA. These tools are generally created and disseminated in an online format with proper security applications in place for the safety of Federal workforce data.

The use of the records in this system of records supports agencies in assessing current Federal staffing, skills, and competencies in order to focus on priority training and development areas. Such records, will help agencies to professionalize the critical workforce on an increasing basis, encouraging the application of education, training, and experience to inform critical thinking and expert analysis that will support decision-making and overcome challenges to program implementation and execution. The analysis from competency assessment tools will help to develop Federal employees via a career path that provides experience and mentorship opportunities designed to teach these skillsets.

In addition, the HCF (5 CFR part 250(b)) requires agencies to execute several functions related to workforce analysis and planning; talent management; and skill gap closure, including using the OPM-designated method to identify gaps. Furthermore, Chief Human Capital Officers are responsible for workforce assessment, strategy, and development and are entitled to data and information supporting such efforts. Tools and applications that assess competency strengths and gaps will enable the human capital management processes used to cultivate and administer the workforce. It will also help agencies remain current with research and best practices, allow for proactive responses to change, and maximize the efficiency and effectiveness of Human Resource service delivery.

OPM also has a statutory responsibility under 5 U.S.C. 1103(c) to guide, enable, and assess agency strategic human capital management processes to find best practices for assessing the management of human capital by federal agencies. The records in this system of records are necessary to administer competency assessment and exploration tools to enable individual and organizational strategies to address skill gaps and support employee development.

SYSTEM NAME AND NUMBER:

Federal Competency Assessment Records, OPM/Central-22.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by Strategic Workforce Planning, Employee Services, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

SYSTEM MANAGER(S):

Manager, Forecasting and Methods, Strategic Workforce Planning, Employee Services, U.S. Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, *cedar@opm.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 250, subpart B, establishes the Human Capital Framework (HCF), in fulfillment of OPM's responsibilities under 5 U.S.C. 1103(c) and 5 U.S.C. 1402.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to determine competency levels to better understand employee proficiency strengths and gaps; to identify targeted training and development opportunities in order to upskill and reskill employees; to determine employees' competency strengths and areas for improvement, so that necessary training and development opportunities can be identified, and skills gaps can ultimately be closed. In addition, the system is intended to provide agencies with aggregated results of their assessments to support their competency gap analyses, which contribute important information for personnel training, and development efforts. However, the records in this system of records are not intended to be used, and may not be used, for employee performance ratings or hiring and promotion decisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. First and last name
b. Email address
c. Agency
d. Agency subcomponent
e. Organizational/Work component names (up to four levels of work unit information may be obtained)
f. Country
g. Duty location
h. Occupational classification or series
i. Locality pay area
j. Pay plan
k. Grade level
l. Supervisory status
m. Supervisor name
n. Professional field
o. Selected competencies
p. Supervisor proficiency level responses
q. Employee proficiency level responses
r. Calculated differences in proficiency level responses

RECORD SOURCE CATEGORIES:

Records are obtained from the supervisors and employees who complete competency assessments and surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding and one of the following is a party to the litigation or has an interest in such litigation:

(1) OPM, or any component thereof;

(2) Any employee or former employee of OPM in his or her official capacity;

(3) Any employee or former employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee;

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the OPM General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.

d. To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that there has been a breach of the system of records; (2) OPM has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OPM (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when OPM determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for OPM when OPM determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to OPM employees.

h. To Federal supervisors of employees who have provided self-entered data on individual competency proficiency levels; however, only information about the employees they supervise can be accessed and only in order to analyze their employees' information in comparison to the individual targeted and current proficiency levels as entered by the supervisor.

i. To Federal agencies whose personnel have provided information related to competency assessments so that agencies may conduct analyses and identify competency strengths and gaps, appropriately de-identified individual and aggregate level data about their agency's employees.

PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically on OPM's production database servers, hosted at an OPM data center in Macon, GA. Access to these servers are restricted to authorized government personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the Federal employee's name along with their agency name and government email address, the employee's direct supervisor's name, email address, or

other personal identifier contained in this system of records. The records can be retrieved by a small number of personnel in the Strategic Workforce Planning office by means of secure login to the application; individual Federal employees and supervisors can also retrieve the stored records by means of a secure login in order to view their own or their employees' records.

Records can be retrieved in aggregate form by other authorized OPM personnel or specially assigned administrators in participating Federal agencies by means of a secure login.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system of records are subject to General Records Schedule 2.6, Item 010, and will be retained for three years unless a business use is identified that requires a longer retention.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are protected from unauthorized access and misuse through various administrative, technical and physical security measures. OPM security measures are in compliance with the Federal Information Security Modernization Act (Pub. L. 113–283), associated OMB policies, and applicable standards and guidance from the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Supervisors and employees who complete an assessment using the competency tool will have access to the information they submitted via their own secure login to the application.

In addition, individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of Personnel Management, Freedom of Information Act Office, 1900 E Street NW, Washington, DC 20415. Individuals must furnish the following information for their records to be located:

1. Full name.
2. Employing agency.
3. Government email address used.
4. Supervisor's name.
5. Signature.
6. The reason why the individual believes this system contains information about him/her.
7. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURES:

Users can contact the System Manager (listed above) to make changes.

Individuals may also request that records about them be amended by writing to the Office of Personnel Management, Freedom of Information Act Office, 1900 E Street NW, Washington, DC 20415 and furnish the following information for their records to be located:

1. Full name.
2. Employing agency.
3. Government email address used.
3. Supervisor's name.
4. Signature.
5. Precise identification of the information requested to be amended.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR 297).

NOTIFICATION PROCEDURES:

See ''Record Access Procedure.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–18258 Filed 8–19–20; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Request for Reinstatement With Change of a Previously Approved Collection: Certificate of Medical Examination, OF 178, 3206–0250

AGENCY: Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the reinstatement with change of a previously approved collection information collection request (ICR) 3206–0250, Certificate of Medical Examination. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until October 19, 2020. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments;

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Butler at (202) 606–0960; by fax at (202) 606–4430, TDD at (202) 418–3134, or by email at *employ@opm.gov.*

SUPPLEMENTARY INFORMATION: The Optional Form (OF) 178, Certificate of Medical Examination, is used to collect medical information about individuals who are incumbents of positions which require physical fitness/agility testing and/or medical examinations, or who have been selected for such a position contingent upon meeting physical fitness/agility testing and medical examinations as a condition of employment. This information is needed to ensure fair and consistent treatment of employees and job applicants, to adjudicate the medically based pass-over of a preference eligible, and to adjudicate claims of discrimination under the Americans with Disabilities Act (ADA).

The current approval of the OF 178 Certificate of Medical Examination expired in April 2015. This **Federal Register** notice opens a 60-day comment period giving the general public and other Federal agencies the opportunity to comment on the reinstatement of this previously approved information collection form. There were four minor changes to the form. The date of the form was updated to December 2014. The reference to Recruitment and Hiring in line 4 of the Public Burden Statement on page 1 was updated to Talent Acquisition and Workforce Shaping. A fillable text box was inserted under ''Specific hearing requirements (specify)'' on page 3. The data fields for ''Name'', ''Last 4 digits of Social Security Number'' and ''Date'' located at the bottom of pages 2–7 were updated to ''Applicant/Employee'' and added to pages 2–7.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Talent Acquisition and Workforce Shaping, Employee Services, Office of Personnel Management.

Title: Certificate of Medical Examination.

OMB Number: 3206–0250.

Frequency: Annually.

Affected Public: Federal Government.

Number of Respondents: 45,000.

Estimated Time per Respondent: 3 hours.

Total Burden Hours: 135,000 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–18257 Filed 8–19–20; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–249; Order No. 5638]

Competitive Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning time-limited changes in rates of general applicability for competitive products. The changes are scheduled to take effect October 18, 2020, and would roll back to current levels on December 27, 2020. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 31, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Overview
II. Initial Administrative Actions
III. Ordering Paragraphs

I. Introduction and Overview

On August 14, 2020, the Postal Service filed notice with the Commission concerning time-limited changes in rates of general applicability for competitive products.[1] The Postal Service represents that, as required by 39 CFR 3035.102(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. *See* Notice at 1. The changes are scheduled to take effect on October 18, 2020, and will roll back to current levels on December 27, 2020. *Id.*

Attached to the Notice is Governors' Decision No. 20–3, which states the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3035.102.[2] The Governors' Decision provides an analysis of the competitive products' price changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3035. Governors' Decision No. 20–3 at 1. The attachment to the Governors' Decision sets forth both the new prices to be in effect from October 18, 2020, and the current prices that will be restored on December 27, 2020. *See* Notice at 1–2.

The Notice includes an attachment showing FY 2021 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming implementation of the new prices from October 18, 2020, to December 27, 2020. *See id.* at 2.

The Notice also includes an application for non-public treatment of the attributable costs, contribution, and cost coverage data in the unredacted version of the annex to the Governors' Decision, as well as the supporting materials for the data. *See id.*

Planned price adjustments. The Governors' Decision includes an overview of the Postal Service's planned price changes, which is summarized in the table below.

TABLE I–1—PROPOSED PRICE CHANGES

Product name	Average price increase (percent)
Domestic Competitive Products	
Priority Mail Express	0.7
Retail	0.0
Commercial Base	4.4
Commercial Plus	4.4
Priority Mail	1.7
Retail	0.0
Commercial Base	4.2
Commercial Plus	3.9
Parcel Select (non-Lightweight)	5.9
Destination Delivery Unit	6.8

[1] USPS Notice of Time-Limited Changes in Rates of General Applicability for Competitive Products, August 14, 2020 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates.

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 20–3), at 1 (Governors' Decision No. 20–3).

TABLE I–1—PROPOSED PRICE CHANGES—Continued

Product name	Average price increase (percent)
Destination Sectional Center Facility	8.0
Destination Network Distribution Center	5.6
Parcel Select Lightweight	12.0
Parcel Select Ground	3.0
Parcel Return Service	3.3
Return Sectional Center Facility	1.9
Return Delivery Unit	4.7
First-Class Package Service	5.6
Retail	0.0
Commercial	7.0

Source: *See* Governors' Decision No. 20–3 at 2–3.

II. Initial Administrative Actions

The Commission establishes Docket No. CP2020–249 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E. Comments are due no later than August 31, 2020. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission's website at *www.prc.gov.*

Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as Public Representative to represent the interests of the general public in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2020–249 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E.

2. Comments are due no later than August 31, 2020.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–18291 Filed 8–19–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–221 and CP2020–251]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 24, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–221 and CP2020–251; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 158 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 14, 2020;

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 24, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–18270 Filed 8–19–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: August 15, 2020, at 3:00 p.m.

PLACE: Washington, DC

STATUS: Closed.

ITEMS CONSIDERED:

1. Administrative Issues.
2. Strategic Issues.

On August 15, 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. 2020–18366 Filed 8–18–20; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89560; File No. SR–FICC–2020–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce the Margin Liquidity Adjustment Charge and Include a Bid-Ask Risk Charge in the VaR Charges

August 14, 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 30, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2020–009. On August 13, 2020, FICC filed Amendment No. 1 to the proposed rule change, to make clarifications and corrections to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 (hereinafter, the ''Proposed Rule Change''), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[4] The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change consists of modifications to the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules,'' and together with the GSD Rules, ''Rules'') to introduce the Margin Liquidity Adjustment (''MLA'') charge as an additional component of GSD and MBSD's respective Clearing Funds, as described in greater detail below.[5]

This Proposed Rule Change also consists of modifications to the GSD Rules, the MBSD Rules, the GSD Methodology Document—GSD Initial Market Risk Margin Model (''GSD QRM Methodology Document'') and the MBSD Methodology and Model Operations Document—MBSD Quantitative Risk Model (''MBSD QRM Methodology Document,'' and together with the GSD QRM Methodology Document, the ''QRM Methodology Documents'') in order to (i) enhance the calculation of the VaR Charges of GSD and MBSD to include a bid-ask spread risk charge, and (ii) make necessary technical changes to the QRM Methodology Documents in order to implement this proposed change.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to enhance the methodology for calculating Required Fund Deposits to the respective Clearing Funds of GSD and MBSD by (1) introducing a new component, the MLA charge, which would be calculated to address the risk presented to FICC when a Member's portfolio contains large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type (referred to as ''asset groups''),[6] and (2) enhancing the calculation of the VaR Charges of GSD and MBSD by including a bid-ask spread risk charge, as described in more detail below.[7]

FICC is also proposing to make certain technical changes to the QRM Methodology Documents, as described in below, in order to implement the proposed enhancement to the VaR Charges.

(i) Overview of the Required Fund Deposits and the Clearing Funds

As part of its market risk management strategy, FICC manages its credit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibits 3 and 5 of the filing, and these clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below.

[4] On July 30, 2020, FICC filed the proposed rule change as an advance notice (SR–FICC–2020–802) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). On August 13, 2020, FICC filed Amendment No. 1 to the advance notice to make similar clarifications and corrections to the advance notice. A copy of the advance notice, as modified by Amendment No. 1 (hereinafter, the ''Advance Notice'') is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[5] Capitalized terms not defined herein are defined in the GSD Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf,* and the MBSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

[6] References herein to ''Members'' refer to GSD Netting Members and MBSD Clearing Members, as such terms are defined in the Rules. References herein to ''net unsettled positions'' refer to, with respect to GSD, Net Unsettled Positions, as such term is defined in GSD Rule 1 (Definitions) and, with respect to MBSD, refers to the net positions that have not yet settled. *Supra* note 4.

[7] The results of a study of the potential impact of adopting the proposed changes have been provided to the Commission.

exposure to Members by determining the appropriate Required Fund Deposits to the GSD and MBSD Clearing Fund and monitoring their sufficiency, as provided for in the Rules.[8] The Required Fund Deposits serve as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidating a Member's portfolio in the event FICC ceases to act for that Member (hereinafter referred to as a ''default'').[9] The aggregate of all Members' Required Fund Deposits constitutes the respective GSD and MBSD Clearing Funds. FICC would access the GSD and MBSD Clearing Funds should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by FICC, as identified within the Rules.[10] The VaR Charge comprises the largest portion of a Member's Required Fund Deposit amount. Currently, the GSD QRM Methodology Document states that the total VaR Charge for each portfolio is the sum of the sensitivity VaR of the portfolio plus the haircut charges plus the repo interest volatility charges plus the pool/TBA basis charge. In the MBSD QRM Methodology Document, the current description of the total VaR Charge states that it is the sum of the designated VaR Charge and the haircut charge.

The VaR Charge is calculated using a risk-based margin methodology that is intended to capture the risks related to market price that is associated with the securities in a Member's portfolio. This risk-based margin methodology is designed to project the potential losses that could occur in connection with the liquidation of a defaulting Member's portfolio, assuming a portfolio would take three days to liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge, which is calculated to cover projected liquidation losses at 99 percent confidence level for Members.[11]

FICC regularly assesses market and liquidity risks as such risks relate to its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. The proposed changes to include the MLA charge to its Clearing Fund methodology and to enhance the VaR Charges by including a bid-ask spread risk charge, as described below, are the result of FICC's regular review of the effectiveness of its margining methodology.

(ii) Overview of Liquidation Transaction Costs and Proposed Changes

Each of the proposed changes addresses a similar, but separate, risk that FICC faces increased transaction costs when it liquidates the net unsettled positions of a defaulted Member due to the unique characteristics of that Member's portfolio. The transaction costs to FICC to liquidate a defaulted Member's portfolio include both market impact costs and fixed costs. Market impact costs are the costs due to the marketability of a security, and generally increase when a portfolio contains large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type, as described more below. Fixed costs are the costs that generally do not fluctuate and may be caused by the bid-ask spread of a particular security. The bid-ask spread of a security accounts for the difference between the observed market price that a buyer is willing to pay for that security and the observed market price that a seller is willing to sell that security.

The transaction cost to liquidate a defaulted Member's portfolio is currently captured by the measurement of market risk through the calculation of the VaR Charge.[12] The proposed changes would supplement and enhance the current measurement of this market risk to address situations where the characteristics of the defaulted Member's portfolio could cause these costs to be higher than the amount collected for the VaR Charge.

First, as described in more detail below, the MLA charge is designed to address the market impact costs of liquidating a defaulted Member's portfolio that may increase when that portfolio includes large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type. These positions may be more difficult to liquidate because a large number of securities with similar risk profiles could reduce the marketability of those large net unsettled positions, increasing the market impact costs to FICC. As described below, the MLA charge would supplement the VaR Charge.

Second, as described in more detail below, the bid-ask spread risk charge would address the risk that the transaction costs of liquidating a defaulted Member's net unsettled positions may increase due to the fixed costs related to the bid-ask spread. As described below, this proposed change would be incorporated into, and, thereby, enhance the current measure of transaction costs through, the VaR Charge.

(iii) Proposed Margin Liquidity Adjustment Charge

In order to address the risks of increased market impact costs presented by portfolios that contain large net unsettled positions in the same asset group, FICC is proposing to introduce a new component to the GSD and MBSD Clearing Fund formulas, the MLA charge.

As noted above, a Member portfolio with large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type may be more difficult to liquidate in the market in the event the Member defaults because a concentration in that group of securities or in a transaction type could reduce the marketability of those large net unsettled positions. Therefore, such portfolios create a risk that FICC may face increased market impact cost to liquidate that portfolio in the assumed margin period of risk of three business days at market prices.

The proposed MLA charge would be calculated to address this increased market impact cost by assessing sufficient margin to mitigate this risk. As described below, the proposed MLA charge would be calculated for different asset groups. Essentially, the calculation is designed to compare the total market value of a net unsettled position in a particular asset group, which FICC would be required to liquidate in the

[8] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund Formula and Loss Allocation), *supra* note 4. FICC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[9] The Rules identify when FICC may cease to act for a Member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a Member's access to FICC's services in the event that Member defaults on a financial or other obligation to FICC. *See* GSD Rule 21 (Restrictions on Access to Services), and MBSD Rule 14 (Restrictions on Access to Services), of the Rules, *supra* note 4.

[10] *Supra* note 4.

[11] Unregistered Investment Pool Clearing Members are subject to a VaR Charge with a minimum target confidence level assumption of 99.5 percent. *See* MBSD Rule 4, Section 2(c), *supra* note 4.

[12] The calculation of the VaR Charge is described in GSD Rule 1 (Definitions) and MBSD Rules 1 (Definitions). *Supra* note 4.

event of a Member default, to the available trading volume of that asset group or equities subgroup in the market.[13] If the market value of the net unsettled position is large, as compared to the available trading volume of that asset group, then there is an increased risk that FICC would face additional market impact costs in liquidating that position in the event of a Member default. Therefore, the proposed calculation would provide FICC with a measurement of the possible increased market impact cost that FICC could face when it liquidates a large net unsettled position in a particular asset group.

To calculate the MLA charge, FICC would categorize securities into separate asset groups. For GSD, asset groups would include the following, each of which have similar risk profiles: (a) U.S. Treasury securities, which would be further categorized by maturity—those maturing in (i) less than one year, (ii) equal to or more than one year and less than two years, (iii) equal to or more than two years and less than five years, (iv) equal to or more than five years and less than ten years, and (v) equal to or more than ten years; (b) Treasury-Inflation Protected Securities (''TIPS''), which would be further categorized by maturity—those maturing in (i) less than two years, (ii) equal to or more than two years and less than six years, (iii) equal to or more than six years and less than eleven years, and (iv) equal to or more than eleven years; (c) U.S. agency bonds; and (d) mortgage pools transactions. For MBSD, to-be-announced (''TBA'') transactions, Specified Pool Trades and Stipulated Trades would be included in one mortgage-backed securities asset group.

FICC would first calculate a measurement of market impact cost with respect to the net unsettled positions of a Member in each of these asset groups. As described above, the calculation of an MLA charge is designed to measure the potential additional market impact cost to FICC of closing out a large net unsettled position in that particular asset group.

To determine the market impact cost for each net unsettled position in Treasuries maturing less than one year and TIPS for GSD and in the mortgage-backed securities asset group for MBSD, FICC would use the directional market impact cost, which is a function of the net unsettled position's net directional market value.[14] To determine the market impact cost for all other net unsettled positions, FICC would add together two components: (1) The directional market impact cost, as described above, and (2) the basis cost, which is based on the net unsettled position's gross market value.[15]

The calculation of market impact cost for net unsettled positions in Treasuries maturing less than one year and TIPS for GSD and in the mortgage-backed securities asset group for MBSD would not include basis cost because basis risk is negligible for these types of positions.

For all asset groups, when determining the market impact costs, the net directional market value and the gross market value of the net unsettled positions would be divided by the average daily volumes of the securities in that asset group over a lookback period.[16]

FICC would then compare the calculated market impact cost to a portion of the VaR Charge that is allocated to net unsettled positions in those asset groups.[17] If the ratio of the calculated market impact cost to the 1-day VaR Charge is greater than a threshold, an MLA charge would be applied to that asset group.[18] If the ratio of these two amounts is equal to or less than this threshold, an MLA charge would not be applied to that asset group. The threshold would be based on an estimate of the market impact cost that is incorporated into the calculation of the 1-day VaR charge, such that an MLA charge would apply only when the calculated market impact cost exceeds this threshold.

When applicable, an MLA charge for each asset group would be calculated as a proportion of the product of (1) the amount by which the ratio of the calculated market impact cost to the applicable 1-day VaR charge exceeds the threshold, and (2) the 1-day VaR charge allocated to that asset group.

For each Member portfolio, FICC would add the MLA charges for net unsettled positions in each asset group to determine a total MLA charge for a Member.

The ratio of the calculated market impact cost to the 1-day VaR Charge would also determine if FICC would apply a downward adjustment, based on a scaling factor, to the total MLA charge, and the size of any adjustment. For net unsettled positions that have a higher ratio of calculated market impact cost to the 1-day VaR Charge, FICC would apply a larger adjustment to the MLA charge by assuming that it would liquidate that position on a different timeframe than the assumed margin period of risk of three business days. For example, FICC may be able to mitigate potential losses associated with liquidating a Member's portfolio by liquidating a net unsettled position with a larger VaR Charge over a longer timeframe. Therefore, when applicable, FICC would apply a multiplier to the calculated MLA charge. When the ratio of calculated market impact cost to the 1-day VaR Charge is lower, the multiplier would be one, and no adjustment would be applied; as the ratio gets higher the multiplier decreases and the MLA charge is adjusted downward.

The final MLA charge would be calculated daily and, when the charge is applicable, as described above, would be included as a component of Members' Required Fund Deposit.

MLA Excess Amount for GSD Sponsored Members

For GSD, the calculation of the MLA charge for a Sponsored Member that clears through single account sponsored by a Sponsoring Member would be the same as described above. For a GSD Sponsored Member that clears through multiple accounts sponsored by multiple Sponsoring Members, in addition to calculating an MLA charge for each account (as described above), FICC would also calculate an MLA charge for the consolidated portfolio.

[13] FICC would determine average daily trading volume by reviewing data that is made publicly available by the Securities Industry and Financial Markets Association (''SIFMA''), at *https://www.sifma.org/resources/archive/research/statistics.*

[14] The net directional market value of an asset group within a portfolio is calculated as the absolute difference between the market value of the long net unsettled positions in that asset group, and the market value of the short net unsettled positions in that asset group. For example, if the market value of the long net unsettled positions is $100,000, and the market value of the short net unsettled positions is $150,000, the net directional market value of the asset group is $50,000.

[15] To determine the gross market value of the net unsettled positions in each asset group, FICC would sum the absolute value of each CUSIP in the asset group.

[16] *Supra* note 12.

[17] FICC's margining methodology uses a three-day assumed period of risk. For purposes of this calculation, FICC would use a portion of the VaR Charge that is based on one-day assumed period of risk and calculated by applying a simple square-root of time scaling, referred to in this Proposed Rule Change as ''1-day VaR Charge.'' Any changes that FICC deems appropriate to this assumed period of risk would be subject to FICC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework''). *See* Securities Exchange Act Release Nos. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–FICC–2017–014); 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–FICC–2018–010); 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (File No. SR–FICC–2020–004).

[18] FICC would review the method for calculating the thresholds from time to time and any changes that FICC deems appropriate would be subject to FICC's model risk management governance procedures set forth in the Model Risk Management Framework. *See id.*

If the MLA charge of the consolidated portfolio is higher than the sum of all MLA charges for each account of the Sponsored Member, the Sponsored Member would be charged the amount of such difference, to be referred to as the ''MLA Excess Amount,'' in addition to the applicable MLA charge. If the MLA charge of the consolidated portfolio is not higher than the sum of all MLA charges for each account of the Sponsored Member, then the Sponsored Member will only be charged an MLA charge for each sponsored account, as applicable.

The MLA Excess Amount is designed to capture the additional market impact cost that could be incurred when a Sponsored Member defaults, and each of the Sponsoring Members liquidates net unsettled positions associated with that defaulted Sponsored Member. If large net unsettled positions in the same asset group are being liquidated by multiple Sponsoring Members, the market impact cost to liquidate those positions could increase. The MLA Excess Amount would address this additional market impact cost by capturing any difference between the calculations of the MLA charge for each sponsored account and for the consolidated portfolio.

Proposed Changes to GSD and MBSD Rules

The proposal described above would be implemented into the GSD Rules and MBSD Rules. Specifically, FICC would amend GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions) to include a description of the MLA charge.

The proposed change to GSD Rule 1 (Definitions) would first identify each of the asset groups and would then separately describe the two calculations of market impact cost by these asset groups by identifying the components of these calculations. The proposed definition would state that GSD would compare the calculated market impact cost to a portion of that Member's VaR Charge, to determine if an MLA charge would be applied to an asset group. The proposed definition would then state that GSD would add each of the applicable MLA charges calculated for each asset group together. Finally, the proposed definition would state that GSD may apply a downward adjusting scaling factor to result in a final MLA charge. The proposed change to GSD Rule 1 (Definitions) would also include a definition of the ''MLA Excess Amount.'' The proposed definition would state that it would be an additional charge applicable to Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members and would describe how the additional charge would be determined.

The proposed change to MBSD Rule 1 (Definitions) would define the MBS asset group, for purposes of calculating this charge, and would then describe the calculation of market impact cost for that asst group by identifying the components of this calculation. The proposed definition would state that MBSD would compare the calculated market impact cost to a portion of the Member's VaR Charge, to determine if an MLA charge would be applied to a net unsettled position. Finally, the proposed definition would state that MBSD may apply a downward adjusting scaling factor to result in a final MLA charge.

FICC would also amend GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation) to include the MLA charge as a component of the Clearing Fund formula.

(iv) Proposed Bid-Ask Spread Risk Charge

FICC has identified potential risk that its margining methodologies do not account for the transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio. Bid-ask spreads account for the difference between the observed market price that a buyer is willing to pay for a security and the observed market price that a seller is willing to sell that security. Therefore, FICC is proposing to amend the VaR models of GSD and MBSD to include a bid-ask spread risk charge in the VaR Charges of GSD and MBSD to address this risk.

In order to calculate this charge, GSD would segment Members' portfolios into separate bid-ask spread risk classes by product type and maturity. The bid-ask spread risk classes would be separated into the following types: (a) Mortgage pools (''MBS''); (b) TIPS; (c) U.S. agency bonds; and (d) U.S. Treasury securities, which would be further segmented into separate classes based on maturities as follows: (i) Less than five years, (ii) equal to or more than five years and less than ten years, and (iii) equal to or more than ten years. FICC would further segment the U.S. Treasury securities into separate classes based on maturities.

Only the MBS asset group is applicable to MBSD Member portfolios. FICC would exclude Option Contracts in to-be-announced (''TBA'') transactions from the bid-ask spread risk charge because, in the event of a Member default, FICC would liquidate any Option Contracts in TBAs in a Member's portfolio at the intrinsic value of the Option Contract and, therefore, does not face a transaction cost related to the bid-ask spread.

Each product type and maturity risk class would be assigned a specific bid-ask spread haircut rate in the form of a basis point charge that would be applied to the gross market value in that particular risk class. The applicable bid-ask spread risk charge would be the product of the gross market value in a particular risk class in the Member's portfolio and the applicable basis point charge. The bid-ask spread risk charge would be calculated at the portfolio level, such that FICC would aggregate the bid-ask spread risk charges of the applicable risk classes for the Member's portfolio.

FICC proposes to review the haircut rates annually based on either the analysis of liquidation transaction costs related to the bid-ask spread that is conducted in connection with its annual simulation of a Member default or market data that is sourced from a third-party data vendor. Based on the analyses from recent years' simulation exercises, FICC does not anticipate that these haircut rates would change significantly year over year. FICC may also adjust the haircut rates following its annual model validation review, to the extent the results of that review indicate the current haircut rates are not adequate to address the risk presented by transaction costs from a bid-ask spread.[19]

The proposed initial haircuts are based on the analysis from the most recent annual default simulation and market data sourced from a third-party data vendor, and are listed in the table below:

Class	Asset class	Maturity	Haircut (bps)
MBS	MBS	All	0.8

[19] All proposed changes to the haircuts would be subject to FICC's model risk management governance procedures set forth in the Model Risk Management Framework. *See id.*

Class	Asset class	Maturity	Haircut (bps)
TIPS	TIPS	All	2.1
Agency	Agency bonds	All	3.8
Treasury 5−	Treasury	< 5 years	0.6
Treasury 5–10	Treasury	5–10 years	0.7
Treasury 10+	Treasury	>10 years	0.7

Proposed Changes to GSD and MBSD Rules

The proposal described above would be implemented into the GSD Rules and MBSD Rules. Specifically, FICC would include a description of the bid-ask spread risk charge in the current definitions of the VaR Charge in GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions). The proposed change would state that the calculations the VaR Charge shall include an additional bid-ask spread risk charge measured by multiplying the gross market value of each net unsettled position by a basis point charge. The proposed change would also state that the basis point charge would be based on six risk classes and would identify those risk classes.

Proposed Changes to QRM Methodology Documents

To implement this proposal, FICC is proposing to amend the QRM Methodology Documents to describe the bid-ask spread risk charge. Specifically, FICC would describe (i) that the bid-ask spread risk charge is designed to mitigate the risk related to transaction costs in liquidating a portfolio in the event of a Member default; (ii) how the bid-ask spread risk charge would be calculated; and (ii) the impact analysis that was conducted in each of the QRM Methodology Documents. The GSD QRM Methodology Document would describe the proposed six classes (listed in the table above). The MBSD QRM Methodology Document would state that the only class for MBSD portfolios is the MBS asset class, and that the Option Contracts in TBAs would be excluded from the proposed charge. Finally, FICC would update the descriptions of the total VaR Charge in the QRM Methodology Documents to include the bid-ask spread risk charge as a component of this charge.

(v) Proposed Technical Changes

Finally, FICC would amend the QRM Methodology Documents to re-number the sections and tables, and update certain section titles, as necessary, to add a new section that describes the proposed bid-ask spread risk charge.

(vi) Implementation Timeframe

FICC would implement the proposed changes no later than 10 Business Days after the later of the approval of the Proposed Rule Change and no objection to the related advance notice [20] by the Commission. FICC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

FICC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[21] and Rules 17Ad–22(e)(4)(i) and (e)(6)(i), each promulgated under the Act,[22] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[23] FICC believes the proposed change to implement the MLA charge is designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because it is designed to address the market impact costs to FICC of liquidating a Member's portfolio in the event of that Member's default. Specifically, the proposed MLA charge would allow FICC to collect sufficient financial resources to cover its exposure that it may face increased market impact costs in liquidating net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type that are not captured by the VaR Charge. Additionally, as described above, the proposed MLA Excess Amount is designed to capture any additional market impact cost that could be incurred when each of the Sponsoring Members liquidates large net unsettled positions in securities of the same asset group that are all associated with one defaulted Sponsored Member.

The Clearing Fund is a key tool that FICC uses to mitigate potential losses to FICC associated with liquidating a Member's portfolio in the event of Member default. Therefore, the proposed change to include the MLA charge among the Clearing Fund components, when applicable, would enable FICC to better address the increased market impact costs of liquidating net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type, such that, in the event of Member default, FICC's operations would not be disrupted and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the Proposed Rule Change to implement the MLA charge is designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[24]

Additionally, FICC believes that the proposed change to amend the VaR model of each of GSD and MBSD to include bid-ask spread risk charge within Members' final VaR Charge would be designed to assure the safeguarding of securities and funds that are in the custody or control of FICC or for which it is responsible because the proposed change would enable FICC to better limit its exposure to increased transaction costs due to the bid-ask spread in the market when liquidating the a defaulted Member's portfolio. FICC believes that including the above-described bid-ask spread risk charge within the VaR Charges would better ensure that FICC calculates and collects sufficient margin and, thereby, better enable FICC to limit its exposure to these transaction costs. By enabling FICC to limit its exposure to Members in this way, the proposed change is designed to better ensure that, in the event of a Member Default, FICC would have adequate margin from the defaulting Member and non-defaulting Members would not be exposed to losses they cannot anticipate or control.

[20] *Supra* note 3.

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] *Id.*

In this way, the proposed change to include the bid-ask spread risk charge within the calculation of the final VaR Charges of GSD and MBSD would be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible and therefore consistent with Section 17A(b)(3)(F) of the Act.[25]

FICC believes that the proposed technical changes described above are designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible, consistent with Section 17A(b)(3)(F) the Act.[26] FICC believes the proposed technical changes would also enhance the clarity of the QRM Methodology Documents for FICC. Having clear and accurate methodology documents, which describe how the bid-ask spread risk charge would be calculated and that such bid-ask spread risk charge is included within the calculation of the final VaR Charges of GSD and MBSD, would help to ensure that FICC continues to accurately calculate and assess margin and in turn, collect sufficient margin from its Members and better enable FICC to limit its exposures to the risks related to increased transaction costs due to the bid-ask spread in the market that could be incurred when liquidating a portfolio. By better enabling FICC to limit its exposure to Member's in this way, the proposed change is designed to better ensure that, in the event of a Member default, FICC would have adequate margin from the defaulting Member and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed technical changes to the QRM Methodology Documents would be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible and therefore consistent with Section 17A(b)(3)(F) of the Act.[27]

Rule 17Ad–22(e)(4)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[28]

As described above, FICC believes that both of the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence.

Specifically, FICC believes that the proposed MLA charge would effectively mitigate the risks related to large net unsettled positions of securities in the same asset group within a portfolio and would address the potential increased risks FICC may face related to its ability to liquidate such positions in the event of a Member default. The proposed MLA Excess Amount would supplement this proposed charge to capture any additional market impact cost related to Sponsored Members that clear through multiple accounts with multiple Sponsoring Members.

Therefore, FICC believes that the proposal would enhance FICC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, FICC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[29]

Additionally, FICC believes that the proposed bid-ask spread risk charge would enhance FICC's ability to identify, measure, monitor and manage its credit exposures to Members and those exposures arising from its payment, clearing, and settlement processes because the proposed changes would better ensure that FICC maintains sufficient financial resources to cover its credit exposure to each Member with a high degree of confidence. FICC believes that the proposed change would enable FICC to more effectively identify, measure, monitor and manage its exposures to risks related to market price, and enable it to better limit its exposure to potential losses from Member defaults by providing a more effective measure of the risks related to market price. As described above, due to the bid-ask spread in the market, there is an observable transaction cost to liquidate a portfolio. The proposed bid-ask spread risk charge is designed to manage the risk related to this transaction cost in the event a Member's portfolio is liquidated. As such, FICC believes that the proposed change would better address the potential risks that FICC may face that are related to its ability liquidate a Member's net unsettled positions in the event of that firm's default, and thereby enhance FICC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In this way, FICC believes this proposed change is also consistent with Rule 17Ad–22(e)(4)(i) under the Act.[30]

Rule 17Ad–22(e)(6)(i) under the Act requires, in part, that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[31]

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members, including the VaR Charges. FICC's proposed change to introduce an MLA charge is designed to more effectively address the risks presented by large net unsettled positions in the same asset group. FICC believes the addition of the MLA charge would enable FICC to assess a more appropriate level of margin that accounts for these risks. This proposed change is designed to assist FICC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios that contain large net unsettled positions in the same asset group and may be more difficult to liquidate in the event of a Member default. The proposed MLA Excess Amount would further this goal by measuring any additional risks that could be presented by a Sponsored Member that clears through multiple accounts at multiple Sponsoring Members. Therefore, FICC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[32]

Furthermore, FICC believes that including the bid-ask spread risk charge within the calculation of the final VaR Charges of GSD and MBSD would provide FICC with a better assessment of its risks related to market price. This proposed change would enable FICC to assess a more appropriate level of margin that accounts for this risk at the

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] 17 CFR 240.17Ad–22(e)(4)(i).

[29] *Id.*

[30] *Id.*

[31] 17 CFR 240.17Ad–22(e)(6)(i).

[32] *Id.*

portfolio level. As such, each Member portfolio would be subject to a risk-based margining system that, at minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, consistent with Rule 17Ad–22(e)(6)(i) under the Act.[33]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed changes could have an impact on competition. Specifically, FICC believes the proposed changes could burden competition because they would result in larger Required Fund Deposit amounts for Members when the additional charges are applicable and result in a Required Fund Deposit that is greater than the amount calculated pursuant to the current formula.

When the proposal results in a larger Required Fund Deposit, the proposed change could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. However, the increase in Required Fund Deposit would be in direct relation to the specific risks presented by each Member's net unsettled positions, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar net unsettled positions, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. As such FICC believes that any burden on competition imposed by the proposed changes would not be significant and, further, would be both necessary and appropriate in furtherance of FICC's efforts to mitigate risks and meet the requirements of the Act, as described in this filing and further below.

FICC believes the above described burden on competition that may be created by the proposed MLA charge and the bid-ask spread risk charge would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act.[34] As stated above, the proposed MLA charge is designed to address the market impact costs to FICC of liquidating a Member's portfolio in the event of that Member's default. Specifically, the proposed MLA charge would allow FICC to collect sufficient financial resources to cover its exposure that it may face increased market impact costs in liquidating net unsettled positions that are not captured by the VaR Charge. Additionally, as described above, the proposed MLA Excess Amount is designed to capture any additional market impact cost that could be incurred when each of the Sponsoring Members liquidates large net unsettled positions in securities of the same asset group that are all associated with one defaulted Sponsored Member. Likewise, the proposed bid-ask spread risk charge is designed to help limit FICC's exposures to the increased transaction costs due to the bid-ask spread in the market that could be incurred when liquidating a Member's portfolio in the event of a Member default. Therefore, FICC believes this proposed change is consistent with the requirements of Section 17A(b)(3)(F) of the Act, which requires that the Rules be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or which it is responsible.[35]

FICC believes these proposed changes would also support FICC's compliance with Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act, which require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence; and (y) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[36]

As described above, FICC believes the introduction of the MLA charge would allow FICC to employ a risk-based methodology that would address the increased market impact costs that FICC could face when liquidating net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type. The proposed MLA Excess Amount would supplement this proposed charge to capture any additional market impact cost related to Sponsored Members that clear through multiple accounts with multiple Sponsoring Members. Similarly, the proposed change to include the bid-ask spread risk charge within the calculation of the VaR Charge would allow FICC to employ a risk-based methodology that would better measure the transaction costs that could be incurred in liquidating a defaulted Member's portfolio. Therefore, the proposed changes would better limit FICC's credit exposures to Members, consistent with the requirements of Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act.[37]

FICC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. The proposed MLA charge and the proposed bid-ask spread risk charge would also enable FICC to produce margin levels more commensurate with the risks and particular attributes of each Member's portfolio.

The proposed MLA charge and the MLA Excess Amount would do this by measuring the increased market impact costs that FICC may face when liquidating a defaulted Member's portfolio that includes net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type. With respect to the proposed bid-ask spread risk charge, a haircut (in the form of a basis point charge that would be applied to the gross market value) would be applied to separate risk classes in the portfolio. As described above, for purposes of calculating this charge, the portfolio would be segmented into separate risk classes, by asset group and maturity, and a haircut would be applied to the gross market value of each group. Therefore, because the proposed changes are designed to provide FICC with an appropriate measure of the risks (*i.e.,* risks related to both market impact costs and transaction costs) presented by Members' portfolios, FICC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

FICC believes that it has designed the proposed changes in an appropriate way in order to meet compliance with its obligations under the Act. Specifically, the proposals would improve the risk-based margining methodology that FICC employs to set margin requirements and better limit FICC's credit exposures to its Members. Therefore, as described above, FICC believes the proposed changes are necessary and appropriate

[33] *Id.*

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] *Id.*

[36] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

[37] *Id.*

in furtherance of FICC's obligations under the Act, specifically Section 17A(b)(3)(F) of the Act[38] and Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act.[39]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such Proposed Rule Change, or

(B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2020–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2020–009. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2020–009 and should be submitted on or before September 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18199 Filed 8–19–20; 8:45 am]

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[38] 15 U.S.C. 78q–1(b)(3)(F).

[39] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89563; File No. SR–PEARL–2020–03]

Self-Regulatory Organizations; MIAX PEARL, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities

August 14, 2020.

I. Introduction

On January 24, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern the trading of cash equities and establish an equities trading facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 12, 2020.[3] On March 25, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to May 12, 2020.[4] On May 8, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On May 12, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On August 6, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.[8] The Commission has received no comments on the proposed rule change, as modified by Amendment No. 1. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (''Notice'').

[4] *See* Securities Exchange Act Release No. 88476 (March 25, 2020), 85 FR 17929 (March 31, 2020).

[5] In Amendment No. 1 the Exchange: (i) Deleted the definition of ''Equity Securities'' from proposed Exchange Rule 1901and made corresponding changes throughout the proposed Exchange Rules to eliminate unnecessary confusion; (ii) substituted references to ''PEARL Equities'' with ''MIAX PEARL Equities'' throughout the proposed Exchange Rules; (iii) updated proposed Exchange Rule 2622 (Limit Up-Limit Down Plan and Trading Halts) regarding a Level 3 Market Decline to conform it to recent changes made by each of the national securities exchanges that trade equities and the Financial Industry Regulatory Authority (''FINRA''), and made a corresponding change to proposed Exchange Rule 2615 (Opening Process); and (iv) modified proposed Exchange Rule 2617(a)(4)(C) and (D) to account for the potential for orders to post and rest at prices that cross contra-side liquidity and also to correct a typographical error in proposed Exchange Rule 2617(a)(4)(D). Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-pearl-2020-03/srpearl202003-7168815-216600a.pdf.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 88859 (May 12, 2020), 85 FR 29759 (May 18, 2020).

[8] *See* Securities Exchange Act Release No. 89502 (August 6, 2020), 85 FR 48746 (August 12, 2020).

No. 1, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,[11] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange, and with Section 6(b)(6) and 6(b)(7) of the Act,[12] which require an exchange to provide fair procedures for the disciplining of members and persons associated with members. The Commission also finds that the proposed rule change, as amended, is consistent with Section 11A of the Act,[13] and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[14] In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section 12(f) of the Act,[15] which governs unlisted trading privileges for securities originally listed on another national securities exchange.

As set forth in the Notice and the Notice of Amendment No. 1, the Exchange proposes to adopt rules governing the trading of cash equities on the Exchange and establish an equities trading facility of the Exchange (referred to as ''MIAX PEARL Equities'') that will function in a manner similar to equities trading platforms the Commission has approved for other national securities exchanges.[16] The Exchange's proposed rules for MIAX PEARL Equities are substantively similar to the corresponding rules of other equities exchanges. The Commission believes that the proposed MIAX PEARL Equities rules raise no new or novel policy matters or issues. As discussed below, the Commission believes that the proposed MIAX PEARL Equities rules are consistent with the Act.

A. MIAX PEARL Equity Members

MIAX PEARL Equities, as a trading facility of the Exchange, will be a fully automated electronic system (''System'') for the trading of cash equity securities.[17] The Exchange will have a new category of Exchange Member participation called ''Equity Member.''[18]

An Equity Member must be or become a member of the Exchange pursuant to Chapter II (Access) and continue to abide by the requirements of Chapter II of Exchange Rules and the additional requirements of Chapter XX governing participation in MIAX PEARL Equities.[19] An Equity Member must also be a member of another registered exchange that is not registered solely under Section 6(g) of the Act, or be a member of FINRA.[20] Further, an Equity Member that transacts business with public customers must at all times be a member of FINRA.[21]

There will be two types of Equity Members: (1) Equities Order Entry Firms (''OEFs'') and (2) Equities Market Makers. Each Equity Member must be registered as a broker-dealer and have as the principal purpose of being an Equity Member the conduct of a securities business, which shall be deemed to exist if and so long as: (1) The Equity Member has qualified and acts in respect of its business on MIAX PEARL Equities as an OEF, or an Equities Market Maker, or both; and (2) all transactions effected by the Equity Member are in compliance with Section 11(a) of the Act[22] and the rules and regulations adopted thereunder.[23] Equity Members may trade equity securities for their own proprietary accounts or, if authorized to do so under applicable law, may conduct business on behalf of customers.[24] OEFs are Equity Members representing orders as agent on MIAX PEARL Equities or non-Equities Market Makers conducting proprietary trading as principal.[25] An Equity Member may also register as an Equities Market Maker by filing a registration request with the Exchange.[26]

An Equity Member registered as an Equities Market Maker is required to engage in a course of dealing for its own account and to assist in the maintenance of a fair and orderly market.[27] Among other things, each Equities Market Maker must, on a daily basis, maintain a two-sided market on a continuous basis during regular market hours for each equity security in which it is registered as an Equities Market Maker.[28] Equities Market Makers may withdraw their quotations,[29] and may voluntarily terminate their registration with the Exchange.[30] Pursuant to the existing procedures set forth in Chapter IX of current Exchange Rules, the Exchange may suspend condition, limit, prohibit or terminate the authority of an Equities Market Maker to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.[31]

While using the System, Equity Members and persons employed by or associated with any Equity Member are prohibited from conduct that is: (1) Inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(6) and (b)(7).

[13] 15 U.S.C. 78k–1.

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78l(f).

[16] MIAX PEARL's equities rules, including its rules relating to market makers, order types and instructions, priority, execution, and opening processes, are similar to existing exchanges' trading rules. *See, e.g.,* Rules of the Cboe BZX Exchange, Inc.

[17] *See* Notice, *supra* note 3 at 8053, 8056.

[18] *See* MIAX PEARL Equities Rules 2000–2003.

[19] *See* MIAX PEARL Equities Rule 2000(b).

[20] *See* MIAX PEARL Equities Rule 2001(f). If such other registered exchange has not been designated by the Commission, pursuant to Rule 17d–1 under the Act, to examine Members for compliance with financial responsibility rules, then such applicant must have and maintain a membership in FINRA. *See id.*

[21] *See* MIAX PEARL Equities Rule 2001(f).

[22] 15 U.S.C. 78k(a).

[23] *See* MIAX PEARL Equities Rule 2001(e).

[24] *See id.*

[25] *See* MIAX PEARL Equities Rule 1901.

[26] *See* MIAX PEARL Equities Rule 2605. The Exchange represents that it will not restrict access in any particular equity security until the Exchange has submitted objective standards for restricting access to the Commission for the Commission's review and approval. *See id.*

[27] *See* MIAX PEARL Equities Rule 2606.

[28] *See* MIAX PEARL Equities Rule 2606(a)(1).

[29] *See* MIAX PEARL Equities Rule 2607.

[30] *See* MIAX PEARL Equities Rule 2608.

[31] *See* MIAX PEARL Equities Rule 2609.

business.[32] Should any such conduct occur, the Exchange may suspend an Equity Member's access to the System following a warning, or terminate an Equity Member's access to the System by written notice.[33]

The Exchange's rules with respect to Equity Member participation, including the proposed affirmative and negative obligations for Equities Market Makers, raise no novel regulatory issues. The Commission believes that these proposed rules are consistent with Section 6(b)(5) of the Act because they are designed to promote just and equitable principles of trade, perfect the mechanism of a national market system and, in general, protect investors and the public interest. The Commission also believes that these proposed rules subject Equity Market Makers and Equity Members to appropriate discipline for improper conduct, consistent with Section 6(b)(6) and 6(b)(7) of the Act.

B. MIAX PEARL Equities Trading System

The Exchange's equities trading System, like its system for options, will be operated as a fully automated electronic order book, and the Exchange will not maintain or operate a physical trading floor.[34] The Exchange will be a trading center whose quotations can be ''automated quotations'' under Rule 600(b)(4).[35] In addition, the Exchange is designed to be an ''automated trading center'' under Rule 600(b)(5) whose best-priced, displayed quotation will be a ''protected quotation'' under Rules 600(b)(61) and 600(b)(62), and for purposes of Rule 611.[36] Only Equity Members and their Sponsored Participants (collectively, ''Users'') may transact business on MIAX PEARL via the System.[37]

Order Types and Instructions

Users may submit orders to the System as Limit Orders, Market Orders, or Midpoint Peg Orders.[38] Orders may be entered as an odd lot, round lot, or mixed lot.[39] The System will support two time-in-force instructions: Immediate-or-Cancel (''IOC'') or Regular Hours Only (''RHO'').[40] Users may submit orders with the display instructions of Displayed or Non-Displayed, but all orders eligible for display will be automatically defaulted to Displayed unless a User elects otherwise.[41] Users also may submit orders with instructions of Do Not Route,[42] Post Only,[43] Attributable,[44] and Non-Attributable.[45] In addition, Users may mark Limit Orders as Intermarket Sweep Orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers.[46] Users may also choose to designate orders with self-trade protection modifiers to prevent executions against a resting opposite side order originating from the same market participant, Exchange Member, or trading group identifier.[47] The order types and instructions the Exchange has proposed for its equities trading System raise no new regulatory issues. The Commission believes these proposed rules are consistent with the Act, and Section 6(b)(5) in particular, because the proposed order type functionality offered by the Exchange will enable Exchange Users with varying trading needs to submit orders to the Exchange that are tailored to meet those needs, which should help promote just and equitable principles of trade, foster coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a national market system.

The MIAX PEARL Equities Rules will also provide for Limit Order Price Protection.[48] The Exchange has proposed that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from: (1) The Protected Best Offer for Limit Orders to buy, the Protected Best Bid for Limit Orders to sell; or (2) if the Protected Best Offer or Protected Best Bid is unavailable, the consolidated last sale price disseminated during the Regular Trading Hours on trade date; or (3) if the Protected Best Offer or Protected Best Bid and a consolidated last sale price are unavailable, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events.[49]

The Exchange's proposed Limit Order Price Protection functionality differs from that provided by other national securities exchanges in two respects: (i) It permits Equity Members to customize Limit Order Price Protection by specifying a dollar value and percentage limit away from a reference price on a per session basis, in lieu of using the Exchange's default parameters; and (ii) it provides for an alternative reference price when the NBBO and/or last sale price are unavailable.[50] By permitting Equity Members to customize the Limit Order Price Protection while also maintaining Exchange default protection levels that are applicable in the absence of Equity Member customization, and by providing an alternative reference price when the NBBO and/or last sale price are unavailable, these proposed rules are designed to provide Equity Members with price protection for their limit orders that is reflective of the current trading environment for a given security and is also tailored to their risk profiles.[51] The Commission believes that the Exchange's Limit Order Price Protection functionality is designed to help to protect investors, consistent with the requirements of Section 6(b)(5) of the Act, by ensuring that an Equity Member's limit order may only execute at prices that are within a specified bound of the prevailing market price for a particular security, as reflected by the NBBO or other available reference points if the NBBO is not available.

Opening Procedures

The Exchange will conduct an Opening Process at the start of Regular

[32] *See* MIAX PEARL Equities Rule 2602(b).

[33] *See* MIAX PEARL Equities Rule 2602(d).

[34] The Exchange represents that the System will leverage the Exchange's current technology, including its customer connectivity, messaging protocols, quotations and execution engine, order router, data feeds, and network infrastructure. *See* Notice, *supra* note 3, at 8056.

[35] 17 CFR 242.600(b)(4). *See also* MIAX PEARL Equities Rule 2617(c).

[36] 17 CFR 242.600(b)(5), (b)(61) and (b)(62); 17 CFR 242.611. *See also* MIAX PEARL Equities Rule 2617(c).

[37] *See* MIAX PEARL Equities Rules 2000 and 2602(a)(1). *See also* Exchange Rule 210 (Sponsored Access to the Exchange).

[38] *See* MIAX PEARL Equities Rule 2614(a)(1)–(3).

[39] *See* MIAX PEARL Equities Rule 2614(a). Odd lot, round lot, and mixed lot orders are treated in the same manner on the Exchange, except as discussed below regarding the adjustment of an odd-lot price that locks or crosses the Protected NBBO. *See* MIAX PEARL Equities Rule 2611 and *infra* note 88 and accompanying text.

[40] *See* MIAX PEARL Equities Rule 2614(b). A Market Order may only include a time in force of IOC. *See* MIAX PEARL Equities Rule 2614(a)(2).

[41] *See* MIAX PEARL Equities Rule 2614(c)(3) and (4). Market Orders and Mid-Point Peg Orders are not eligible for display. *See* MIAX PEARL Equities Rule 2614(a)(2) and (3).

[42] *See* MIAX PEARL Equities Rule 2614(c)(1).

[43] *See* MIAX PEARL Equities Rule 2614(c)(2).

[44] *See* MIAX PEARL Equities Rule 2614(c)(5).

[45] *See* MIAX PEARL Equities Rule 2614(c)(6).

[46] An ISO is not eligible for routing and may include a time-in-force of IOC or RHO. *See* MIAX PEARL Equities Rule 2614(d).

[47] *See* MIAX PEARL Equities Rule 2614(f).

[48] *See* MIAX PEARL Equities Rule 2614(a)(1)(I).

[49] *See* MIAX PEARL Equities Rule 1900 (defining the term ''PBO'' or ''Protected NBO'' as the national best offer that is a Protected Quotation, and the term ''PBB'' or ''Protected NBB'' as the national best bid that is a Protected Quotation).

[50] *See* Notice, *supra* note 3, at 8061.

[51] *See id.*

Trading Hours.[52] During the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO.[53] The midpoint of the NBBO will be calculated differently depending on whether the primary listing exchange is NYSE or NYSE American,[54] or is any other primary listing exchange.[55]

If the conditions to establish the Opening Process do not occur by 9:45:00 a.m. Eastern Time, the Exchange will conduct a Contingent Open by matching all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO.[56] The Exchange's proposal to match orders at the midpoint of the NBBO as part of the Contingent Open would provide consistent order handling to Users that wish to participate in the MIAX PEARL Equities Opening Process by executing their eligible orders at the midpoint of the NBBO, regardless of whether the opening process occurs at or near 9:30 a.m. Eastern Time, or later as part of a Contingent Open.[57] If the midpoint of the NBBO is not available for the Contingent Open, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the MIAX PEARL Equities Book, cancelled, executed, or routed to away trading centers in accordance with the terms of the order.[58] Those Users that do not wish to participate in the Contingent Open may cancel their orders at any time and resubmit those orders after the Contingent Open occurs and continuous trading begins.[59] While an equity security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process.[60] The Re-Opening Process will occur in the same general manner as the Opening Process.[61]

The Commission believes that the proposed opening and re-opening procedures are reasonably designed to provide for an orderly opening or re-opening of trading on MIAX PEARL Equities, and thus are consistent with the Act, and in particular the Section 6(b)(5) goals of removing impediments to the mechanism of a national market system and protecting investors and the public interest. In addition, the Exchange states that other equity exchanges do not perform a Contingent Opening process following their initial opening processes that attempts to match orders at the midpoint of the NBBO.[62] The Commission believes that the Exchange's proposal to match orders at the midpoint of the NBBO as part of the Contingent Open provides an additional opportunity for marketable contra-side interest to execute at the NBBO midpoint prior to the beginning of continuous trading, and thereby promotes just and equitable principles of trade, the removal of impediments to the mechanism of the national market system, and the protection of investors and the public interest, consistent with Section 6(b)(5) of the Act.[63]

Order Priority and Execution

Following the Opening Process, the System will continuously and automatically match orders pursuant to price/display/time priority.[64] Orders are ranked based on their working price.[65] For equally-priced trading interest, orders categorized as displayed will have priority over orders categorized as non-displayed.[66] Within each priority category, orders will be ranked based on time, with each order being assigned a timestamp equal to the time the order is first placed on the MIAX PEARL Equities Book, subject to enumerated exceptions regarding self-trade prevention and certain cancel/replace messages.[67] The System also will utilize certain collars and constraints in an effort to reduce the occurrence of erroneous trades.[68] The best-ranked orders to buy and best-ranked orders to sell that are displayable in the MIAX PEARL Equities book and their aggregate displayed size will be available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.[69]

MIAX PEARL Equities Rule 2617(a) addresses order execution. The rule provides that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another trading center and cannot be posted to the MIAX PEARL Equities Book.[70]

MIAX PEARL Equities Rule 2617(a)(1)–(3) provides that the System will comply with all applicable securities laws and regulations, including Regulation NMS Rule 611, Regulation SHO, and the Plan to Address Extraordinary Market Volatility (the ''LULD Plan'').[71] MIAX PEARL Equities Rule 2617(a)(4) addresses how (subject to the requirements of Rule 611 and other applicable Commission and Exchange requirements), an incoming order or Aggressing Order would be matched against orders on the MIAX PEARL Equities Book.[72] Specifically, MIAX PEARL Equities Rule 2617(a)(4)(A)–(B) provides that an Aggressing Order or an incoming order to buy (sell) will be automatically executed to the extent that it is priced at an amount that equals or exceeds (is less than) any order to sell (buy) in the MIAX PEARL Equities Book and is executable.[73]

MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) further address executions on the MIAX PEARL Equities Book. As initially proposed, MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) set forth how the Exchange would process orders when the MIAX PEARL Equities Book is internally locked.[74] In Amendment No. 1, the Exchange added language to these proposed rule provisions to account for the fact that certain orders also may post at prices resulting in a MIAX PEARL Equities Book that is internally crossed.[75] The Exchange stated that

[52] Orders designated as Post Only, ISOs, Market Orders, and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. *See* MIAX PEARL Equities Rule 2615. Self-trade prevention modifiers will be honored during the Opening Process. *See* MIAX PEARL Equities Rule 2615(a)(2).

[53] *See* MIAX PEARL Equities Rule 2615(b).

[54] *See* MIAX PEARL Equities Rule 2615(c)(1).

[55] For any other primary listing exchange, the Opening Process will be priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time. *See* MIAX PEARL Equities Rules 2615(c)(2).

[56] *See* MIAX PEARL Equities Rule 2615(d).

[57] *See* Notice, *supra* note 3, at 8063.

[58] Users not seeking an execution at the midpoint of the NBBO during the Contingent Open may cancel their orders before 9:45 a.m. and re-enter those orders after the Contingent Open occurs. *See* Notice, *supra* note 3, at 8063.

[59] *See id.*

[60] *See* MIAX PEARL Equities Rule 2615(e).

[61] *See* MIAX PEARL Equities Rule 2615(e)(1).

[62] *See* Notice, *supra* note 3, at 8063 n.61.

[63] 15 U.S.C. 78f(b)(5).

[64] *See* MIAX PEARL Equities Rules 2616(a). *See* MIAX PEARL Equities Rule 2616(a)(1).

[65] *See* MIAX PEARL Equities Rule 2616(a)(1).

[66] *See* MIAX PEARL Equities Rule 2616(a)(2).

[67] *See* MIAX PEARL Equities Rule 2616(a)(3)–(5).

[68] *See* MIAX PEARL Equities Rules 2618 and 2621.

[69] *See* MIAX PEARL Rule 2216(b).

[70] *See* MIAX PEARL Equities Rule 2617(a).

[71] *See id.* Rule 2617(a)(2) specifies that for any execution to occur during Regular Trading Hours, the price must be equal to, or better than, the Protected NBBO unless an exception to Rule 611 applies. *See* MIAX PEARL Equities Rules 1901 (defining ''Protected NBBO'') and 2617(a)(2).

[72] *See* MIAX PEARL Equities Rule 1901 (defining ''Aggressing Order'' as an order to buy (sell) that is or becomes marketable against sell (buy) interest on the MIAX PEARL Equities Book).

[73] *See* MIAX PEARL Equities Rule 2617(a)(4)(A)–(B).

[74] *See* Amendment No. 1.

[75] *Id.*

such an internally crossed book may occur when an incoming order of odd lot size designated as Post Only does not execute against a resting Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under MIAX PEARL Equities Rule 2614(c)(2).[76] The Exchange provided an example where this occurs when an incoming displayable odd lot Post Only order would cross a contra-side Midpoint Peg order resting at the midpoint of the PBBO by one half of one cent ($.005) and post and display at its limit price, crossing the Midpoint Peg order.[77] The example further reflects where these internally crossed orders would be subsequently executable—specifically, the Midpoint Peg order would no longer be executable at the midpoint of the PBBO and instead would be executable at one-half minimum price variation more aggressive than the displayed price of the odd lot Post Only order, and the odd lot Post Only order would be executable at its displayed price.[78] The Exchange modified MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) to acknowledge this possibility.

MIAX PEARL Equities Rule 2617(a)(4)(C), as modified by Amendment No. 1, acknowledges that certain orders, based on their operation and User instructions, are permitted to post and rest on the MIAX PEARL Equities Book at prices that lock or cross contra-side liquidity; provided, however, that the System would never display a locked or crossed market.[79] The rule further provides that, if an Aggressing Order or an incoming order to buy (sell) would execute upon entry against an order to sell (buy) at the same price as or a price inferior to a resting displayed order to buy (sell), the Aggressing Order or incoming order to buy (sell) will be cancelled or posted to the MIAX PEARL Equities Book and ranked in accordance with MIAX PEARL Equities Rule 2616.[80]

MIAX PEARL Equities Rule 2617(a)(4)(D), as modified by Amendment No. 1, governs the price at which an order is executable when it is posted non-displayed on the PEARL Equities Book and there is a contra-side displayed order at a price which results in an internally locked or crossed book.[81] For securities priced equal to or greater than $1.00 per share, in the case where a non-displayed order to sell (buy) is posted on the MIAX PEARL Equities Book at a price that locks or crosses a displayed order to buy (sell) pursuant to MIAX PEARL Equities Rule 2617(a)(4)(C) described above, an Aggressing Order or an incoming order to buy (sell) that is a market order or a limit order priced more aggressively than the order to buy (sell) displayed on the MIAX PEARL Equities Book will execute against the non-displayed order to sell (buy) resting on the MIAX PEARL Equities Book at one-half minimum price variation greater (less) than the price of the resting displayed order to buy (sell).[82]

The MIAX PEARL Equities Rules also are designed to address intermarket locks and crosses, as required by Rule 610(d) of Regulation NMS,[83] in that they are designed not to disseminate interest that would lock or cross a protected quote, require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.[84] The MIAX PEARL Equities Rules also provide for the re-pricing of limit orders in order to comply with Rule 201 of Regulation SHO[85] and the LULD Plan,[86] and the repricing of non-displayed limit orders to ensure compliance with Rule 611 of Regulation NMS.[87]

Further, with respect to odd lots, the Exchange has proposed that the working and display price of a displayable odd lot order will be adjusted both on arrival and when resting on the MIAX PEARL Equities Book depending on the odd lot order's limit price in relation the Protected NBBO and whether the Protected NBBO itself is locked or crossed, to reduce the potential for odd lot orders to be displayed on the Exchange's proprietary data feed at potentially unexecutable prices.[88] This functionality differs from that of certain other equity exchanges by re-pricing the odd lot order to the PBB/PBO of the Exchange when the PBB/PBO was previously locked or crossed by an away trading center.[89] According to the Exchange, this difference will reduce the potential for an odd lot order to appear on the Exchange's proprietary data feeds as though it is locking or crossing the PBBO. The Commission believes that, to the extent Rule 2617 will reduce the potential for odd lot orders to be displayed on the Exchange's data feed at potentially unexecutable prices, this proposed rule is reasonably designed to protect investors and remove impediments to the mechanism of a national market system, consistent with Section 6(b)(5) of the Act.

To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications).[90] The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating MIAX PEARL Equities' best bid and best offer as a protected quotation as soon as possible but no later than 90 days after the date of this order, or such later date as MIAX PEARL Equities begins operation of its equities trading platform. The Commission has taken the same position with other new equities exchanges.[91]

In light of the foregoing, the Commission finds that the MIAX PEARL Equities trading rules are consistent with the Act and, in

[76] *Id.*

[77] *Id.* The example assumes that the PBBO is $10.00 by $10.05 and there are no orders resting on the MIAX PEARL Equities book. The Exchange states that it has yet to determine the level of fees and rebates it intends to offer, so the example assumes a maker/taker fee structure with a $0.0030 fee for removing liquidity and a $0.0030 rebate for providing liquidity, requiring at least $0.0060 of price improvement for a displayed order designated as Post Only to remove liquidity. The Exchange also states that, assuming it offers lower fees and rebates for non-displayed orders, if the incoming post only order in the example was non-displayed, it would execute against the resting contra-side Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under Exchange Rule 2614(c)(2). Further, the Exchange states that if the incoming post only order in the example instead was a displayed round lot, it would have updated the PBBO resulting in the contra-side Midpoint Peg Order being re-priced to the new midpoint of the PBBO and not resulting in a non-displayed internally crossed book. *Id.*

[78] *Id.*

[79] *See* Amendment No. 1; Rule 2617(a)(4)(C).

[80] *See* Amendment No. 1; Rule 2617(a)(4)(C).

[81] *See* Amendment No. 1; Rule 2617(a)(4)(D).

[82] *See* Amendment No. 1; Rule 2617(a)(4)(D).

[83] 17 CFR 242.610(d).

[84] *See* MIAX PEARL Equities Rule 2624. *See also* MIAX PEARL Equities Rule 2614(a)(1) and (g)(1) (relating to price sliding functionality for non-routable limit orders to avoid violations of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)).

[85] 17 CFR 242.201. *See* MIAX PEARL Equities Rule 2614(a)(1) and (g)(3).

[86] *See* MIAX PEARL Equities Rules 2614(a)(1) and 2622. *See also* MIAX PEARL Equities Rule 2617(a)(3) (providing that any executions that occur during Regular Trading Hours must comply with the LULD plan).

[87] 17 CFR 242.611. *See* MIAX PEARL Equities Rule 2614(a)(1) and (g)(2).

[88] *See* MIAX PEARL Equities Rule 2611(b). *See also* Notice, *supra* note 3 at 8057.

[89] *See* Notice, *supra* note 3, at 8073 n.111.

[90] *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7–10–04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

[91] *See, e.g.,* Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10–234) (order granting registration of Long-Term Stock Exchange, Inc.); and 88806 (May 4, 2020), 85 FR 27451 (File No. 10–237) (order granting registration of MEMX LLC).

particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[92]

C. Routing

MIAX PEARL Equities will support orders that are designated to be routed to the Protected NBBO as well as orders that will execute only within MIAX PEARL Equities.[93] The System will provide a routing service (''Routing Services'') for orders when trading interest is not available on MIAX PEARL Equities.[94] As the Exchange currently does for options,[95] it will route orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.[96]

For all Routing Services, the Exchange will determine the logic that provides when, how, and where orders are routed away to other trading centers.[97] The Exchange represents that the Exchange's routing logic will not provide any advantage to Users when routing orders to away trading centers as compared to other routing methods.[98] The routing broker will receive routing instructions from the Exchange to route orders to other trading centers and report such executions back to the Exchange.[99] The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.[100]

The Exchange represents that for each routing broker used by the Exchange, an agreement will be in place between the Exchange and the routing broker that will, among other things, restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange.[101] Further, the Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker; and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the Routing Services.[102]

The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.[103] In addition, the MIAX PEARL Equities rules state that the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among an exchange's members and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[104] The Exchange also represents that it will file a proposed rule change with the Commission pursuant to Section 19(b) of the Act prior to offering additional routing options.[105]

The Exchange states that use of its Routing Services to route orders to other market centers is optional.[106] Parties that do not desire to use these services must designate their orders as not available for routing.[107] In addition, any bid or offer entered on the Exchange routed to another trading center through a routing broker that results in an execution shall be binding on the Member that entered such bid or offer.[108] The MIAX PEARL Equities rules with respect to Routing Services raise no new regulatory issues. The Commission believes that the proposed routing rules are consistent with the Act, and further the goals of Section 6(b)(5) in particular, because they are designed to foster coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a national market system, and are not designed to permit unfair discrimination between customers or broker-dealers.

D. Securities Traded: Unlisted Trading Privileges

The Exchange is not proposing to be a listing market for equity securities, but instead will trade equity securities pursuant to unlisted trading privileges (''UTP''). MIAX PEARL Equities Rule 2900 establishes the Exchange's authority to trade securities on a UTP basis. MIAX PEARL Equities Rule 2900(a) provides that the Exchange may extend UTP to any NMS Stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Act.[109] MIAX PEARL Equities Rule 2900(a) further provides that any such security would be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. For any UTP security that is a UTP Exchange Traded Product, the Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange.[110] Equity Members must provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such

[92] *See* 15 U.S.C. 78f(b)(5).

[93] However, an order marked ''short'' when a short sale price test restriction pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. *See* MIAX PEARL Equities Rule 2617(b)(2). An order that is ineligible for routing due to a short sale price test restriction and that includes a time-in-force of IOC will be cancelled upon entry. *Id.* The Exchange will handle routable orders in connection with the LULD Plan as described in MIAX PEARL Equities Rule 2622(b)(2) and (3).

[94] *See* Notice, *supra* note 3, at 8053.

[95] *See* Exchange Rule 529.

[96] *See* Notice, *supra* note 3, at 8066. The Exchange states that this routing process is described under MIAX PEARL Equities Rule 2617(b)(1), which is identical to current Exchange Rule 529 that is applicable to options. *See id.*

[97] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(iv).

[98] *See* Notice, *supra* note 3, at 8066.

[99] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

[100] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

[101] *See* Notice, *supra* note 3, at 8066. *See also* MIAX PEARL Equities Rule 2617(b)(1)(A).

[102] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(i).

[103] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(ii).

[104] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(iii).

[105] *See* Notice, *supra* note 3, at 8066 n.78.

[106] *See id.* at 8066.

[107] *See id.*

[108] *See* MIAX PEARL Equities Rule 2617(b)(1)(A)(vi).

[109] Any such security will be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. *See* MIAX PEARL Equities Rule 2900. *See also* Amendment No. 1, *supra* note 5 (deleting from the MIAX PEARL Equities Rules the originally proposed definition of ''Equity Securities'' as unnecessary).

[110] This includes: (a) The special risks of trading the new Exchange Traded Product; (b) the Exchange Rules that will apply to the new Exchange Traded Product; and (c) information about the dissemination of value of the underlying assets or indices. *See* MIAX PEARL Equities Rules 2900(b)(1).

securities, not later than the time a confirmation of the first transaction in such securities is delivered to such purchaser.[111] Upon request of a customer, an Equity Member must also provide a prospectus for the particular UTP Exchange Traded Product.[112]

The Exchange will also impose certain restrictions on Equity Members acting as Equities Market Makers on the Exchange in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities.[113] Further, the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.[114]

Rule 12f–5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges. MIAX PEARL Equities Rule 2900 includes a provision that any security traded UTP on the Exchange ''shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.'' Accordingly, pursuant to Section 12(f) of the Act and Rule 12f–5 thereunder, MIAX PEARL Equities Rules will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

The provisions in MIAX PEARL Equities Rules 2900 raise no new regulatory issues, and the Commission therefore finds that the Exchange's approach to the trading of securities on a UTP basis, as set forth in MIAX PEARL Equities Rule 2900, is consistent with Section 12(f) of the Act and Rule 12f–5 thereunder.

E. Regulation

The Exchange represents that it will regulate MIAX PEARL Equities using the Exchange's existing regulatory structure.[115] Pursuant to the Exchange's By-Laws, the Chief Regulatory Office of the Exchange will have general supervision of the regulatory operations of the Exchange, which will include responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements applicable to MIAX PEARL Equities.[116] Further, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MIAX PEARL Equities.[117]

As more fully discussed in the Notice, the Exchange has proposed specific business conduct and operational rules for Equity Members which include rules covering similar subject matter as existing Exchange Rules applicable to options Members.[118] In addition, the Exchange's existing rules applicable to the MIAX PEARL options market (current Chapters I though XVIII of the Exchange Rules) will apply to Equity Members and their associated persons, unless a specific MIAX PEARL Equities Rule (in proposed Chapters XIX through XXX of the Exchange Rules) governs or the context otherwise requires.[119]

Further, the Exchange's By-Laws provide that it has disciplinary jurisdiction over its members, including Equity Members so that it can enforce its members' compliance with its rules and the federal securities laws.[120] The Exchange's rules also permit it to sanction members for violations of its rules and of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.[121]

In addition, the Exchange represents that: (1) The Exchange will join the existing equities industry agreements and establish new agreements, as necessary, pursuant to Section 17(d) of the Act; (2) the Exchange's Regulatory Services Agreement (''RSA'') with FINRA will govern many aspects of the regulation and discipline of Members that participate in equities trading, as it does for options market regulation; and (3) the Exchange will authorize Equity Members to trade on MIAX PEARL Equities and conduct surveillance of equities trading as it does for options.[122]

The Exchange represents that it will establish Rule 17d–2 Plans for Allocation of Regulatory Responsibilities, including, subject to Commission approval: (i) A plan with FINRA pursuant to which the Exchange and FINRA will agree to allocate to FINRA, with respect to common members, regulatory responsibility for overseeing and enforcing certain applicable laws, rules, and regulations of MIAX PEARL Equities; (ii) joining the multi-party plan with FINRA and other national securities exchanges for the surveillance, investigation, and enforcement of common insider trading rules; and (iii) joining the multi-party plan with FINRA and other national securities exchanges for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules.[123]

In addition, the Exchange represents that it will: (i) Expand its existing RSA with FINRA, pursuant to which FINRA performs various regulatory services on behalf of the Exchange, subject to the Exchange's ultimate responsibility, including the review of membership applications and the conduct of investigations, disciplinary and hearing services; (ii) join the Intermarket Surveillance Group (''ISG''); and (iii) submit a Minor Rule Violation Plan to the Commission under Rule 19d–1(c)(2) of the Act applicable to Equity Members.[124]

According to the Exchange, FINRA currently surveils options trading on behalf of the Exchange pursuant to an existing RSA designed to detect violations of Exchange rules and applicable federal securities laws.[125] The Exchange represents that this RSA

[111] In addition, Equity Members will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public, as well as a disclaimer with any other written materials provided by an Equity Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle substantially. *See* MIAX PEARL Equities Rules 2900(b)(2)(B).

[112] *See* MIAX PEARL Equities Rule 2900(b)(2)(C).

[113] *See* MIAX PEARL Equities Rule 2900(b)(4).

[114] *See* MIAX PEARL Equities Rule 2900(b)(5).

[115] *See* Notice, *supra* note 3, at 8071–72.

[116] *See* MIAX PEARL By-Laws, Section 6.10.

[117] *See* MIAX PEARL By-Laws, Section 4.5(c).

[118] *See* Notice, *supra* note 3, at 8069–70 (discussing MIAX PEARL Equities Rules regarding Fair Practice (Chapter XXI), Books, Records, and Reports (Chapter XXII), Supervision (Chapter XXIII), Margin (Chapter XXIV), Chapter XXVII (Trading Practice Rules), and other miscellaneous provisions (Chapter XXVIII)).

[119] *See* MIAX PEARL Rule 1900 (Applicability).

[120] *See* MIAX PEARL By-Laws Section 9.2. *See also* MIAX PEARL By-Laws Section 2.1(d).

[121] *See* Chapter X of Exchange Rules. The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.

[122] *See id.* at 8071–72.

[123] *See* Notice, *supra* note 3, at 8072. Rule 17d–2 provides that any two or more self-regulatory organizations (''SROs'') may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2.

[124] *See id.*

[125] *See* Notice, *supra* note 3, at 8072.

will be expanded to provide for FINRA to also surveil equities trading on MIAX PEARL Equities on behalf of the Exchange.[126] The Exchange will remain responsible for FINRA's performance under the RSA.[127]

In addition, with respect to exchange traded products traded on MIAX PEARL Equities pursuant to unlisted trading privileges, the Exchange represents that it will enter into a comprehensive surveillance sharing agreement with markets that trade components of the index or portfolio on which shares of an exchange-traded product is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.[128]

The Exchange has also proposed Rule 2622(e) to comply with the LULD Plan.[129] MIAX PEARL Equities Rule 2622(e) requires the Exchange to be a Participant in the LULD Plan [130] and requires that Equity Members comply with the LULD Plan's provisions. MIAX PEARL Equities Rule 2622(e) also describes the Exchange's order handling procedures to comply with the LULD Plan.[131]

The Exchange's proposed regulatory structure raises no new regulatory issues. Accordingly, the Commission finds that the Exchange's proposed regulatory structure, including the Exchange's proposed application of existing rules and by-laws to MIAX PEARL Equities and Equity Members' conduct, the Exchange's commitment to establish new or expand existing agreements with third-parties including FINRA for purposes such as surveillance, member discipline, and overseeing and enforcing compliance with MIAX PEARL Equities rules, and proposed Rule 2622(e) requiring compliance with the LULD plan, are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.[132] The Commission also finds that the Exchange's proposed regulatory structure is consistent with the requirements of Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder, and the rules of the Exchange,[133] and with Section 6(b)(6) and 6(b)(7) of the Act,[134] which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members.

F. Section 11(a) of the Act

Section 11(a)(1) of the Act [135] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[136] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [137] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, the Exchange requests that the Commission concur with the Exchange's conclusion that Equity Members that enter orders into the System satisfy the conditions of Rule 11a2–2(T).[138] For the reasons set forth below, the Commission believes that Equity Members entering orders into the System could satisfy the requirements of Rule 11a2–2(T).

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means. [139] The Exchange has represented that it does not have a physical trading floor, and the System will receive orders from members electronically through remote terminals or computer-to-computer interfaces. The Commission believes that the System satisfies this off-floor transmission condition.

The second condition states that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange represented that at no time following the submission of an order is

[126] *See id.*

[127] *See id.*

[128] *See id.* The Exchange states that FINRA, on behalf of the Exchange, may obtain information, and will communicate information as needed, regarding trading in the shares of exchange-traded products, as well as in the underlying exchange-traded securities and instruments with other markets and other entities that are members of ISG. The Exchange may also obtain information regarding trading in such shares and underlying securities and instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, the Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a fund reported to FINRA's Trade Reporting and Compliance Engine. *See id.*

[129] In Amendment No. 1, the Exchange updated MIAX PEARL Equities Rules 2615 and 2622 regarding trading halts to reflect recent proposed rule changes filed by all other equity exchanges and FINRA with respect to a Level 3 Market Decline. *See supra* note 5. When triggered, a Level 3 halt would halt trading market-wide until the next trading day. The changes in Amendment No. 1 would allow for next-day trading to resume in all NMS stocks no differently from any other trading day, and would not need to wait for the primary listing market to reopen trading in a security.

[130] The Exchange represents that it intends to become a Participant in the LULD Plan prior to launching MIAX PEARL Equities. *See* Notice, *supra* note 3, at 8068, n.87 and Section III.A. *infra.*

[131] *See* MIAX PEARL Equities Rule 2622(e), and Notice, *supra* note 3, at 8068.

[132] *See* 15 U.S.C. 78f(b)(5).

[133] 15 U.S.C. 78f(b)(1).

[134] 15 U.S.C. 78f(b)(6) and (b)(7).

[135] 15 U.S.C. 78k(a)(1).

[136] 17 CFR 240.11a2–2(T).

[137] This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

[138] *See* Letter to Vanessa Countryman, Secretary, Commission, from Christopher Solgan, VP, Senior Counsel, MIAX PEARL, dated July 13, 2020 (''MIAX PEARL 11(a) Letter'').

[139] *See, e.g.,* Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (order approving IEX exchange registration); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (order approving EDGX Options as an options trading facility of the EDGX Exchange, Inc.); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010); (order approving the BATS Options as an options trading facility of the BATS Exchange, Inc.); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release''); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (''1978 Release'') (regarding NYSE's Designated Order Turnaround System).

an Equity Member or an associated person of the Equity Member able to acquire control or influence over the result or timing of the order's execution.[140] According to the Exchange, the execution of a member's order is determined solely by what quotes and orders, bids, or offers are present in the System at the time the Equity Member submits the order, and the order priority based on the MIAX PEARL Equities Rules.[141] Accordingly, the Commission believes that an Equity Member and its associated persons do not participate in the execution of an order submitted to the System.

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[142] The Exchange has represented that the design of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.[143] Based on the Exchange's representation that the design of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange, the Commission believes that the System satisfies this condition of Rule 11a2–2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[144] Equity Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[145]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[146] that the proposed rule change (SR–PEARL–2020–03), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of MIAX PEARL Equities is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Equities Trading.* MIAX PEARL must join all relevant national market system plans related to equities trading, including: (1) The Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); (2) the National Market System Plan to Address Extraordinary Market Volatility; and (3) the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS.

B. *Regulatory Services Agreement and Rule 17d–2 Agreements.* MIAX PEARL must ensure that all necessary changes are made to its RSA with FINRA and must be a party to the multi-party Rule 17d–2 agreements applicable to equities trading and equities market surveillance.

C. *Intermarket Surveillance Group.* MIAX PEARL must join the Intermarket Surveillance Group.

D. *Minor Rule Violation Plan.* MIAX PEARL must submit a Minor Rule Violation Plan to address Equity Members.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[147]

J. Matthew DeLesDernier,

Assistant Secretary.

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[140] *See* MIAX PEARL 11(a) Letter, *supra* note 138, at 3–4.

[141] *See id.* at 4. The member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[142] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 139.

[143] *See* MIAX PEARL 11(a) Letter, *supra* note 138, at 4.

[144] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 141 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[145] *See* MIAX PEARL 11(a) Letter, *supra* note 138, at 4.

[146] 15 U.S.C. 78s(b)(2).

[147] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89554; File No. SR–BX–2020–018]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits, at Equity 7, Section 118(a)

August 14, 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 August 3, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction credits, at Equity 7, Section 118(a).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

Description of the Changes

The Exchange proposes to revise its schedule of credits to add one new credit. Specifically, the Exchange proposes to provide a $0.0018 per share executed credit (for securities in Tapes A and B) and a $0.0017 per share executed credit (for securities in Tape C) for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during July 2020; (ii) accesses liquidity equal to or exceeding 0.01% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares for the month. The Exchange believes that that the availability of the new credits will incentivize members to grow their existing level of liquidity removal activity on the Exchange, and in particular, to grow such levels relative to a baseline of such activity. In doing so, the Exchange intends to improve the overall quality and attractiveness of the Nasdaq BX market.

Impact of the Changes

Those participants that act as net removers of liquidity from the Exchange will benefit directly from the proposed addition of new credits that would apply to orders that remove liquidity from the Exchange. Other participants will also benefit from the new credit insofar as any ensuing increase in liquidity removal activity will improve the overall quality of the market.

The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon

[3] *See* Securities Exchange Act Release No. 34–89114 (June 22, 2020), 85 FR 38418 (June 26, 2020) (SR–BX–2020–011); Securities Exchange Act Release No. 34–88857 (May 12, 2020), 85 FR 29766 (May 18, 2020) (SR–BX–2020–008); Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87271 [sic] (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR–BX–2019–026 [sic]); Securities Exchange Act Release No. 34–85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

members achieving certain volume thresholds.[8]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[9] Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed schedule of credits to provide increased overall incentives to members to increase their liquidity removal activity on the Exchange. An increase in liquidity removal activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed new credit will be comparable to, if not favorable to, those that its competitors provide.[10]

The Exchange notes that those participants that are dissatisfied with the proposed credit are free to shift their order flow to competing venues that offer them higher credits.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal will allocate its proposed new credit fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity on the Exchange as well as to tie the receipt of the credits to the member engaging in a threshold volume of combined liquidity removal activity on the Exchange. Furthermore, it is equitable for the Exchange to propose higher credits for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C due to the Exchange's desire to specifically promote increased liquidity removal activity in securities in Tapes A and B. An increase in overall liquidity removal activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposed Credit is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed change. That is, to the extent that the proposed changes increase liquidity a removal activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market, to the benefit of all existing and prospective participants.

Furthermore, it is not unfairly discriminatory for the Exchange to propose a higher credit for participants with orders in securities in Tapes A and B than it proposes for participants with orders in Tape C because the Exchange seeks to promote increased liquidity removal activity specifically in securities in Tapes A and B.

Moreover, any participant that is dissatisfied with the proposed new credit is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credit. Moreover, members are free to trade on other venues to the extent they believe that the credit provided is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credits changes in this market may impose any

[8] *See* CBOE EDGA Fee Schedule, at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/;* NYSE National Fee Schedule, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[9] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[10] *See* n. 8, *supra.*

burden on competition is extremely limited.

The proposed restated schedule of credits is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which presently comprises approximately 40% of industry volume.

The Exchange intends for the proposed change to its schedule of credits to increase member incentives to engage in the removal of liquidity from the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2020–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–018. 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–BX–2020–018, and should be submitted on or before September 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89558; File No. SR–NSCC–2020–016]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce the Margin Liquidity Adjustment Charge and Include a Bid-Ask Risk Charge in the VaR Charge

August 14, 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 30, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2020–016. On August 13, 2020, NSCC filed Amendment No. 1 to the proposed rule change, to make clarifications and corrections to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 (hereinafter, the ''Proposed Rule Change''), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibits 3 and 5 of the filing, and these clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below.

[4] On July 30, 2020, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2020–804) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). On August 13, 2020, NSCC filed Amendment No. 1 to the advance notice to make similar clarifications and corrections to the advance notice. A copy of the advance notice, as modified by Amendment No. 1 (hereinafter, ''Advance Notice'') is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules & Procedures (''Rules'') to (1) introduce a new component of the Clearing Fund, the Margin Liquidity Adjustment (''MLA'') charge, and (2) enhance the calculation of the volatility component of the Clearing Fund formula that utilizes a parametric Value-at-Risk (''VaR'') model (defined for purposes of this filing as the ''VaR Charge,'' and described in more detail in Item II(A)1(i) below) by including a bid-ask spread risk charge, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing to enhance its Clearing Fund methodology by (1) introducing a new component, the MLA charge, which would be calculated to address the risk presented to NSCC when a Member's portfolio contains large Net Unsettled Positions[6] in a particular group of securities with a similar risk profile or in a particular asset type (referred to as ''asset groups''), and (2) enhancing the calculation of the VaR Charge by including a bid-ask spread risk charge, as described in more detail below.[7]

(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[8] The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[9] The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC. NSCC would access its Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.[10] The volatility component of each Member's Required Fund Deposit is designed to measure market price volatility and is calculated for Members' Net Unsettled Positions. The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of confidence. The VaR Charge is the volatility component applicable to most Net Unsettled Positions,[11] and usually comprises the largest portion of a Member's Required Fund Deposit. Procedure XV of the Rules currently provides that the VaR Charge shall be calculated in accordance with a generally accepted portfolio volatility margin model utilizing assumptions based on historical data as NSCC deems reasonable and a volatility range that NSCC deems appropriate.[12]

NSCC regularly assesses market and liquidity risks as such risks relate to its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. The proposed changes to include the MLA charge to its Clearing Fund methodology and to enhance the VaR Charge by including a bid-ask spread risk charge, as described below, are the result of NSCC's regular review of the effectiveness of its margining methodology.

(ii) Overview of Liquidation Transaction Costs and Proposed Changes

Each of the proposed changes addresses a similar, but separate, risk that NSCC faces increased transaction costs when it liquidates the Net Unsettled Positions of a defaulted Member due to the unique characteristics of that Member's portfolio. The transaction costs to NSCC to liquidate a defaulted Member's portfolio include both market impact costs and fixed costs. Market impact costs are the costs due to the marketability of a security, and generally increase when a portfolio contains large Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type, as described more below. Fixed costs are the costs that generally do not fluctuate and may be caused by the bid-ask spread of a particular security. The bid-ask spread of a security accounts for the difference between the observed market price that a buyer is willing to pay for that security and the observed market price that a seller is willing to sell that security.

The transaction cost to liquidate a defaulted Member's portfolio is currently captured by the measurement of market risk through the calculation of the applicable volatility charge.[13] The proposed changes would supplement and enhance the current measurement of this market risk to address situations where the characteristics of the

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[6] ''Net Unsettled Positions'' and ''Net Balance Order Unsettled Positions'' refer to net positions that have not yet passed their settlement date or did not settle on their settlement date, and are referred to collectively in this filing as Net Unsettled Positions. *See* Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *id.*

[7] The results of a study of the potential impact of adopting the proposed changes have been provided to the Commission.

[8] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 4. NSCC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[9] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services) of the Rules, *supra* note 4.

[10] *Supra* note 4.

[11] As described in Procedure XV, Section I(A)(1)(a)(ii), (iii) and (iv), and Section I(A)(2)(a)(ii), (iii) and (iv) of the Rules, Net Unsettled Positions in certain securities are excluded from the VaR Charge and instead charged a volatility component that is calculated by multiplying the absolute value of those Net Unsettled Positions by a percentage. *Supra* note 4.

[12] Procedure XV, Section I(A)(1)(a)(i) and Section I(A)(2)(a)(i) of the Rules, *supra* note 4.

[13] The calculation of the VaR Charge and the haircut-based volatility charge are described in Sections I.(A)(1)(a) and I.(A)(2)(a) of Procedure XV of the Rules. *Supra* note 4. The methodologies for these calculations and how they are designed to address risks faced by NSCC have been described in recent proposed rule change and advance notice filings. *See* Securities Exchange Act Release Nos. 82780 (February 26, 2018), 82 FR 9035 (March 2, 2018) (File No. SR–NSCC–2017–808); 82781 (February 26, 2018), 82 FR 9042 (March 2, 2018) (File No. SR–NSCC–2017–020).

defaulted Member's portfolio could cause these costs to be higher than the amount collected for the applicable volatility charge.

First, as described in more detail below, the MLA charge is designed to address the market impact costs of liquidating a defaulted Member's portfolio that may increase when that portfolio includes large Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type. These positions may be more difficult to liquidate because a large number of securities with similar risk profiles could reduce the marketability of those large Net Unsettled Positions, increasing the market impact costs to NSCC. As described below, the MLA charge would supplement the applicable volatility charge.

Second, as described in more detail below, the bid-ask spread risk charge would address the risk that the transaction costs of liquidating a defaulted Member's Net Unsettled Positions may increase due to the fixed costs related to the bid-ask spread. As described below, this proposed change would be incorporated into, and, thereby, enhance the current measure of transaction costs through, the VaR Charge.

(iii) Proposed Margin Liquidity Adjustment Charge

In order to address the risks of an increased market impact cost presented by portfolios that contain large Net Unsettled Positions in the same asset group, NSCC is proposing to introduce a new component to the Clearing Fund formula, the MLA charge.

As noted above, a Member portfolio with large Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type may be more difficult to liquidate in the market in the event the Member defaults because a concentration in that group of securities or in an asset type could reduce the marketability of those large Net Unsettled Positions. Therefore, such portfolios create a risk that NSCC may face increased market impact cost to liquidate that portfolio in the assumed margin period of risk of three business days at market prices.

The proposed MLA charge would be calculated to address this increased market impact cost by assessing sufficient margin to mitigate this risk. As described below, the proposed MLA charge would be calculated for different asset groups, and subgroups for the equities asset group. Essentially, the calculation is designed to compare the total market value of a Net Unsettled Position in a particular asset group or subgroup, which NSCC would be required to liquidate in the event of a Member default, to the available trading volume of that asset group or equities subgroup in the market.[14] If the market value of the Net Unsettled Position is large, as compared to the available trading volume of that asset group or subgroup, then there is an increased risk that NSCC would face additional market impact costs in liquidating that position in the event of a Member default. Therefore, the proposed calculation would provide NSCC with a measurement of the possible increased market impact cost that NSCC could face when it liquidates a large Net Unsettled Position in a particular asset group or subgroup.

Rather than calculate the market impact cost for each CUSIP, NSCC's MLA charge would estimate market impact cost at the portfolio-level using aggregated volume data. For example, as described in greater detail below, the calculation of market impact cost would include a measurement of the gross market value of the portfolio. Given the vast number of CUSIPs processed by NSCC, this approach is simpler and is expected to result in more predicable calculations of the MLA charge.

To calculate the MLA charge, NSCC would categorize securities into separate asset groups, which have similar risk profiles—(1) equities [15] (excluding equities defined as Illiquid Securities pursuant to the Rules),[16] (2) Illiquid Securities, (3) unit investment trusts, or UITs, (4) municipal bonds (including municipal bond exchange-traded products, or ''ETPs''), and (5) corporate bonds (including corporate bond ETPs). NSCC would then further segment the equities asset group into the following subgroups: (i) Micro-capitalization equities, (ii) small capitalization equities, (iii) medium capitalization equities, (iv) large capitalization equities, (v) treasury ETPs, and (vi) all other ETPs.[17]

NSCC would first calculate a measurement of market impact cost for each asset group and equities subgroup for which a Member has Net Unsettled Positions in its portfolio. As described above, the calculation of an MLA charge is designed to measure the potential additional market impact cost to NSCC of closing out a large Net Unsettled Position in that particular asset group or equities subgroup.

Market Impact Cost Calculation for Market Capitalization Subgroups of Equities Asset Group

The market impact cost for each Net Unsettled Position in a market capitalization subgroup of the equities asset group would be calculated by multiplying four components: (1) An impact cost coefficient that is a multiple of the one-day market volatility of that subgroup and is designed to measure impact costs, (2) the gross market value of the Net Unsettled Position in that subgroup, (3) the square root of the gross market value of the Net Unsettled Position in that subgroup in the portfolio divided by an assumed percentage of the average daily trading volume of that subgroup, and (4) a measurement of the concentration of the Net Unsettled Position in that subgroup in the portfolio (as described in greater detail below).[18]

NSCC also represents that its measurement of the concentration of the Net Unsettled Position in the portfolio would include aggregating the relative weight of each CUSIP in that Net Unsettled Position relative to the weight of that CUSIP in the subgroup, such that a portfolio with fewer positions in a

[14] NSCC would determine average daily trading volume by reviewing data that is made publicly available by the Securities Industry and Financial Markets Association (''SIFMA''), at *https://www.sifma.org/resources/archive/research/statistics.*

[15] NSCC would exclude long positions in Family-Issued Securities, as defined in Rule 1 (Definitions) of the Rules, from the MLA charge. NSCC believes the margin charge applicable to long Net Unsettled Positions in Family-Issued Securities pursuant to Sections I.(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV of the Rules provides adequate mitigation of the risks presented by those Net Unsettled Positions, such that an MLA charge would not be triggered. *Supra* note 4.

[16] *See* Rule 1 (Definitions), *supra* note 4.

[17] Initially, the market capitalization categorizations would be: (i) micro-capitalization equities would be less than $300 million, (ii) small capitalization equities would be equal to or greater than $300 million and less than $2 billion, (iii) medium capitalization equities would be equal to or greater than $2 billion and less than $10 billion, and (iv) large capitalization equities would be equal to or greater than $10 billion. In determining the range of these market capitalization categorizations, NSCC would consult publications issued by sources it deems appropriate. NSCC would review these categories annually and any changes that NSCC deems appropriate would be subject to NSCC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework''). *See* Securities Exchange Act Release Nos. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–NSCC–2017–008); 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009); 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (File No. SR–NSCC–2020–008).

[18] *See supra* note 13.

subgroup would have a higher measure of concentration for that subgroup.[19]

Market Impact Cost Calculation for the Other Asset Groups and Equities Subgroups

The market impact cost for Net Unsettled Positions in the municipal bond, corporate bond, Illiquid Securities and UIT asset groups, and for Net Unsettled Positions in the treasury ETP and other ETP subgroups of the equities asset group would be calculated by multiplying three components: (1) An impact cost coefficient that is a multiple of the one-day market volatility of that asset group or subgroup, (2) the gross market value of the Net Unsettled Position in that asset group or subgroup, and (3) the square root of the gross market value of the Net Unsettled Position in that asset group or subgroup in the portfolio divided by an assumed percentage of the average daily trading volume of that subgroup.[20]

Total MLA Charge Calculation for Each Portfolio

For each asset group or subgroup, NSCC would compare the calculated market impact cost to a portion of the volatility charge that is allocated to Net Unsettled Positions in that asset group or subgroup (as determined by Sections I.(A)(1)(a) and I.(A)(2)(a) of Procedure XV of the Rules).[21] If the ratio of the calculated market impact cost to the applicable 1-day volatility charge is greater than a threshold, an MLA charge would be applied to that asset group or subgroup.[22] If the ratio of these two amounts is equal to or less than this threshold, an MLA charge would not be applied to that asset group or subgroup. The threshold would be based on an estimate of the market impact cost that is incorporated into the calculation of the applicable 1-day volatility charge, such that an MLA charge would apply only when the calculated market impact cost exceeds this threshold.

For each Member portfolio, NSCC would add the MLA charges for Net Unsettled Positions in each of the subgroups of the equities asset group to determine an MLA charge for the Net Unsettled Positions in the equities asset group. NSCC would then add the MLA charge for Net Unsettled Positions in the equities asset group with each of the MLA charges for Net Unsettled Positions in the other asset groups to determine a total MLA charge for a Member.

When applicable, an MLA charge for each asset group or subgroup would be calculated as a proportion of the product of (1) the amount by which the ratio of the calculated market impact cost to the applicable 1-day volatility charge exceeds the threshold, and (2) the 1-day volatility charge allocated to that asset group or subgroup.

The ratio of the calculated market impact cost to the 1-day volatility charge would also determine if NSCC would apply a downward adjustment, based on a scaling factor, to the total MLA charge, and the size of any adjustment. For Net Unsettled Positions that have a higher ratio of calculated market impact cost to the 1-day volatility charge, NSCC would apply a larger adjustment to the MLA charge by assuming that it would liquidate that position on a different timeframe than the assumed margin period of risk of three business days. For example, NSCC may be able to mitigate potential losses associated with liquidating a Member's portfolio by liquidating a Net Unsettled Position with a larger volatility charge over a longer timeframe. Therefore, when applicable, NSCC would apply a multiplier to the calculated MLA charge. When the ratio of calculated market impact cost to the 1-day volatility charge is lower, the multiplier would be one, and no adjustment would be applied; as the ratio gets higher the multiplier decreases and the MLA charge is adjusted downward.

The final MLA charge would be calculated daily and, when the charge is applicable, as described above, would be included as a component of Members' Required Fund Deposit.

Proposed Changes to NSCC Rules

The proposal described above would be implemented into Procedure XV of the NSCC Rules. Specifically, the proposed changes to Procedure XV would describe the calculation of the MLA charge in a new subsection (i) of Section I(A)(1) and a new subsection (g) of Section I(A)(2).

These new subsections would first identify each of the asset groups and subgroups. The proposed new subsections would then separately describe the two calculations of market impact cost for these asset groups and subgroups by identifying the components of these calculations. The new subsections would state that NSCC would compare the calculated market impact cost to a portion of that Member's volatility charge, to determine if an MLA charge would be applied to an asset group or subgroup. The new subsections would then state that NSCC would add each of the applicable MLA charges calculated for each asset group together. Finally, the new subsections would state that NSCC may apply a downward adjusting scaling factor to result in a final MLA charge.

NSCC would also amend Section I(B)(2) of Procedure VX, which describes the Excess Capital Premium charge, to add the MLA charge to the list of Clearing Fund components that are excluded from the calculation of the Excess Capital Premium charge.[23] The Excess Capital Premium is imposed on a Member when the Member's Required Fund Deposit exceeds its excess net capital. NSCC believes that including the MLA charge in the calculation of the Excess Capital Premium could lead to more frequent and unnecessary Excess Capital Premium charges. This is not the intended purpose of the Excess Capital Premium charge and could place an unnecessary burden on Members.

(iv) Proposed Bid-Ask Spread Risk Charge

NSCC has identified potential risk that its margining methodologies do not account for the transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio. Bid-ask spreads account for the difference between the observed market price that a buyer is willing to pay for a security and the observed market price that a seller is willing to sell that security. Therefore, NSCC is proposing to include a bid-ask spread risk charge in the VaR Charge to address this risk.

In order to calculate this charge, NSCC would segment Member's portfolios into four bid-ask spread risk classes: (i) Large and medium capitalization equities, (ii) small capitalization equities, (iii) micro-capitalization equities, and (iv) ETPs.[24]

[19] The relative weight would be calculated by dividing the absolute market value of a single CUSIP in the Member's portfolio by the total absolute market value of that portfolio.

[20] *See supra* note 13.

[21] *Supra* note 4. NSCC's margining methodology uses a three-day assumed period of risk. For purposes of this calculation, NSCC would use a portion of the applicable volatility charge that is based on one-day assumed period of risk and calculated by applying a simple square-root of time scaling, referred to in this proposed rule change as ''1-day volatility charge.'' Any changes that NSCC deems appropriate to this assumed period of risk would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework. *See supra* note 16.

[22] Initially, the threshold would be 0.4, because, currently, approximately 40 percent of the 1-day volatility charge addresses market impact costs. NSCC would review this threshold from time to time and any changes that NSCC deems appropriate would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework. *See id.*

[23] *See* Section I.(B)(2) of Procedure XV of the Rules. *Supra* note 4.

[24] *See supra* note 16.

Each risk class would be assigned a specific bid-ask spread haircut rate in the form of a basis point charge that would be applied to the gross market value in that particular risk class. The applicable bid-ask spread risk charge would be the product of the gross market value in a particular risk class in the Member's portfolio and the applicable basis point charge. The bid-ask spread risk charge would be calculated at the portfolio level, such that NSCC would aggregate the bid-ask spread risk charges of the applicable risk classes for the Member's portfolio.

NSCC proposes to review the haircut rates annually based on either the analysis of liquidation transaction costs related to the bid-ask spread that is conducted in connection with its annual simulation of a Member default or market data that is sourced from a third-party data vendor. Based on the analyses from recent years' simulation exercises, NSCC does not anticipate that these haircut rates would change significantly year over year. NSCC may also adjust the haircut rates following its annual model validation review, to the extent the results of that review indicate the current haircut rates are not adequate to address the risk presented by transaction costs from a bid-ask spread.[25]

The proposed initial haircuts are based on the analysis from the most recent annual default simulation and market data sourced from a third-party data vendor, and are listed in the table below:

Class	Haircut (bps)
Large and Medium Capitalization Equities	5.0
Small Capitalization Equities	12.3
Micro-Capitalization Equities	23.1
ETPs	1.5

Proposed Changes to NSCC Rules

The proposal described above would be implemented into Procedure XV of the NSCC Rules. Specifically, NSCC would amend subsection (a)(i)(I) of Sections I(A)(1) and I(A)(2) of Procedure XV by stating that the calculations of the estimations of volatility described in these Sections shall include an additional bid-ask spread risk charge measured by multiplying the gross market value of each Net Unsettled Position by a basis point charge. The proposed change to this subsection would also state that the basis point charge would be based on four risk classes and would identify those risk classes.

(v) Implementation Timeframe

NSCC would implement the proposed changes no later than 10 Business Days after the later of the approval of the proposed rule change and no objection to the related advance notice[26] by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[27] and Rules 17Ad–22(e)(4)(i) and (e)(6)(i), each promulgated under the Act,[28] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[29] NSCC believes the proposed change to implement the MLA charge is designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because it is designed to address the market impact costs to NSCC of liquidating a Member's portfolio in the event of that Member's default. Specifically, the proposed MLA charge would allow NSCC to collect sufficient financial resources to cover its exposure that it may face increased market impact costs in liquidating Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type that are not captured by the VaR Charge.

The Clearing Fund is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Therefore, the proposed change to include the MLA charge among the Clearing Fund components, when applicable, would enable NSCC to better address the increased market impact costs of liquidating Net Unsettled Positions in a particular group of securities with a similar risk profile, such that, in the event of Member default, NSCC's operations would not be disrupted and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change to implement the MLA charge is designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[30]

Additionally, NSCC believes that the proposed change to amend the VaR Charge to include bid-ask spread risk charge within Members' final VaR Charge would be designed to assure the safeguarding of securities and funds that are in the custody or control of NSCC or for which it is responsible because the proposed change would enable NSCC to better limit its exposure to increased transaction costs due to the bid-ask spread in the market when liquidating the a defaulted Member's portfolio. NSCC believes that including the above-described bid-ask spread risk charge within the VaR Charges would better ensure that NSCC calculates and collects sufficient margin and, thereby, better enable NSCC to limit its exposure to these transaction costs. By enabling NSCC to limit its exposure to Members in this way, the proposed change is designed to better ensure that, in the event of a Member default, NSCC would have adequate margin from the defaulting Member and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed change to include the bid-ask spread risk charge within the calculation of the final VaR Charge would be designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible and therefore consistent with Section 17A(b)(3)(F) of the Act.[31]

Rule 17Ad–22(e)(4)(i) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[32]

As described above, NSCC believes that both of the proposed changes would enable it to better identify, measure, monitor, and, through the

[25] All proposed changes to the haircuts would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework. *See id.*

[26] *Supra* note 3.

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] *Id.*

[31] *Id.*

[32] 17 CFR 240.17Ad–22(e)(4)(i).

collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence.

Specifically, NSCC believes that the proposed MLA charge would effectively mitigate the risks related to large Net Unsettled Positions of securities in the same asset group within a portfolio and would address the potential increased risks NSCC may face related to its ability to liquidate such positions in the event of a Member default.

Therefore, NSCC believes that the proposal would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[33]

Additionally, NSCC believes that the proposed bid-ask spread risk charge would enhance NSCC's ability to identify, measure, monitor and manage its credit exposures to Members and those exposures arising from its payment, clearing, and settlement processes because the proposed changes would better ensure that NSCC maintains sufficient financial resources to cover its credit exposure to each Member with a high degree of confidence. NSCC believes that the proposed change would enable NSCC to more effectively identify, measure, monitor and manage its exposures to risks related to market price, and enable it to better limit its exposure to potential losses from Member defaults by providing a more effective measure of the risks related to market price. As described above, due to the bid-ask spread in the market, there is an observable transaction cost to liquidate a portfolio. The proposed bid-ask spread risk charge is designed to manage the risk related to this transaction cost in the event a Member's portfolio is liquidated. As such, NSCC believes that the proposed change would better address the potential risks that NSCC may face that are related to its ability liquidate a Member's Net Unsettled Positions in the event of that firm's default, and thereby enhance NSCC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In this way, NSCC believes this proposed change is also consistent with Rule 17Ad–22(e)(4)(i) under the Act.[34]

Rule 17Ad–22(e)(6)(i) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[35]

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's credit exposures to Members, including the VaR Charge. NSCC's proposed change to introduce an MLA charge is designed to more effectively address the risks presented by large Net Unsettled Positions in the same asset group. NSCC believes the addition of the MLA charge would enable NSCC to assess a more appropriate level of margin that accounts for these risks. This proposed change is designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios that contain large Net Unsettled Positions in the same asset group and may be more difficult to liquidate in the event of a Member default. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[36]

Furthermore, NSCC believes that including the bid-ask spread risk charge within the calculation of the final VaR Charge would provide NSCC with a better assessment of its risks related to market price. This proposed change would enable NSCC to assess a more appropriate level of margin that accounts for this risk at the portfolio level. As such, each Member portfolio would be subject to a risk-based margining system that, at minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, consistent with Rule 17Ad–22(e)(6)(i) under the Act.[37]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes that the proposed changes could have an impact on competition. Specifically, NSCC believes the proposed changes could burden competition because they would result in larger Required Fund Deposit amounts for Members when the additional charges are applicable and result in a Required Fund Deposit that is greater than the amount calculated pursuant to the current formula.

When the proposal results in a larger Required Fund Deposit, the proposed change could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. However, the increase in Required Fund Deposit would be in direct relation to the specific risks presented by each Member's Net Unsettled Positions, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar Net Unsettled Positions, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. As such NSCC believes that any burden on competition imposed by the proposed changes would not be significant and, further, would be both necessary and appropriate in furtherance of NSCC's efforts to mitigate risks and meet the requirements of the Act, as described in this filing and further below.

NSCC believes the above described burden on competition that may be created by the proposed MLA charge and the bid-ask spread risk charge would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act.[38] As stated above, the proposed MLA charge is designed to address the market impact costs to NSCC of liquidating a Member portfolio in the event of the Member's default. Specifically, the proposed MLA charge would allow NSCC to collect sufficient financial resources to cover its exposure that it may face increased market impact costs in liquidating net unsettled positions that are not captured by the VaR Charge. Likewise, the proposed bid-ask spread risk charge is designed to help limit NSCC's exposures to the increased transaction costs due to the bid-ask spread in the market that could be incurred when liquidating a Member portfolio in the event of a Member default. Therefore, NSCC believes this proposed change is consistent with the requirements of Section 17A(b)(3)(F) of the Act, which requires that the Rules be designed to assure the safeguarding of securities and funds that are in

[33] *Id.*

[34] *Id.*

[35] 17 CFR 240.17Ad–22(e)(6)(i).

[36] *Id.*

[37] *Id.*

[38] 15 U.S.C. 78q–1(b)(3)(F).

NSCC's custody or control or which it is responsible.[39]

NSCC believes these proposed changes would also support NSCC's compliance with Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act, which require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence; and (y) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[40]

As described above, NSCC believes the introduction of the MLA charge would allow NSCC to employ a risk-based methodology that would address the increased market impact costs that NSCC could face when liquidating Net Unsettled Positions in in a particular group of securities with a similar risk profile or in a particular asset type. Similarly, the proposed change to include the bid-ask spread risk charge within the VaR Charge would allow NSCC to employ a risk-based methodology that would better measure the transaction costs that could be incurred in liquidating a defaulted Member's portfolio. Therefore, the proposed changes would better limit NSCC's credit exposures to Members, consistent with the requirements of Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act.[41]

NSCC believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described in detail above. The proposed MLA charge and the proposed bid-ask spread risk charge would also enable NSCC to produce margin levels more commensurate with the risks and particular attributes of each Member's portfolio.

The proposed MLA charge would do this by measuring the increased market impact costs that NSCC may face when liquidating a defaulted Member's portfolio that includes Net Unsettled Positions in a particular group of securities with a similar risk profile or in a particular asset type. With respect to the proposed bid-ask spread risk charge, a haircut (in the form of a basis point charge that would be applied to the gross market value) would be applied to separate risk classes in the portfolio. As described above, for purposes of calculating this charge, the portfolio would be segmented into four separate risk classes, by product type and market capitalization, and a haircut would be applied to the gross market value of each group. Therefore, because the proposed changes are designed to provide NSCC with an appropriate measure of the risks (*i.e.,* risks related to both market impact costs and transaction costs) presented by Members' portfolios, NSCC believes the proposal is appropriately designed to meet its risk management goals and its regulatory obligations.

NSCC believes that it has designed the proposed changes in an appropriate way in order to meet compliance with its obligations under the Act. Specifically, the proposals would improve the risk-based margining methodology that NSCC employs to set margin requirements and better limit NSCC's credit exposures to its Members. Therefore, as described above, NSCC believes the proposed changes are necessary and appropriate in furtherance of NSCC's obligations under the Act, specifically Section 17A(b)(3)(F) of the Act[42] and Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act.[43]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–NSCC–2020–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2020–016. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

[41] *Id.*

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i).

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–NSCC–2020–016 and should be submitted on or before September 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18198 Filed 8–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89562; File No. SR–ISE–2020–31]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add the Consolidated Audit Trail (''CAT'') Industry Member Compliance Rules to the List of Minor Rule Violations in its Rulebook

August 14, 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 August 5, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in its rulebook.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add ISE's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Options 11, Section 1(b).[3] This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[4]

Proposed Rule Change

The Exchange adopted the CAT Compliance Rules in General 7 in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules as the Exchange's General 7. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Options 11, Section 1 sets forth the list of rules under which a Member or person associated with or employed by a Member (hereinafter, ''Member or associated person''), may be subject to a fine. Options 11, Section 1 permits the Exchange to impose a fine, not to exceed $5,000, on any Member or associated person for a minor violation of an eligible rule. The Exchange proposes to amend Options 11, Section 1 to add the CAT Compliance Rules under General 7 to the list of rules in Options 11, Section 1 eligible for disposition pursuant to a minor fine.[7]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[8] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to the Exchange pursuant to the Rule 17d–2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination,

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that ISE Options 11, including Section 1, is incorporated by reference into the rulebooks of Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX''). As such, the amendments to ISE Options 11, Section 1 proposed herein will also impact GEMX and MRX Options 11, Section 1.

[4] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013); *see also* Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[5] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–ISE–2017–08) (Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules).

[6] 17 CFR 242.613.

[7] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. The Exchange will apply an identical maximum fine amount for eligible violations of General 7 to achieve consistency with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of General 7 in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under General 5, Section 3 as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 9–10, *infra.*

[8] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. We expect that the other exchanges would be entering into a similar RSA.

In order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules in General 7 pursuant to the Exchange's MRVP in Options 11, Section 1.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to the CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory alert notifying its Members of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in General 7 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding language that the Exchange may impose a minor rule violation fine of up to $2,500 for failures to comply with the CAT Compliance Rule requirements under General 7 would further the goal of transparency and add clarity to the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendments to Options 11, Section 1 are consistent with Section 6(b)(6) of the Act,[13] which provides that a Member or associated person shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of General 7 pursuant to the Exchange's rules.

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of a Member or associated person, consistent with Sections 6(b)(7) and 6(d) of the Act.[14] Options 11, Section 1 does not preclude a Member or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in General 7 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

[9] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[10] *See id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] 15 U.S.C. 78f(b)(7) and 78f(d).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–31 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–31. 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–ISE–2020–31 and should be submitted on or before September 10, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,[18] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Options 11, Section 1 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[19] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[20] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [22] and Rule 19d–1(c)(2) thereunder,[23] that the proposed rule change (SR–ISE–2020–31) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18203 Filed 8–19–20; 8:45 am]

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[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[18] 17 CFR 240.19d–1(c)(2).

[19] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[20] *See supra* note 4.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19d–1(c)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89564; File No. SR–CBOE–2020–075]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Make Qualified Contingent Cross Orders Available for FLEX Trading

August 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make Qualified Contingent Cross (''QCC'') Orders available for FLEX trading. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.70 and Rule 5.72, as well as Rule 5.33, to make QCC Orders, which includes Complex QCC Orders and QCC with Stock Orders, available for electronic FLEX trading. Currently, QCC Orders are available only for electronic non-FLEX trading.

QCC Orders facilitate the execution of option orders that are part of Qualified Contingent Trades (''QCTs''),[3] by permitting Trading Permit Holders (''TPHs'') to cross options orders without exposure while effecting the trade in the equities leg in another market at a price necessary to achieve the net price. Currently, TPHs may choose to submit the options component of a QCT as a FLEX Option, yet, are currently unable to execute a FLEX Options component of a QCT on the Exchange in the same efficient, unexposed manner as they may execute a non-FLEX Option component of a QCT on the Exchange. The Exchange now seeks to provide TPHs and their customers with the same QCC trading capabilities for FLEX trading that are currently available for non-FLEX trading, thus providing TPHs with the same capability to execute the options parts of QCTs that are comprised of FLEX Options.

Rule 5.6(c) currently provides for the non-FLEX definition of a QCC Order. Specifically, a QCC order is comprised of an originating order to buy or sell at least 1,000 contracts (or 10,000 mini-option contracts) that is identified as being part of a QCT coupled with a contra-side order or orders totaling an equal number of contracts. If a QCC Order has more than one option leg (a ''Complex QCC Order''), each option leg must have at least 1,000 standard option contracts (or 10,000 mini-option contracts). A QCC order represents one component of a QCT, which must be paired with a stock order. When a User enters a QCC Order, the User is responsible for executing the associated stock component of the QCT at or near the same time of the QCC order execution, just as a User is ultimately responsible for complying with execution requirements for any order a User submits. Indeed, the Exchange requires TPHs to properly mark all QCC Orders as such, and has a surveillance program in place which assesses TPH compliance with the requirements applicable to QCC Orders, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.[4] To execute the associated stock, a User may choose to either (1) separately submit an option order to the Exchange and the stock order to a stock execution venue in time to be executed at or near the same time of each other, or (2) submit a QCC with Stock Order. A QCC with Stock Order is a type of QCC Order (including a Complex QCC Order) entered with a stock component to be electronically communicated by the Exchange to a designated broker-dealer for execution on behalf of the submitting User and, as indicated, are available to Users on a voluntary basis.[5]

The Exchange proposes to adopt Rule 5.72(e)[6] to govern FLEX QCC Orders. The proposed rule is simply making QCC Order available for FLEX, and as such, the definition of FLEX QCC Orders is substantively identical as non-FLEX QCC Orders in Rule 5.6(c) and FLEX QCC Orders will execute in substantially the same manner with few differences unique to trading in FLEX Trading. Proposed Rule 5.72(e) provides that a ''FLEX QCC'' order is comprised of an originating order to buy or sell at least 1,000 standard FLEX Option contracts (or 10,000 mini FLEX option contracts) that is identified as being part of a QCT (as defined in Rule 5.6(c)) coupled with a contra-side order or orders totaling an equal number of contracts. If a FLEX QCC order has more than one option leg (a ''Complex FLEX QCC'' order), each option leg must have

[3] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (1), which defines a ''qualified contingent trade'' as a transaction consisting of two or more component orders, executed as agent or principal, where: (A) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (B) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (C) the execution of one component is contingent upon the execution of all other components at or near the same time; (D) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (E) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (F) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

[4] *See* Securities Exchange Act Release No. 15058 (June 17, 2011), 76 FR 35491 (Order Granting Approval of Proposed Rule Change Establishing Qualified Contingent Cross Orders) (''QCC Approval Order'').

[5] *See* Rule 5.33(a), definition of ''QCC with Stock Order''.

[6] The Exchange also moves current paragraph (e) to paragraph (f).

at least 1,000 standard FLEX option contracts (or 10,000 mini FLEX option contracts). This is substantively identical to the non-FLEX QCC definition in Rule 5.6(c). The Exchange notes that Users will enter into the System all FLEX QCC Orders as they would any other FLEX Order pursuant to 5.72(b) (governing the order entry of FLEX Orders) and the applicable FLEX auction rules. As such, the Exchange points out that FLEX QCC Orders may only be submitted for series consistent with the FLEX rules.[7] Like QCC Orders submitted for non-FLEX trading,[8] FLEX QCC Orders will execute automatically upon entry without exposure pursuant to proposed Rule 5.72(e)(1). The Exchange notes, as there is no FLEX Order Book, the corresponding provisions in Rule 5.6(c)[9] and 5.33(f)(2) regarding QCC Order execution requirements in connection with yielding to prices at which Priority Customer Orders may be resting in the Simple Book[10] and Complex Order Book (''COB''),[11] and in Rule 5.6(c)[12] in connection with pricing QCC Orders at or between the NBBO[13] would not be applicable to QCC Orders submitted to FLEX.[14] Proposed Rule 5.72(e)(1) also provides that a FLEX QCC Order is cancelled if it cannot execute, and that Rule 5.9 (related to exposure of orders on the Exchange) does not apply to FLEX QCC orders, both of which are consistent with the current non-FLEX QCC Rules.[15] Like QCC Orders submitted in non-FLEX classes,[16] QCC orders submitted in FLEX classes must be entered in the standard increment for the class.[17] Therefore, the proposed rule change adds in proposed Rule 5.72(e)(2) that FLEX QCC may only be entered in the increments applicable to FLEX Orders under Rule 5.4(c)(4).

Proposed Rule 5.72(e)(1) also provides that a FLEX QCC with Stock order executes pursuant to Rule 5.33(l). The proposed rule change amends Rule 5.33(1) to specify that the provisions governing QCC with Stock include FLEX QCC with Stock. As such, pursuant to Rule 5.33(l), for a FLEX QCC with Stock Order, a User must include the same requisite information as they must include when submitting such orders for non-FLEX trading pursuant to Rule 5.33(l)(3)(A),[18] and the System will process the option and stock components of such orders in the same manner as it does for non-FLEX QCC orders pursuant to Rule 5.33(l)(3)(B) and (C).[19]

The Exchange seeks to make QCC Orders available for FLEX trading due to the growing customer demand it has received for QCC functionality for FLEX trading. The Exchange notes that a number of TPHs have expressed to the Exchange that use of QCC for FLEX options would increase the efficiency of their executions of the options component of a QCT if the options component consists of a FLEX Option. An investor may seek to use a FLEX Option as an appropriate hedge for a stock order but is currently unable to execute a FLEX Option that is part of a QCT on the Exchange in the same unexposed manner as it may execute a non-FLEX Option on the Exchange. Currently, if a TPH wants to execute a FLEX Option that is intended to be part of a QCT, it would have to enter the FLEX Option as a FLEX Order separate from the stock portion or as a stock-option order, which must be exposed for at least three seconds prior to execution.[20] As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance of TPHs to ensure that TPHs execute the options component of a QCT at or near the same time as the stock component, in accordance with the QCT exemption.[21] Therefore, there is compliance risk for TPHs if they do not execute the options component at or near the same time of execution of the stock component. Providing TPHs with QCC Order functionality for FLEX Options will reduce the compliance burden on TPHs by providing a more efficient means of executing the options component of a QCT if the options component consists of a FLEX Option, as QCC Orders did for non-FLEX options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[22] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[24] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to make the QCC Order type available for electronic FLEX trading will facilitate TPHs' execution of the options component of QCTs that are comprised of FLEX Options in the same manner that TPHs may currently execute the options component of QCTs that are comprised of non-FLEX Options, thereby removing impediments to and perfecting the mechanism of a free and open market and national market system and, in general, protecting investors. QCC Orders for FLEX Options will execute in the same manner as QCC Orders for

[7] *See* Rules 5.72(b), (c), and (d).

[8] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (2).

[9] *See id.*

[10] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(A)(i).

[11] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(B)(i) and (iii).

[12] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2).

[13] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(A)(ii) and (B)(ii).

[14] This is true for any FLEX Order.

[15] *See* Rule 5.6(c), definition of ''Qualified Contingent Cross or QCC'', subparagraph (2)(C) and (2)(C), respectively.

[16] *See* 5.6(c), definition of ''Qualified Contingent Cross or QCC'', paragraph (3).

[17] *See* Rule 5.4(c)(4) (which sets forth minimum increments for FLEX options).

[18] Rule 5.33(l)(3)(A) requires a User to include a net price for the stock and option components in accordance with the minimum increments for stock-option orders and (ii) identify the designated broker-dealer as set forth in Rule 5.33 (l)(2).

[19] Rule 5.33(l)(3)(B) provides that the System executes the option component in accordance with Rule 5.6(c), but does not immediately send the User a trade execution report, and automatically communicates the stock component to the designated broker-dealer for execution at a stock trading venue. If the option component(s) of a QCC with Stock Order cannot execute, the System cancels the QCC with Stock Order, including both the stock and option components. Rule 5.33(l)(3)(C) provides that, if the System receives an execution report for the stock component of a QCC with Stock Order from the designated broker-dealer, the Exchange sends the User the trade execution report for the QCC with Stock order, including execution information for both the stock and option components. If the System receives a report from the designated broker-dealer that the stock component of a QCC with Stock Order cannot execute, the Exchange nullifies the option component trade and notifies the User of the reason for the nullification.

[20] *See* Rule 5.72(c)(1)(F); Rule 5.73(c)(3); and Rule 5.74(c)(3).

[21] *See supra* note 3; *see also infra* note 29.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *Id.*

non-FLEX Options; the proposed rule change merely expands the classes in which the Exchange may make QCC Orders available and provides a specific definition of FLEX QCC Orders for clarity. Moreover, the Exchange notes that stock-option orders (which, by definition, must also be a QCT) [25] are already permitted under the Rules for FLEX Options, and thus, the FLEX Options components of QCTs submitted as stock-option orders may currently execute at any price in FLEX (*i.e.,* are not subject to an NBBO or yielding to Customer orders). The proposed rule change merely provides an alternative, more efficient manner of execution for the option component of larger-sized QCTs.

The Exchange believes the availability of QCC Orders for FLEX Options will allow for a more efficient execution of the options component of a QCT on the Exchange. As noted above, to qualify as a QCT, the execution of one component is contingent upon the execution of all other components at or near the same time. The Exchange conducts surveillance to ensure a TPH executes the stock and option components of a QCT at or near the same time.[26] As a result, if the option component does not execute when initially submitted to the Exchange, a TPH may be subject to compliance risk if it does not execute the option component at or near the same time of the execution of the stock component. Indeed, the Exchange notes that the compliance risk of not being able to execute a FLEX Options portion of a QCT at or near the same time of the execution of the stock component is greater in a FLEX auction, where it must be exposed for at least three seconds prior to execution, than for non-FLEX option orders that must be exposed for at least one second [27] unless submitted into an auction with a shorter exposure period. The Exchange believes the proposed rule change will reduce this compliance risk for TPHs executing FLEX Options that are components of QCTs, which will protect investors and the public interest. Since the purpose of a QCT order is for all components to trade at or near the same time, the Exchange believes it is appropriate to provide TPHs with a mechanism to facilitate immediate execution of FLEX Options that comprise the options component of a QCT to reduce the compliance burden on TPHs when effecting QCTs with a FLEX Option component.

The Exchange believes that proposed Rule 5.72(e), while substantially the same in almost all aspects to Rule 5.6(c) governing non-FLEX QCC, will provide clarity to TPHs regarding the submission of their QCC FLEX Options. The only difference between the FLEX and non-FLEX QCC orders is that FLEX QCC orders are not subject to the NBBO or prices of customers in the book. The Exchange notes this difference exists for any order type in non-FLEX trading versus FLEX trading.[28] The Exchange notes that the proposed rule changes do not alter any of the current increments applicable to FLEX Options but merely provide additional detail within the specific provision covering QCC Orders regarding the standard increments already permissible for FLEX Options that will also apply to QCC FLEX Orders.

As the Commission has previously found,[29] the execution of QCTs is beneficial to the market as a whole as it contributes to the efficient functioning of the securities markets and the price discovery process. Pursuant to the QCT Release, the options portion of a QCT may consist of non-FLEX or FLEX Options [sic]. However, as noted above, without the availability of QCC Orders for FLEX Options, TPHs are subject to higher compliance risk with respect to QCTs with a FLEX Option component than TPHs who execute QCTs with a non-FLEX Option component. The Exchange submits this proposed rule change in response to demand from TPHs and their customers to be able to execute the options components of QCTs comprised of a FLEX Option in the same manner that they are currently able to execute the options components of QCTs comprised of non-FLEX options. Therefore, the proposed rule change will provide TPHs whose hedging strategies involve FLEX Options with the same functionality currently available to TPHs whose hedging strategies involve non-FLEX Options. The Exchange believes this will provide investors with additional flexibility regarding execution of their hedging strategies related to stock positions, which flexibility ultimately benefits investors.

Moreover, the Commission has stated that, while it believes that order exposure is generally beneficial to options markets, it recognizes that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuers, convertible securities, and equity derivatives such as options and that those who engage in contingent trades can benefit the market as a whole by studying the relationships between prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value.[30]

The requirement that a non-FLEX QCC must execute at a price at or between the NBBO merely incorporates an execution requirement applicable to all option order types, as all options must execute at price at or better than the NBBO in accordance with linkage rules.[31] Therefore, this execution requirement is not a heightened execution requirement for an unexposed option order. The additional requirement that a QCC order not execute at the same price as a Priority Customer incorporates the general principle of customer protection in the options markets.[32] If the market model for a class does not include customer priority, this is a heightened execution requirement for execution of an unexposed order.[33] Even without this additional protection, the Exchange believes the proposed FLEX QCC order will protection investors, as it will provide users of FLEX options with the same functionality as user of non-FLEX options. Additionally, primarily broker-dealers and institutional investors engage in FLEX trading. Therefore, there are minimal retail customer orders

[25] *See* Interpretation and Policy .03 to Rule 5.33.

[26] *See supra* QCC Approval Order.

[27] *See* Rule 5.9.

[28] The Exchange also notes that the requirement that a QCC order execute at a price at or better than the NBBO is not a unique execution requirement—every option order type approved by the Commission must execute at a price at or better than the NBBO in accordance with the linkage plan. *See* Rule 5.66.

[29] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''QCT Release''); *and see* QCC Approval Order.

[30] *See* QCC Approval Order.

[31] *See* Rule 5.66. In other words, if the definition of a QCC order did not include the provision that it must execute at a price at or better than the NBBO, QCC orders would still be required to execute at a price at or better than the NBBO. The Exchange believes inclusion of this explicit requirement for QCC orders was intended to highlight the difference between execution of the options component and the stock component, which may execute at any price, but was not a unique price requirement necessary for execution of an unexposed order. Every order type on the Exchange approved for non-FLEX trading and FLEX trading has this same distinction.

[32] If there was not a customer order resting at the top of the book, then the second pricing requirement for QCC orders is simply ignored. As there is no book in the FLEX market, the proposed FLEX QCC order is equivalent to a non-FLEX QCC order submitted when there is no customer order resting at the top of the book.

[33] The Exchange has enabled customer priority for all equity option classes that trade on the Exchange (and thus for all classes in which TPHs may submit QCC orders). Therefore, all QCC orders submitted on the Exchange are subject to the same execution pricing requirements as non-QCC orders.

submitted into the FLEX market that would require additional protection. As discussed above, the Exchange believes the benefits of exposure on an order on the Exchange are outweighed by the benefits offered by immediate execution of these contingent order types. The Exchange does not believe market participants that engage in hedging strategies involving FLEX Options should not have access to the same functionality as market participants with hedging strategies involving non-FLEX options.

The Exchange does not believe the propose rule change raises price protection concerns that market participants may submit FLEX QCC orders for a FLEX series with slightly different terms than a non-FLEX series in order to get better pricing. Such risk, if any, exists today with respect to all FLEX trading. The Exchange again points out that the linkage rules and customer priority are currently not applicable to any orders submitted to FLEX, wherein there is no order book. The Exchange has observed no trends of TPHs submitting FLEX orders in order to avoid trading in the non-FLEX market. The Exchange believes the risk (if any) of a market participant trading a FLEX Option rather than a non-FLEX Option with slightly different terms to use the FLEX market as a substitute for the non-FLEX market and achieve such a result is minimal. This possibility exists today with respect to all options the Exchange lists for FLEX and non-FLEX trading. The Exchange has not observed market participants attempting to trade in the FLEX market rather than the non-FLEX market for this purpose in classes in which this is possible today.

The Exchange believes attempting to execute an order in the FLEX market as a substitute for the non-FLEX market would minimize execution opportunities for that order. Such trading would be inefficient for market participants and could introduce price and execution risk to market participants' trading strategies given the reduced liquidity, participation, and price discovery in the FLEX market compared to the non-FLEX market.[34] Additionally, series with different terms have different prices and serve different investment purposes, so trading a ''similar'' FLEX series may not achieve the same investment objective as the non-FLEX series a TPH initially sought to trade. The Exchange notes if a FLEX QCC orders execute at a price through the book of the ''similar'' non-FLEX series, while that would be a better price for one transaction participant, it would be a worse price for the participant on the opposite side, and thus it may be more difficult for the TPH to find sufficient contra party interest. For example, suppose the market for Aug ABC 800 call with a multiplier of 100 is 10.20—11.00. If a market participant sought interest from counterparties to execute a FLEX QCC Order to buy an Aug ABC 795 call with at 10.00, it is unlikely another market participant would sell at that price if they were looking to sell the Aug ABC 800 call, given that participant could sell the ''similar'' non-FLEX Option series at 10.20, which would be a better price for that seller. Given the likely difficulties (such as reduced liquidity and potentially longer timeframe to receive execution) of trading in the FLEX market as a substitute for trading an economically equivalent option in the non-FLEX market (such as to obtain a better execution price), the Exchange believes the risk of this occurring is de minimis. The Exchange believes that any such risk is even lower for FLEX QCC orders given the additional requirements that apply to FLEX QCC orders, even without the heightened execution price requirement that a QCC order cannot execute at the same price as a Priority Customer. The benefits of QCC orders apply to FLEX options in the same manner as they do for non-FLEX options, which benefits the Exchange believes significantly outweigh any price protection risk that may exist in the FLEX market.

Ultimately, as noted above, QCC Orders in FLEX Options will execute in a substantially similar manner as QCC Orders in non-FLEX Options. In addition to this, the Exchange notes that QCC functionality is a widely adopted industry order type wherein multiple other options exchanges currently have QCC functionality in place.[35]

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 that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because QCC functionality is already available for non-FLEX Options. The Exchange is simply proposing to make QCC Orders available for additional classes (FLEX Option classes). The Exchange notes that the proposed order type will be available to all Users on a voluntary basis, and Users are not required to use QCC Orders when executing QCTs. Users may continue to execute the options component of QCTs that are comprised of FLEX Options in the same manner as they do today. The proposed rule change will provide FLEX Traders with the same functionality that is currently available to non-FLEX Traders with respect to execution of option components of QCTs. The Exchange believes all TPHs should have access to this functionality so they can all execute option components of QCTs in the same manner, regardless of whether they choose to hedge the stock portions of QCTs with FLEX or non-FLEX options.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is merely making functionality currently available on the Exchange to additional option classes. As noted above, QCC Order functionality is currently available at other options exchanges, which may determine make QCC functionality available to additional option classes as well, including flexible options. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

Overall, the Exchange believes the proposed rule change is appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

[34] *See* Sections VII and X of the ODD regarding risks associated with FLEX Options.

[35] *See e.g.* Nasdaq Phlx Rules Options 3, Section 12 (electronic QCC orders), and Options 8, Section 32(e) (open outcry QCC orders); Nasdaq ISE Options 3, Section 12; BOX Options Rule 7110(c)(6); MIAX Options Rule 516(j); *and* NYSE Arca Options Rule 6.90–O.

reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–075 and should be submitted on or before September 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–18200 Filed 8–19–20; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 19, 2020.

ADDRESSES: Send all comments to Jermaine Perry, Management Analyst, Office Surety Guarantees, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jermaine Perry, Management Analyst, *Jermaine.perry@sba.gov* 202–401–8275, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractors. The information collected on the form from surety companies will be used to update the status of successfully completed contracts and to provide a final accounting of contractor and surety fees due to SBA.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Quarterly Contract Completion Report.

Description of Respondents: Surety companies.

Form Number: 2,461.

Total Estimated Annual Responses: 92.

Total Estimated Annual Hour Burden: 92.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–18260 Filed 8–19–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16588 and #16589; FLORIDA Disaster Number FL–00156]

Administrative Declaration of a Disaster for the State of Florida

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 08/13/2020.

Incident: Flash Flooding.

Incident Period: 05/26/2020 through 05/27/2020.

DATES: Issued on 08/13/2020.

Physical Loan Application Deadline Date: 10/13/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/13/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Miami-Dade.

Contiguous Counties:

Florida: Broward, Collier, Monroe.

The Interest Rates are:

	Percent
For Physical Damage:	

	Percent
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16588 6 and for economic injury is 16589 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–18246 Filed 8–19–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No SSA–2020–0043]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0043].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 19, 2020. Individuals can obtain copies of the collection instrument by writing to the above email address.

Statement Regarding Contributions—20 CFR 404.360—404.366 and 404.736—0960–0020. SSA uses Form SSA–783 to collect information regarding a child's current sources of support when determining the child's entitlement to Social Security benefits. We request this information from adults acting on behalf of the child claimants who can provide SSA with any sources of support or substantial contributions for the child. These adults inform the claims representative as part of the initial benefits process. If the individual capable of providing the information does not accompany the child claimant, we mail the SSA–783 to the individual for completion, or if the person has access to a computer, we will refer them to SSA's website. The respondents are individuals providing information about a child's sources of support.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–783	2,352	1	15	588	* $25.72	** 24	*** $39,326

* We based this figure on the average hourly wage for all occupations in May 2019 as reported by the U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 21, 2020. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. Marriage Certification—20 CFR 404.725—0960–0009. Sections 202(b) and 202(c) of the Social Security Act (Act) stipulate that every spouse of an individual entitled to Old-Age, Survivors, and Disability Insurance (OASDI) benefits is entitled to a spouse benefit if the wife or husband, in addition to meeting the entitlement requirements, meets the relationship criteria in Section 216(h)(1)(A) and (B) of the Act. SSA uses Form SSA–3 to determine if a spouse claimant has the necessary relationship to the Social Security number holder (*i.e.,* the worker) to qualify for the worker's OASDI benefits. The respondents are applicants for spouse's OASDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3	62,342	1	5	5,195	* $25.72	** 24	*** $774,995

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Farm Arrangement Questionnaire—20 CFR 404.1082(c)—0960–0064. When self-employed workers submit earnings data to SSA, they cannot count rental income from a farm unless they demonstrate ''material participation'' in the farm's operation. A material participation arrangement means the farm owners must perform a combination of physical duties, management decisions, and capital investment in the farm they are renting out. SSA uses Form SSA–7157, the Farm Arrangement Questionnaire, to document material participation. The respondents are workers who are renting farmland to others, are involved in the operation of the farm, and want to claim countable income from work they perform relating to the farm.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–7157	662	1	30	331	*$25.25	**24	***$15,049

* We based this figure on average Farmer's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes451011.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
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3. Advanced Notice of Termination of Child's Benefits & Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105. SSA collects information on Forms SSA–1372–BK and SSA–1372–BK–FC to determine whether children of an insured worked meet the eligibility requirements for student benefits. The data we collect allows SSA to determine student entitlement, and assess whether to terminate benefits. SSA uses the SSA–1372–BK for domestic student claimants and the SSA–1372–BK–FC for student claimants living and attending school outside the United States. The respondents are student claimants for Social Security benefits, their respective schools and, in some cases, their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1372–BK:							
SSA–1372–BK (students)	233,179	1	8	31,091	*$7.86	**24	***$317,750
SSA–1372–BK State/Local/Tribal Government (school officals)	209,861	1	3	10,493	* 47.54	0	*** 498,837
SSA–1372–BK (representative payees)	23,318	1	3	1,166	25.72	0	*** 29,990
Totals	466,358			42,750			*** 846,577
SSA–1372–BK–FC:							
SSA–1372–BK–FC (students)	746	1	8	99	* 7.86	** 24	*** 743
SSA–1372–BK–FC State/Local/Tribal Government (school officals)	671	1	3	37	* 47.54	0	*** 1,759

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1372–BK–FC (representative payees)	75	1	3	4	25.72	0	*** 103
Totals	1,492			136			*** 2,605
Grand Total:							
Grand Total	467,850			42,886			*** 849,182

* We based these figures on average DI hourly wages for single students based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*); on the average School Worker's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*), and on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes231011.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

4. Claimant's Work Background—20 CFR 404.1512(a); 404.1520(a)(4); 404.1565(b); 416.912(a); 416.920(a)(4); 416.965(b)—0960–0300. Sections 205(a) and 1631(e) of the Act provide the Commissioner of Social Security with the authority to establish procedures for determining if a claimant is entitled to disability benefits. The administrative law judge (ALJ) may ask individuals to provide background information on Form HA–4633 about work they performed in the past 15 years. When a claimant requests a hearing before an ALJ to establish an entitlement to disability benefits, the ALJ may request that the claimant provide a work history to assist the ALJ in fully inquiring into issues related to the disability. The ALJ uses the information collected from the claimants on Form HA–4633 to: (1) Identify the claimant's relevant work history; (2) decide if SSA requires expert vocational testimony and, if so, have a vocational expert available to testify during the hearing; and (3) provide a reference for the ALJ to discuss the claimant's work history. The ALJ makes the completed Form HA–4633 part of the documentary evidence of record. The respondents are claimants for disability benefits under Title II or Title XVI who requested a hearing before an ALJ after SSA denied their application for disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
HA–4633—PDF/paper version	53,200	1	15	13,300	* $10.73	** 24	*** $371,043
Electronic Records Express Submissions	136,800	1	15	34,200	* 25.72	0	*** 879,624
Totals	190,000			47,500			*** 1,250,667

* We based these figures on average DI hourly wages based on SSA's current FY 2020 SSI data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*), and on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

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5. Social Security Administration Eligible Non-Attorney Representative—20 CFR 404.1717, 404.1745–404.1799, 416.1517, and 416.1545–416.1599—0960–0699. Section 3 of the Social Security Disability Applicants Access to Professional Representation Act (PRA) of 2010, Public Law 111–142, permanently extends the direct payment provision of Section 303 of the Social Security Protection Act (SSPA) of 2004, Public Law 108–203. The PRA permits SSA to extend direct payment of approved fees from claimants' past-due benefits to certain non-attorney representatives. Prior to the enactment of the SSPA and PRA, only attorneys could receive direct payment of SSA-approved fees. Under the PRA, non-attorneys must meet certain prerequisites to be eligible for direct payment of fees. These prerequisites include: (1) A bachelor's degree from an accredited institution of higher education, or four years of relevant professional experience and a high school diploma or General Education Development certificate; (2) passing a written examination administered by SSA testing the knowledge of relevant provisions of the Act under Titles II and XVI; (3) securing and maintaining continuous professional liability insurance, or equivalent, to protect claimants from malpractice; (4) passing a criminal background check; (5)

demonstrating ongoing completion of continuing education courses. The PRA requires SSA to collect the information needed to determine if applicants have satisfied these prerequisites. SSA uses the information we collect on Form SSA–1691 to determine whether an applicant has fulfilled the statutory prerequisites and regulatory requirements as listed above. To verify this information, we also request the five required items listed above from each new applicant, and we request items #3 and #5 from all non-attorney representatives (new and existing) on a yearly basis. Every year, SSA evaluates the applications, conducts verification investigations, and issues recommendations regarding applicants' eligibility to sit for the examination and eligibility to receive direct payment. The respondents are non-attorneys who want to receive direct payment of their fees for representational services before SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
New Respondents—Paper Application (complete and submit)—404.1717(b)&(c); 416.1517(b)&(c)	468	1	45	351	* $26.45	** 24	*** $14,230
New Respondents Examination—404.1717(a)(5); 416.1517(a)(5)	460	1	120	920	* 26.45	** 24	*** 29,201
New Respondents—Submission of proof of Bachelor's Degree or Equivalent Qualifications—404.1717(a)(3); 416.1517(a)(3)	458	1	10	76	* 26.45	** 24	*** 6,851
New and Existing Respondents—CE Submission via email/mail/or FAX of training courses taken as prescribed by SSA—404.1717(a)(7); 416.1517(a)(7)	1,374	1	20	458	* 26.45	** 24	*** 26,662
New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Scan and Email)—404.1717(a)(6); 416.1517(a)(6)	1,099	1	10	183	* 26.45	** 24	*** 45,547
New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Copy and Mail)—404.1717(a)(6); 416.1517(a)(6)	275	1	15	69	* 26.45	** 24	*** 4,735
New and Existing Respondents—Written Protests—404.1717(d); 416.1517(d)	45	1	45	34	* 26.45	** 24	*** 1,375
Totals	4,179			2,091			*** 128,511

* We based this figures on average Paralegal's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

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Dated: August 17, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–18306 Filed 8–19–20; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0040]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0040].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 19, 2020. Individuals can obtain copies of the collection instrument by writing to the above email address.

Medical Permit Parking Application—41 CFR 102–71.20 & 102–74.305—0960–0624. SSA employees and contractors with a qualifying medical condition who park at SSA-owned and leased facilities may apply to receive a medical parking permit. SSA uses three forms for this program: (1) SSA–3192, the Application and Statement, which an individual completes when first applying for the medical parking space; (2) SSA–3193, the Physician's Report, which the applicant's physician completes to verify the medical condition; and (3) SSA–3194, Renewal Certification, which medical parking permit holders complete to verify their continued need for the permit. The respondents are SSA employees and contractors seeking medical parking permits and their physicians.

Note: Because SSA employees are Federal workers exempt from the requirements of the Paperwork Reduction Act, the burden below is only for SSA contractors, and physicians (of both SSA employees and contractors).

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–3192	390	1	30	195	** $44.07	** $8,594
SSA–3193	465	1	90	698	* 44.07	** 30,761
SSA–3194	82	1	5	7	* 44.07	** 308
Totals	937			900		** 39,663

* We based this figure on averaging the average of Office Physicians and Executive Branch Management Analysts hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes291123.htm*) & (*https://www.bls.gov/oes/current/oes131111.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 21, 2020. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. Internet Representative Payee Accounting, My Representative Payee Accounting, Representative Payee Report-Adult, Representative Payee Report-Child, and Representative Payee Report-Organizational Representative Payees—20 CFR 404.2035, 404.2065, 416.635, and 416.665—0960–0068. When SSA determines it is not in an Old-Age, Survivors, and Disability Insurance (OASDI) or Supplemental Security Income (SSI) recipient's best interest to receive Social Security payments directly, the agency will designate a representative payee for the recipient. The representative payee can be: (1) A family member; (2) a non-family member who is a private citizen and is acquainted with the beneficiary; (3) an organization; (4) a state or local government agency; or (5) a business. In the capacity of representative payee, the person or organization receives the SSA recipient's payments directly and manages these payments. As part of its stewardship mandate, SSA must ensure the representative payees are properly using the payments they receive for the recipients they represent. The agency annually collects the information necessary to make this assessment using Form SSA–623, Representative Payee Report-Adult; Form SSA–6230, Representative Payee Report-Child;

Form SSA–6234, Representative Payee Report-Organizational Representative Payees; and through the electronic internet applications, internet Representative Payee Accounting (iRPA) & My Representative Payee Accounting (MyRPA). The respondents are representative payees of OASDI and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–623	1,086,152	1	15	271,538	* $10.22	** 24	*** $7,215,310
SSA–6230	97,196	1	15	24,299	* 10.22	** 24	*** 645,669
SSA–6234	497,505	1	15	124,376	* 10.22	** 24	*** 3,304,92
iRPA +	290,253	1	15	72,563	* 10.22		*** 741,594
myRPA +	70,021	1	15	17,505	* 10.22		*** 178,901
Totals	2,041,127			510,281			*** 12,086,397

+ All forms (SSA–623, SSA–6230, & SSA–6234) can also be accessed via the internet platforms, iRPA and myRPA.

* We based these figures on average DI hourly wages based on SSA's current FY 2020 data *https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. *Student Reporting Form—20 CFR 404.352(b)(2), 404.367, 404.368, 404.415, 404.434, & 422.135—0960–0088.* To qualify for Social Security Title II student benefits, student beneficiaries must be in full-time attendance status at an educational institution. In addition, SSA requires these beneficiaries to report events that may cause a reduction, termination, or suspension of their benefits. SSA collects such information on Forms SSA–1383 and SSA–1383–FC to determine if the changes or events the student beneficiaries report will affect their continuing entitlement to SSA benefits. SSA also uses the SSA–1383 and SSA–1383–FC to calculate the correct benefit amounts for student beneficiaries. The respondents are Social Security Title II student beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1383	75,000	1	6	7,500	* $7.25	** 24	*** $271,875
SSA–1383–FC	805	1	6	81	* 7.25	** 24	*** 2,922
Totals	75,805			7,581			*** 274,797

* We based this figure on the Federal minimum hourly wage, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/opub/reports/minimum-wage/2019/home.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

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3. *Modified Benefit Formula Questionnaire—0960–0395.* SSA collects information on Form SSA–150 to determine which formula to use in computing the Social Security benefit for someone who receives a pension from employment not covered by Social Security. The Windfall Elimination Provision (WEP) requires use of a benefit formula replacing a smaller percentage of a worker's pre-retirement earnings. However, the resulting amount cannot show a difference in the benefit computed using the modified and regular formulas greater than one-half the amount of the pension received in the first month an individual is entitled to both the pension and the Social Security benefit. The SSA–150 collects the information needed to make the necessary benefit computations. SSA requires the respondents to furnish the information on Form SSA–150 so we can calculate their benefits using the data they supply. SSA calculates the benefits of applicants who do not respond to this questionnaire using the full WEP reduction. SSA employees collect this information once from applicants at the time they file their claim. The respondents are applicants for old-age and disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–150	21,540	1	8	2,872	* $10.73	** 24	*** $123,267

* We based this figure on average DI payments based on SSA's current FY 2020 data (*https://www.ssa.gov/legislation/2020Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. *Employee Work Activity Questionnaire—20 CFR 404.1574(a)—0960–0483.* Social Security Disability Insurance (SSDI) beneficiaries and SSI recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments, but are unable to continue working, they submit Form SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA also uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of SSDI beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–3033	15,000	1	15	3,750	* $59.15	** $221,813

* We based this figure on average general and operations manager's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes111021.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. *Sheltered Workshop Wage Reporting—0960–0771.* Sheltered workshops are private non-profit organizations, or institutions, that implement a recognized program of rehabilitation for handicapped workers, or provide such workers with remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature. Sheltered workshops perform a service for their clients by reporting monthly wages directly to SSA. SSA uses the information these workshops provide to verify and post monthly wages to SSI recipient's records. Most workshops report monthly wage totals to their local SSA office so we can adjust the client's SSI payment amount in a timely manner, and prevent overpayments. Sheltered workshops are motivated to report wages voluntarily as a service to their clients. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Sheltered Workshop Wage Reporting	800	12	9,600	15	2,400	* $19.31	** $46,344

* We based this figure on average Rehabilitation Counselors hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes211015.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: August 17, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–18290 Filed 8–19–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice:11187]

Cultural Property Advisory Committee; Notice of Meeting

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: We are issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES: The Cultural Property Advisory Committee (CPAC) will meet October 27–29, 2020, 10:00 a.m. to 5:00 p.m. (EDT). CPAC will hold an open session on October 27, 2020, at 2:00 p.m. (EDT). It will last approximately one hour.

Participation: You may participate in the open session by videoconference. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any request for reasonable accommodation not later than October 20, 2020, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov.* It may not be possible to accommodate requests made after that date.

Comments: The Committee will review your written comment if it is received by October 13, 2020, at 11:59 p.m. (EDT). You are not required to submit a written comment in order to make an oral comment in the open session.

ADDRESSES: The meeting will be held by videoconference.

Written Comments: You may submit written comments in two ways, depending on whether they contain privileged or confidential information:

- *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket [DOS–2020–0036] and follow the prompts to submit your comments.
- *Email Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''Nigeria'' and/or ''Greece'' in the subject line.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Allison Davis, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, by phone

(202–632–6305) or email (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') (19 U.S.C. 2605(e)(2)). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the request by the Government of the Federal Republic of Nigeria seeking import restrictions on archaeological and ethnological material. The Committee will review the proposed extension of the cultural property agreement with the Government of the Hellenic Republic.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public comments on Nigeria's request for an agreement and the proposed extension of the agreement with Greece on Tuesday, October 27, 2020, from 2:00 p.m. to approximately 3:00 p.m. (EDT). We have provided specific instructions on how to participate or observe the open session at *http://culturalheritage.state.gov.*

You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. If you do wish to speak, however, you must request to be scheduled by October 20, 2020, via email (*culprop@state.gov*). Please submit your name and any organizational affiliation in this request. The open session will start with a brief presentation by the CPAC, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may be invited to provide additional oral comments for a maximum of five (5) minutes per participant, time permitting. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the proposed extensions of the agreements with Greece using the *Regulations.gov* website (listed in the ''COMMENTS'' section above) not later than October 13, 2020, at 11:59 p.m. (EDT). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to *culprop@state.gov.* Include ''Nigeria'' and/or ''Greece'' in the subject line. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via *regulations.gov* are not private and are posted at *http://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Allison R. Davis,

Executive Director, CPAC, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–18262 Filed 8–19–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11184]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of One Bronze Statuette of Horse and Rider

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that one object being imported from abroad pursuant to an agreement with the foreign owner or custodian for temporary display in an exhibition within the ''Archaic and Classical Greek'' Gallery at The J. Paul Getty Museum at the Getty Villa, Pacific Palisades, California, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–18261 Filed 8–19–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice:11185]

Notice of Receipt of Request From the Government of the Federal Republic of Nigeria Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice of receipt of request from Nigeria for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Anne Compton, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov;* include ''Nigeria'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Federal Republic of Nigeria made a request to the Government of the United States on March 13, 2020, under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Nigeria's request seeks U.S. import restrictions on archaeological and ethnological material representing Nigeria's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and

Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Nigeria's request and information about U.S. implementation of the 1970 UNESCO Convention will be available at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis,

Executive Director, CPAC, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–18266 Filed 8–19–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice:11186]

Proposal To Extend Cultural Property Agreement Between the United States and Greece

AGENCY: Department of State.

ACTION: Public Notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding Concerning the Imposition of Import Restrictions on Categories of Archaeological and Byzantine Ecclesiastical Ethnological Material Through the 15th Century A.D. of the Hellenic Republic.*

FOR FURTHER INFORMATION CONTACT: Chelsea Freeland, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6307; *culprop@state.gov;* include ''Greece'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the *Memorandum of Understanding Concerning the Imposition of Import Restrictions on Categories of Archaeological and Byzantine Ecclesiastical Ethnological Material Through the 15th Century A.D. of the Hellenic Republic* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–18256 Filed 8–19–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11183]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Asia Society Triennial: We Do Not Dream Alone (Part 1)'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Asia Society Triennial: We Do Not Dream Alone (Part 1)'' at the Asia Society Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**. This notice supersedes the **Federal Register** notice that was published on March 17, 2020, page 15244 (volume 85, number 52).

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–18264 Filed 8–19–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, the modification of the existing Hazel Avenue/U.S. 50 interchange in the County of Sacramento, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(/)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 19, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Julia K Green, Branch Chief, Caltrans Office of Environmental Management, M–4 California Department of Transportation-District 3, 703 B Street, Marysville, CA 95901 Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (530) 741–5181 or email *Julia.green@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(/)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California.

The County of Sacramento, in cooperation with Caltrans and the City of Rancho Cordova, proposes to modify the existing Hazel Avenue/US 50 interchange, and extend and grade-separate Hazel Avenue over Folsom Boulevard and the SPTC–JPA rail corridor. Hazel Avenue will be extended south to a proposed intersection with the future Atlanta Street (a new roadway that will be constructed as part of the Easton Place development). The project limits along US 50 begin approximately 3,200 feet west of the existing Hazel Avenue overcrossing and extend 2,500 feet east of the Natoma Overhead (post miles 15.1 to 15.4). Improvements along Folsom Boulevard would extend from approximately 1,200 feet west of the

Hazel Avenue intersection to 900 feet east of the intersection. The project purpose is to reduce congestion, improve traffic operations, accommodate travel demand due to planned and approved developments, and improve safety of all modes of travel, including bicycles and pedestrians. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for the project, approved on July 2, 2020, and in other documents in Caltrans' project records.

The FEA, FONSI and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections I 006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act Reauthorization Amendments Of 1990
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Sections 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions to Address Environmental Justice and Low Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(/)(1)

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–18301 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0173]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Netradyne, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Netradyne Inc.(Netradyne) to allow its Driveri® Dash Cam to be mounted lower in the windshield on commercial motor vehicles than is currently permitted.

DATES: Comments must be received on or before September 21, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2020–0173 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Docket Operations in Room W12–140, U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better 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.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey

Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0173), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0173'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

III. Netradyne's Application for Exemption

The Federal Motor Carrier Safety Regulations require devices meeting the definition of ''vehicle safety technology,'' including Netradyne's Driveri® Dash Cam, to be mounted (1) not more than 4 inches below the upper edge of the area swept by the windshield wipers, or (2) not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. Netradyne has applied for an exemption from 49 CFR 393.60(e)(1) to allow its Driveri® Dash Cam to be mounted lower in the windshield than is currently permitted. A copy of the application is included in the docket referenced at the beginning of this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Netradyne's application for an exemption from 49 CFR 393.60(e)(1). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–18217 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0171]

Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Association of American Railroads and American Short Line and Regional Railroad Association (the Associations) on behalf of themselves and member railroads for an exemption from the following hours of service (HOS) provisions: (1) Driving a property-carrying commercial motor vehicle (CMV) without first taking 10 consecutive hours off duty, (2) driving after the 14th hour after coming on duty, (3) driving more than 11 hours during the 14-hour period after coming on duty, (4) driving if more than 8 hours have passed since the end of the last off-duty or sleeper-berth period of at lest 30 minutes, and (5) driving after accumulating 60 hours of on-duty time in 7 consecutive days (60-hour rule), or 70 hours of on-duty time in 8 consecutive days (70-hour rule). The exemption would enable railroad employees subject to the HOS rules to respond to unplanned events that occur outside of or extend beyond the employee's normal work hours. FMCSA requests public comment on the Associations' application for exemption.

DATES: Comments must be received on or before September 21, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2020–0171 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

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 West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The on-line 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 better 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: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225; 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 and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0171), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0171'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

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. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses 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 decision of the Agency must be published 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 also 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. Background

Under 49 CFR 395.3(a) a property carrying commercial motor vehicle driver may not drive without first taking 10 consecutive hours off duty. Additionally, the driver may only drive a total of 11 hours during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. Section 395.3(a)(3)(ii) currently prohibits driving if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. However, under the amended rule adopted on June 1, 2020 [85 FR 33396], which becomes effective on September 29, 2020, driving is not permitted if more than 8 hours of driving time have passed without at least a consecutive 30-minute interruption in driving status. The 30-minute break may be taken as off-duty, on-duty/not-driving, or sleeper-berth time, or any combination thereof. Under 49 CFR 395.3(b) no motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to driver, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after having been on duty 60 hours in any period of 7 consecutive days or having been on duty 70 hours in any period of 8 consecutive days.

On October 11, 2018, the Associations submitted a similar exemption request (83 FR 64929.) The request was later withdrawn by the Associations and a new request has been submitted. The Associations contend that the HOS prohibitions on driving after a 14-hour period, and after 60 or 70 hours on duty in a moving 7- or 8-day ''week'' inhibit a railroad's ability to respond expeditiously to certain types of emergency situations. For this reason the Associations request that a railroad employee responding to an unplanned event that affects interstate commerce, service or the safety of railway operations, including passenger rail operations, and that occurs outside of or extends beyond the employee's normal shift, be exempt from the provisions in 49 CFR part 395.3(a) and (b).

A copy of the exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on the Associations' exemption application. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments

received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–18215 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2020–0004]

Agency Information Collection Activities; Notice and Request for Comment; Petitions for Exemption from the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments on a reinstatement of a previously-approved information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) to reinstate a previously-approved information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before October 19, 2020.

ADDRESSES: You may submit comments identified by the Docket No. DOT–NHTSA–2020–0004 through any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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) 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) how to enhance the quality, utility, and clarity of the information to be collected; (iv) how 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, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Petitions for Exemption From the Vehicle Theft Prevention Standard (49 CFR part 543).

OMB Control Number: 2127–0542.

Type of Request: Request for approval of a reinstatement of a previously-approved information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years.

Affected Public: Motor vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Summary of Information Collection: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts (parts-marking) to impede motor vehicle theft. Under 49 U.S.C. 33106, manufacturers may petition the Secretary of Transportation (NHTSA by delegation) for an exemption from the parts-marking requirement for a line of passenger motor vehicles equipped with an anti-theft device as standard equipment that the Secretary (NHTSA by delegation) decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with the statute, NHTSA promulgated 49 CFR part 543 to provide a process through which manufacturers may seek an exemption from the Theft Prevention Standard. Under these regulations, each manufacturer may request an exemption for one vehicle line per model year.

Under the current part 543, manufacturers choose how they wish to demonstrate to the agency that the anti-theft device they are installing in a vehicle line meets the requirements for exemption: by either the factors listed in § 543.6 (specific content requirements: detailed lists, data, and explanations) or by the criteria listed in § 543.7 (performance criteria). Section 543.6 requires manufacturer to submit: (1) A statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which an exemption is sought; (2) a list naming each component in the antitheft system, and a diagram showing the location of each of those components within the vehicle; (3) a discussion that explains the means and process by which the device is activated and functions, including any aspect of the device designed to facilitate or encourage its activation by motorists, attract attention to the efforts of an unauthorized person to enter or move the vehicle by means other than a key, prevent defeating or circumventing the device by an unauthorized person attempting to enter a vehicle by means other than a key, prevent the operation of a vehicle which an unauthorized person has entered using means other than a key, and ensure the reliability and durability of the device; (4) the reasons for the

petitioner's belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, including any theft data and other data that are available to the petitioner and form the basis for that belief; (5) the reasons for the petitioner's belief that the agency should determine that the antitheft device is likely to be as effective as compliance with the parts-marking requirements of Part 541 in reducing and deterring motor vehicle theft, including any statistical data that are available to the petitioner and form a basis for petitioner's belief that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or similar, line which have parts marked in compliance with part 541.

Section 543.7 requires manufacturers to submit a statement that the entire line of vehicles is equipped with an immobilizer, as standard equipment, that meets one of the following: (1) The performance criteria of (subsections 8 through 21) of C.R.C, c. 1038.114, Theft Protection and Rollaway Prevention (in effect March 30, 2011), as excerpted in appendix A of this part; (2) National Standard of Canada CAN/ULC–S338–98, Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization (May 1998); (3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS) in effect August 8, 2007; or (4) UN/ECE Regulation No. 116 (ECE R116), Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use in effect on February 10, 2009. Manufacturers must also submit documentation kept to demonstrate that the device conforms with the performance criteria and a statement that the immobilizer device is durable and reliable.

Description of the Need for the Information and Proposed Use of the Information: NHTSA requires this information to make a determination of whether an anti-theft device a manufacturer is installing in a vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements and therefore meets the requirements for the grant of an exemption from Part 541 parts-marking.

Estimated Number of Respondents: 12.

The universe of possible petitioners includes all vehicle manufacturers that are required to comply with the Theft Prevention Standard. There are approximately 23 vehicle manufacturers. NHTSA received 32 petitions for exemption from the parts-marking requirements for MYs 2017–2020, and 12 petitions in the most recent year: 9 respondents filing under § 543.6 and 3 respondents filing under § 543.7. We anticipate that the number of petitions received in each of the next three years will be the same as the number of petitions received in the most recent year, with 9 petitions submitted under § 543.7 and 3 submitted under § 543.6 for a total of 12 petitions. Because each manufacturer is limited to requesting an exemption for one vehicle line per model year, NHTSA estimates that each petition will be submitted by a different vehicle manufacturer. Therefore, we estimate the total number of responses and respondents will be 12.

Estimated Total Annual Burden Hours: 2,094.

NHTSA estimates, based on information provided by manufacturers, that 226 hours will be required for exemptions requested under § 543.6, and 20 hours for exemptions requested under § 543.7. The agency expects that nine manufacturers will choose to file for an exemption under § 543.6 and three manufacturers will choose to file for an exemption under § 543.7. The estimated total annual burden hours are shown below:

	Average number of petitions per year	Average time per petition submittal (hrs)	Total annual hours
Preparation and Submittal of Petition for Exemption under § 543.6	9	226	2,034
Preparation and Submittal of Petition for Exemption under § 543.7	3	20	60
Estimated Total Annual Burden Hours:			2,094

The labor cost associated with the burden hours for this collection is derived by (1) applying appropriate average hourly labor rate for ''Compliance Officers,'' Occupation Code 13–1041, published by the Bureau of Labor Statistics,[1] (2) dividing by 0.701 [2] (70.1%) to obtain the total compensation rate for private industry workers, and (3) multiplying by the estimated labor hours for each exemption type.

	Hourly labor cost	Average time per petition submittal	Labor cost/petition	Estimated number of petitions/year	Annual labor cost
Preparation and Submittal of Petition for Exemption under § 543.6	$49.73	226	$11,238.98	9	$101,151
Preparation and Submittal of Petition for Exemption under § 543.7	49.73	20	994.60	3	2,984
Estimated Annual Labor Cost for This Information Collection:					104,135

[1] May 2018 National Occupational Employment and Wage Estimates, United States. Business and Financial Operations Occupations, Compliance Officers, Occupation Code 13–1041; Mean Hourly Wage = $34.86. *https://www.bls.gov/oes/current/oes_nat.htm.* Accessed Mar. 9, 2020.

[2] See Table 1 at *https://www.bls.gov/news.release/ecec.t01.htm.*

Costs to Respondents or Recordkeepers: $0.

NHTSA estimates that there will be no costs to respondents other than costs associated with burden hours.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2020–18216 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0075]

Receipt of Petitions for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petitions for temporary exemption; request for comment.

SUMMARY: NHTSA has received almost identical petitions from 13 final-stage manufacturers of ''entertainer-type motorcoaches,'' seeking temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches. The petitioners seek to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. Each petitioner states that, absent the requested exemption, it will otherwise be unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle. NHTSA is publishing this document to notify the public of the receipt of the petitions and to request comment on them, in accordance with statutory and administrative provisions.

DATES: If you would like to comment, you should submit your comment not later than October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Deirdre Fujita, Office of the Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

ADDRESSES: You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. Telephone: 202–366–9826. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please see below.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555 subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public

interest and consistent with the objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.[1] Each petitioner is applying on the basis that compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption under this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption under this basis may be granted for not more than 2 years, but may be renewed upon reapplication.[2]

b. FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).[3]

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010) NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[4] The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. NHTSA believed that[5] ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.''[6]

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012). Section 32703(a) of MAP–21 directed the Secretary of Transportation (authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.''[7] As MAP–21 defined ''safety belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.[8]

Even as it did so, however, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.''[9] NHTSA also reiterated that there have been concerns expressed in literature in this area about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.[10] The agency also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts'' specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that manufacturers may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[11] The basis for the petition would be that the applicant is unable to sell a bus whose overall level of safety is at least equal to that of a non-exempted vehicle; *i.e.,* for side-facing seats, lap belts provide at least an equivalent level of safety as lap and shoulder belts.

b. Receipt of Petitions

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, 13 final-stage manufacturers of entertainer motorcoaches have submitted individual, mostly identical[12] petitions asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on their vehicles. The petitions seek to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. The basis for each of the applications is that compliance would prevent the petitioners from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (49 CFR 555.6(d)).[13]

For the convenience of readers, and to facilitate administrative processing of the petitions, NHTSA is issuing this single document to notify the public of and request comment on the petitions rather than publishing separate notices for each petition. Copies of each petition have been placed in the docket listed in the heading of this notice. To view the petitions, go to *http://www.regulations.gov* and enter the docket number in the heading.

The petitioners are listed alphabetically as follows:

All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc.

[1] 49 CFR 555.5(b)(5) and 555.5(b)(7).

[2] 555.8(b) and 555.8(e).

[3] 78 FR 70416 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

[4] 75 FR at 50971.

[5] 75 FR at 50971–50972.

[6] *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf* [Footnote in text.]

[7] MAP–21 states at § 32702(6) that ''the term 'motorcoach' has the meaning given the term 'over-the-road bus' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.'' Section 3038(a)(3) (49 U.S.C. 5310 note) states: ''The term 'over-the-road bus' means a bus characterized by an elevated passenger deck located over a baggage compartment.''

[8] For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer's option.

[9] 78 FR at 70448, quoting from the agency's Anton's Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

[10] Editors: Fildes, B., Digges, K., ''Occupant Protection in Far Side Crashes,'' Monash University Accident Research Center, Report No. 294, April 2010, pg. 57. [Footnote in text.]

[11] 78 FR at 70448.

[12] The petitions just differed in the name, address and business structure of each petitioner.

[13] The petitions are related to a petition for temporary exemption NHTSA received from Hemphill Brothers Leasing Company, LLC (Hemphill) on the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses. (Notice of receipt of petition, 84 FR 11735 (March 28, 2019); notice of grant of petition, 84 FR 69966 (November 14, 2019).) In its original petition, Hemphill stated that 39 ''other petitioners'' were covered by it. After NHTSA noted that the Safety Act and NHTSA's procedures did not clearly allow bundling such petitions (84 FR at 11738), the other manufacturers submitted individual petitions. Originally, 41 manufacturers submitted petitions, but later all but 13 withdrew their petitions. Today's notice pertains to those 13 remaining petitions.

c. Brief Overview of the Petitions

Each petitioner states that it typically receives a bus shell [14] from an ''original manufacturer'' and ''customizes the Over-the-Road Bus ('OTRB') to meet the needs of entertainers, politicians, musicians, celebrities and other specialized customers who use motorcoaches as a necessity for their businesses.'' Each petitioner states that it ''builds out the complete interior'' of the bus shell, including—

> roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, invertor and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

Each petitioner states that ''fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S. market each year.''

Pursuant to 49 CFR 555.6(d), an application must provide ''[a] detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempt vehicles.''

Each petitioner reiterates the agency's discussion from the November 2013 seat belt final rule, summarized above. The petitioners also state that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so ''there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions.'' Each petitioner believes that if they comply with the final rule as published, they would be ''forced to offer'' customers—

> a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed. The current requirement in FMVSS 208 for Type 2 belts at side-facing seating positions in OTRBs makes the applicants unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the level of safety of a non-exempted vehicle.

Pursuant to 49 CFR 555.5(b)(7), petitioners must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

Each petitioner states that granting an exemption to allow manufacturers an option of installing a Type 1 lap belt at side-facing seating positions is consistent with the public interest because ''NHTSA's analysis in developing this rule found that such belts presented no demonstrable increase in associated risk.'' The petitioners also each state that the final rule requiring Type 2 belts at side-facing seats ''was not the result of any change in NHTSA policy or analysis, but rather resulted from an overly broad mandate by Congress for 'safety belts to be installed in motorcoaches at each designated seating position.' '' They state that, ''based on the existing studies referenced herein and noted in the rulemaking, petitioners assert that Type 1 belts at side-facing seats may provide equivalent or even superior occupant protection than Type 2 belts.''

Petitioners believe that an option for Type 1 belts at side-facing seats is consistent with the objectives of the Safety Act because, they state, § 30111(a) of the Safety Act states that the Secretary shall establish motor vehicle safety standards that ''shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.'' Petitioners state that—

> an option for Type 1 or Type 2 belts at side-facing seating positions is practicable as it allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design. Additionally, the option to install either Type 1 or Type 2 belts at such locations meets the need for motor vehicle safety as it is consistent with current analysis by NHTSA and the European Commission that indicates no demonstrable difference in risk between the two types of belts when installed in sideways-facing seats. Finally, the option for Type 1 or Type 2 belts at side-facing seat locations provides an objective standard that is easy for manufacturers to understand and meet.

The petitioners indicate that if there is no future NHTSA research, testing or analysis to justify the use of Type 2 belts in side-facing seats in over-the-road buses, they expect to seek to renew the exemption, if granted, at the end of the exemption period.

f. Comment Period

The agency seeks comment from the public on the merits of the petitions requesting a temporary exemption from FMVSS No. 208's shoulder belt requirement for side-facing seats. NHTSA would like to make clear that the petitioners seek to install lap belts at the side-facing seats; they do not seek to be completely exempted from a belt requirement. Further, the petitioners' requests do not pertain to forward-facing designated seating positions on their vehicles. Under FMVSS No. 208, forward-facing seating positions on motorcoaches must have Type 2 lap and shoulder belts, and the petitioners are not raising issues about that requirement for forward-facing seats. After considering public comments and other available information, NHTSA will publish a notice of final action on the petitions in the **Federal Register**.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95 and 501.4.

James Clayton Owens,

Deputy Administrator.

[FR Doc. 2020–18214 Filed 8–19–20; 8:45 am]

BILLING CODE 4910–59–P

[14] The petitions describe the bus as generally containing the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

DEPARTMENT OF TRANSPORTATION

Review of American/JetBlue Agreements

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Extension of waiting period.

SUMMARY: American Airlines, Inc. (American) and JetBlue Airways Corporation (JetBlue) have submitted cooperative agreements, including code-sharing and alliance agreements, to the U.S. Department of Transportation (Department) for review. The statute requires such joint venture agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements may take effect and authorizes the Department to extend the waiting period for these agreements beyond the initial 30-day period. The Department has determined to extend the waiting period for the American/JetBlue agreements for an additional 90 days.

DATES: The waiting period will now expire on November 19, 2020.

FOR FURTHER INFORMATION CONTACT: Todd Homan, Director, Office of Aviation Analysis, 1200 New Jersey Avenue SE, Washington, DC 20590 or (202) 366–5903.

SUPPLEMENTARY INFORMATION: On July 22, 2020, American and JetBlue submitted cooperative agreements, including code-sharing and alliance agreements, to the Department. We are informally reviewing the agreements submitted by the two carriers under 49 U.S.C. 41720. The statute requires such joint venture agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements may take effect.

Pursuant to 49 U.S.C. 41720(a)(1), this requirement currently covers code-sharing agreements, long-term wet leases involving a substantial number of aircraft, and agreements concerning frequent flyer programs. By publishing a notice in the **Federal Register**, we may extend the waiting period by up to 150 days in the case of a joint venture agreement with respect to code-sharing and by up to 60 days for other types of agreements. At the end of the waiting period (either the 30-day period or any extended period established by us), the parties are free to implement their agreement unless the Department has taken action. If we determine that the agreements' implementation would constitute an unfair or deceptive practice or unfair method of competition, the Department would issue an order under 49 U.S.C. 41712 and institute a formal enforcement proceeding.

In the past, we have conducted the reviews authorized by 49 U.S.C. 41720 informally. The airline parties to joint venture agreements have filed the agreements directly with the Department staff that reviews them. Further, we have not established a docketed proceeding on any such agreements. As part of the Department's informal review of the agreements under Section 41720, we focus on whether they would reduce competition or would violate antitrust laws or principles. Our review is analogous to the review of notifiable mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, since we are considering whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

In our review, we consult the Justice Department, which is responsible for enforcing the antitrust laws and may file suit and seek injunctive relief against the parties to an airline agreement, whether or not the agreement is subject to 49 U.S.C. 41720. We seek to avoid duplicative proceedings by this Department and the Justice Department.

Joint venture agreements featuring code-sharing and other forms of cooperation between separate entities do not constitute a merger and, in contrast to the antitrust-immunized alliances between U.S. and foreign airlines, are less likely to lead to a substantial integration of the partners' operations. Such agreements, however, would likely reduce competition if their terms or the resulting relationship among the airline partners would create the potential for collusion on price and service levels in markets where the airlines compete, or if the agreements and the airlines' relationship could otherwise significantly reduce competition, for example, by unreasonably restricting each airline's ability to set its own fares and service levels.

The joint venture agreements submitted by the parties require the Department to undertake a detailed review of the carriers' submission and analysis of its impacts to competition, as well as analyzing the benefits of the transaction. While American and JetBlue submitted agreements on July 22, 2020, they are still negotiating and finalizing several alliance agreements material to the transaction. The two carriers also filed prior to completing their document production process. We need adequate time to review these documents once they are filed. Extending the waiting period will also facilitate the Department coordinating, as contemplated by 49 U.S.C. 41720(f), with the Antitrust Division of the Department of Justice, which is responsible for ensuring that the agreements comply with the antitrust laws of the United States. We have therefore determined to extend the waiting period by 90 days, from August 21, 2020, to November 19, 2020.

We understand the need to complete our review as expeditiously as possible, so that American and JetBlue will know our views on whether and under what terms they may go forward with the agreements. We may therefore terminate the waiting period upon earlier completion of our review.

Authority: 49 U.S.C. 41720(c)(2).

Dated: August 14, 2020.

Joel Szabat,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2020–18193 Filed 8–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Action(s)

On August 17, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ECOBU, Patrick (a.k.a. MUKISA, Patrick), Uganda; DOB 29 Jan 1976; nationality Uganda; Gender Male; National ID No. 001278331 (Uganda) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2017 Comp., p. 399, (E.O. 13818) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. MIREMBE, Dorah, Uganda; DOB 27 Feb 1979; nationality Uganda; Gender Female; National ID No. 001278404 (Uganda) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

3. MUKIIBI, Moses, Uganda; DOB 09 May 1954; POB Bugobango Village, Mpigi District, Uganda; nationality Uganda; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a current

or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption relation to government contracts or the extraction of natural resources, or bribery.

4. MUSENE, Wilson Masalu (a.k.a. MUSENE, Wilson Musalu), Uganda; DOB 06 Mar 1956; POB Bushiswabula Village, Mbale District, Uganda; nationality Uganda; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption relation to government contracts or the extraction of natural resources, or bribery.

Dated: August 17, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–18307 Filed 8–19–20; 8:45 am]

BILLING CODE 4810–AL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Correction; Unified Carrier Registration Plan Board of Directors Meeting

AGENCY: Unified Carrier Registration Plan.

ACTION: Notice; correction.

SUMMARY: This document corrects the Conference ID listed in a Sunshine Act Notice published in the **Federal Register** of August 7, 2020.

DATES: August 17, 2020.

FOR FURTHER INFORMATION CONTACT: Alex B. Leath, Chief Legal Officer, Unified Carrier Registration Plan, (205) 521–8899.

SUPPLEMENTARY INFORMATION:

Correction

In Sunshine Act Notice FR Doc. 2020–17446, on page 48073, in the issue of August 7, 2020, in the first column, the Conference ID ''996 1775 0976'' listed under the heading ''Place'' is corrected to read ''988 5271 2972.''

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–18442 Filed 8–18–20; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0515]

Agency Information Collection Activity: Maintenance of Records Under 38 CFR 36.4333

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 19, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0515'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0515'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 36.4317.

Title: MAINTENANCE OF RECORDS UNDER 38 CFR 36.4333.

OMB Control Number: 2900–0515.

Type of Review: Reinstatement.

Abstract: The Department of Veterans Affairs (VA) Loan Guaranty program guarantees loans made by private lenders to Veterans for the purchase, construction, and refinancing of homes owned and occupied by Veterans. Under 38 CFR 36.4333, VA requires holders to maintain and lenders to retain all records pertaining to loans guaranteed by VA. Under this same authority, VA has a right to inspect, examine, or audit, at a reasonable time and place, such records to ensure program participants are in compliance with applicable laws, regulations, policies, procedures and contract provisions. VA utilizes the data collected through loan audits to require corrective actions by lenders and holders who failed to adhere to VA regulations and statutes. It also uses the data collected through this authority to provide annual feedback to lenders, through the Lender Scorecard, on certain loan characteristics such as interest rate, fees and charges, audit results, etc., as compared to the national average of all VA lenders.

Affected Public: Individuals and Households.

Estimated Annual Burden: 17,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 35,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–18292 Filed 8–19–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 87 and 1030

Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87 and 1030

[EPA–HQ–OAR–2018–0276; FRL–10010–88–OAR]

RIN 2060–AT26

Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing greenhouse gas (GHG) emission standards applicable to certain classes of engines used by certain civil subsonic jet airplanes with a maximum takeoff mass greater than 5,700 kilograms and by certain civil larger subsonic propeller-driven airplanes with turboprop engines having a maximum takeoff mass greater than 8,618 kilograms. These proposed standards are equivalent to the airplane CO_2 standards adopted by the International Civil Aviation Organization (ICAO) in 2017 and would apply to both new type design airplanes and in-production airplanes. The standards proposed in this rule are the equivalent of the ICAO standards, consistent with U.S. efforts to secure the highest practicable degree of uniformity in aviation regulations and standards. The proposed standards would, if finalized, also meet the EPA's obligation under section 231 of the Clean Air Act to adopt GHG standards for certain classes of airplanes as a result of the 2016 ''Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare'' (hereinafter ''2016 Findings'')—for six well-mixed GHGs emitted by certain classes of airplane engines. Airplane engines emit only two of the six well-mixed GHGs, CO_2 and nitrous oxide (N_2O). Accordingly, EPA is proposing to use the fuel-efficiency-based metric established by ICAO, which reasonably serves as a surrogate for controlling both the GHGs emitted by airplane engines, CO_2 and N_2O.

DATES:

Comments: Written comments on this proposal must be received on or before October 19, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 21, 2020.

Public Hearing: EPA will announce the public hearing date and location for this proposal in a supplemental **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0276, at *http://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 to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

EPA solicits comments on all aspects of the proposed standards. However, we do not seek and do not intend to respond to comments on any aspect of EPA's 2016 Findings.

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.

FOR FURTHER INFORMATION CONTACT: Bryan Manning, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4832; email address: *manning.bryan@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

This proposed action would affect companies that manufacture civil subsonic jet airplanes that have a maximum takeoff mass (MTOM) of greater than 5,700 kilograms and civil subsonic propeller driven airplanes (*e.g.,* turboprops) that have a MTOM greater than 8,618 kilograms, including the manufacturers of the engines used on these airplanes. Affected entities include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry ...	336412	Manufacturers of new aircraft engines
Industry ...	336411	Manufacturers of new aircraft

[a] North American Industry Classification System (NAICS).

This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table might also be subject to these proposed regulations. To determine whether your activities are regulated by this action, you should carefully examine the relevant applicability criteria in 40 CFR parts 87 and 1030. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

For consistency purposes across the United States Code of Federal Regulations (CFR), the terms ''airplane,'' ''aircraft,'' and ''civil aircraft'' have the meanings found in title 14 CFR and are used as appropriate throughout the new proposed regulation under 40 CFR part 1030.

B. Did EPA conduct a peer review before issuing this proposed rule?

This regulatory action is supported by influential scientific information. Therefore, the EPA conducted peer reviews consistent with the Office of Management and Budget's (OMB's) Final Information Quality Bulletin for Peer Review.[1] Two different reports used in support of this proposed action underwent peer review; a report detailing the technologies likely to be used in compliance with the proposed standards and their associated costs [2] and a report detailing the methodology and results of the emissions inventory modeling.[3] These reports were each peer-reviewed through external letter reviews by multiple independent subject matter experts (including experts from academia and other government agencies, as well as independent technical experts).[4] [5] The peer review reports and the Agency's response to the peer review comments are available in Docket ID No. EPA–HQ–OAR–2018–0276.

C. Executive Summary

1. Purpose of the Proposed Regulatory Action

One of the core functions of ICAO is to adopt Standards and Recommended Practices on a wide range of aviation-related matters, including aircraft emissions. As a member State of the ICAO, the United States seeks to secure the highest practicable degree of uniformity in aviation regulations and standards.[6] ICAO adopted airplane CO_2 standards in 2017. The adoption of these aviation standards into U.S. law will align with the ICAO standards. For reasons discussed herein, the EPA is proposing to adopt standards for GHG emissions from certain classes of engines used on covered airplanes (hereinafter ''covered airplanes'' or ''airplanes'') that are equivalent in scope, stringency and timing to the CO_2 standards adopted by ICAO.

These proposed standards would allow U.S. manufacturers of covered airplanes to remain competitive in the global marketplace. In the absence of U.S. standards for implementing the ICAO Airplane CO_2 Emission Standards, U.S. civil airplane manufacturers could be forced to seek CO_2 emissions certification from an aviation certification authority of another country (not the Federal Aviation Administration (FAA)) in order to market and operate their airplanes internationally. U.S. manufacturers would be presumed to be at a significant disadvantage if the U.S. fails to adopt standards that are at least as stringent as the ICAO standards for CO_2 emissions. The ICAO Airplane CO_2 Emission Standards have been adopted by other ICAO member states that certify airplanes. The action to adopt in the U.S. GHG standards that match the ICAO Airplane CO_2 Emission Standards will help ensure international consistency and acceptance of U.S. manufactured airplanes worldwide.

In August 2016, the EPA issued two findings regarding GHG emissions from aircraft engines (the 2016 Findings).[7] First, the EPA found that elevated concentrations of GHGs in the atmosphere endanger the public health and welfare of current and future generations within the meaning of section 231(a)(2)(A) of the Clean Air Act (CAA). Second, EPA found that emissions of GHGs from certain classes of engines used in certain aircraft are contributing to the air pollution that endangers public health and welfare under CAA section 231(a)(2)(A). Additional details of the 2016 Findings are described in Section III. As a result of the 2016 Findings, CAA sections 231(a)(2)(A) and (3) obligate the EPA to propose and adopt, respectively, GHG standards for these covered aircraft engines.

2. Summary of the Major Provisions of the Proposed Regulatory Action

The EPA is proposing to regulate GHG emissions from covered airplanes through the adoption of domestic GHG regulations that match international standards to control CO_2 emissions. The proposed GHG standards are equivalent to the CO_2 standards adopted by ICAO and will be implemented and enforced in the U.S. The proposed standards would apply to covered airplanes: Civil subsonic jet airplanes (those powered by turbojet or turbofan engines and with a

[1] OMB, 2004: Memorandum for Heads of Departments and Agencies, *Final Information Quality Bulletin for Peer Review.* Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2005/m05-03.pdf.*

[2] ICF, 2018: *Aircraft CO_2* Cost and Technology Refresh and Industry Characterization, Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[3] U.S. EPA, 2020: *Technical Report on Aircraft Emissions Inventory and Stringency Analysis,* July 2020, 52pp.

[4] RTI International and EnDyna, *Aircraft CO2 Cost and Technology Refresh and Aerospace Industry Characterization: Peer Review,* June 2018, 114pp.

[5] RTI International and EnDyna, *EPA Technical Report on Aircraft Emissions Inventory and Stringency Analysis: Peer Review,* July 2019, 157pp.

[6] ICAO, 2006: Convention on International Civil Aviation, Ninth Edition, Document 7300/9, Article 37, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[7] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

MTOM greater than 5,700 kilograms), as well as larger civil subsonic propeller-driven airplanes (those powered by turboprop engines and with a MTOM greater than 8,618 kilograms). The timing and stringencies of the standards would differ depending on whether the covered airplane is a new type design (*i.e.,* a design that has not previously been type certificated under title 14 CFR) or an in-production model (*i.e.,* an existing design that had been type certificated under title 14 CFR prior to the effective date of the GHG standards). The standards for new type designs would apply to covered airplanes for which an application for certification is submitted to the FAA on or after January 1, 2020 (January 1, 2023, for new type designs that have a maximum takeoff mass (MTOM) of 60,000 kilograms MTOM or less and have 19 passenger seats or fewer). The in-production standards would apply to covered airplanes beginning January 1, 2028. Additionally, consistent with ICAO standards, the EPA is proposing that, before the in-production standards otherwise apply in 2028, certain modifications made to airplanes (*i.e.,* changes that result in an increase in GHG emissions) would trigger a requirement to certify to the in-production regulation beginning January 1, 2023.

The EPA is proposing to adopt the ICAO CO_2 metric, which measures fuel efficiency, for demonstrating compliance with the GHG emission standards. This metric is a mathematical function that incorporates the specific air range (SAR) of an airplane/engine combination (a traditional measure of airplane cruise performance in units of kilometer/kilogram of fuel) and the reference geometric factor (RGF), a measure of fuselage size. The metric is further discussed in Section V.A.

To measure airplane fuel efficiency, the EPA is proposing to adopt the ICAO test procedures whereby the airplane/engine SAR value is measured at three specific operating test points, and a composite of those results is used in the metric to determine compliance with the proposed GHG standards. The test procedures are discussed in Section V.H.

Consistent with the current annual reporting requirement for engine emissions, the EPA is proposing to require the annual reporting of the number of airplanes produced, airplane characteristics, and test parameters. Further information on all aspects of the proposed GHG standards can be found in Section V.

Finally, the EPA is proposing to update the existing incorporation by reference of the ICAO test procedures for hydrocarbons (HC), carbon monoxide (CO), oxides of nitrogen (NO_X) and smoke to reference the most recent edition of the ICAO procedures. This update would improve clarity in the existing test procedures and includes a minor change to the composition of the test fuel used for engine certification. Further details on this technical amendment can be found in Section VIII.

3. Cost and Benefits

U.S. manufacturers have already developed or are developing technologies that will allow affected airplanes to comply with the ICAO standards, in advance of EPA's adoption of standards. Furthermore, based on the manufacturers' expectation that the ICAO standards will be implemented globally, the EPA anticipates nearly all affected airplanes to be compliant by the respective effective dates for new type designs and for in-production airplanes. This includes the expectation that existing in-production airplanes that are non-compliant will either be modified and re-certificated as compliant or will likely go out of production before the production compliance date of January 1, 2028. For these reasons, the EPA is not projecting emission reductions associated with these proposed GHG regulations. We do, however, project a small cost associated with the proposed annual reporting requirement. For further details on the benefits and costs associated with these proposed GHG standards, see Sections VI and VII, respectively.

II. Introduction: Overview and Context for This Proposed Action

This section provides a summary of the proposed rule. This section describes the EPA's statutory authority, the U.S. airplane engine regulations and the relationship with ICAO's international standards, and consideration of the whole airplane in addressing airplane engine GHG emissions.

A. Summary of Proposed Rule

In February 2016, ICAO's Committee on Aviation Environmental Protection (CAEP) agreed to international Airplane CO_2 Emission Standards, which ICAO approved in 2017. The EPA is proposing to adopt GHG standards that are equivalent to the international Airplane CO_2 Emission Standards promulgated by ICAO in Annex 16.[8]

As a result of the 2016 findings,[9] [10] the EPA is obligated under section 231(a) of the CAA to propose and issue emission standards applicable to GHG emissions from the classes of engines used by covered aircraft included in the 2016 Findings. As described later in further detail in Section III, we are proposing to regulate the air pollutant that is the aggregate of the six well-mixed GHGs. Only two of the six well-mixed GHGs—CO_2 and N_2O—have non-zero emissions for total civil subsonic airplanes and U.S. covered airplanes. CO_2 represents 99 percent of all GHGs emitted from both total U.S. civil airplanes and U.S. covered airplanes, and N_2O represents 1 percent of GHGs emitted from total airplanes and U.S. covered airplanes. Promulgation of the proposed GHG emission standards for the certain classes of engines used by covered airplanes would fulfill EPA's obligations under the CAA and is the next step for the United States in implementing the ICAO standards promulgated in Annex 16 under the Chicago Convention. We are proposing a new rule that controls aircraft engine GHG emissions through the use of the ICAO regulatory metric that quantifies airplane fuel efficiency.

The proposed rule would establish GHG standards applicable to U.S. airplane manufacturers that are no less stringent than the ICAO Airplane CO_2 Emission Standards adopted by ICAO.[11] This proposed rule incorporates the same compliance schedule as the ICAO

[8] ICAO, 2006: Convention on International Civil Aviation, Ninth Edition, Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[9] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Final Rule,* 81 FR 54422 (August 15, 2016).

[10] Covered airplanes are those airplanes to which the international CO_2 standards and the proposed GHG standards would apply: Subsonic jet airplanes with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven (*e.g.,* turboprop) airplanes with a MTOM greater than 8,618 kilograms. Section V describes covered and non-covered airplanes in further detail.

ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO CAEP/10 report is found on page 27 of the English Edition 2020 catalog and is copyright protected; Order No. 10069.

[11] ICAO's certification standards and test procedures for airplane CO_2 emissions are based on the consumption of fuel (or fuel burn) under prescribed conditions at optimum cruise altitude. ICAO uses the term, CO_2, for its standards and procedures, but ICAO is actually regulating or measuring the rate of an airplane's fuel burn (fuel efficiency). For jet fuel, the emissions index or emissions factor for CO_2 is 3.16 kilograms of CO_2 per kilogram of fuel burn (or 3,160 grams of CO_2 per kilogram of fuel burn). Thus, to convert an airplane's rate of fuel burn to a CO_2 emissions rate, this emission index needs to be applied.

Airplane CO_2 Emission Standards. The proposed standards would apply to both new type designs and in-production airplanes. The in-production standards would have later applicability dates and different emission levels than for the standards for new type designs. The different emission levels for new type designs and in-production airplanes depend on the airplane size, weight, and availability of fuel efficiency technologies.

Apart from the proposed GHG requirements, we are also proposing to update the engine emissions testing and measurement procedures applicable to HC, NO_X, CO, and smoke in current regulations. The updates would implement recent amendments to ICAO standards in Annex 16, Volume II, and these updates would be accomplished by incorporating provisions of the Annex by reference, as has historically been done.

B. EPA Statutory Authority and Responsibilities Under the Clean Air Act

Section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. (See 42 U.S.C. 7571(a)(2)(A)). Section 231(a)(2)(B) directs the EPA to consult with the Administrator of the FAA on such standards, and it prohibits the EPA from changing aircraft engine emission standards if such a change would significantly increase noise and adversely affect safety (see 42 U.S.C. 7571(a)(2)(B)(i)–(ii)). Section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' (see 42 U.S.C. 7571(a)(3)). The U.S. Court of Appeals for the D.C. Circuit has held that this provision confers an unusually broad degree of discretion on the EPA to adopt aircraft engine emission standards as the Agency determines are reasonable. *Nat'l Ass'n of Clean Air Agencies* v. *EPA,* 489 F.3d 1221, 1229–30 (D.C. Cir. 2007) (*NACAA*).

In addition, under CAA section 231(b) the EPA is required to ensure, in consultation with the U.S. Department of Transportation (DOT), that the effective date of any standard provides the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance (see 42 U.S.C. 7571(b)). Section 232 then directs the Secretary of Transportation to prescribe regulations to ensure compliance with the EPA's standards (see 42 U.S.C. 7572). Finally, section 233 of the CAA vests the authority to promulgate emission standards for aircraft engines only in the Federal Government. States are preempted from adopting or enforcing any standard respecting emissions from aircraft or aircraft engines unless such standard is identical to the EPA's standards (see 42 U.S.C. 7573).

C. Background Information Helpful To Understanding This Proposed Action

Civil airplanes and associated engines are international commodities that are manufactured and sold around the world. The member States of ICAO and the world's airplane and engine manufacturers participated in the deliberations leading up to ICAO's adoption of the international Airplane CO_2 Emission Standards. However, ICAO's standards are not directly applicable to and enforceable against member States' airplane and engine manufacturers. Instead, after adoption of the standards by ICAO, a member State is required (as described later in Section II.D.1) to adopt domestic standards at least as stringent as ICAO standards and apply them, as applicable, to subject airplane and engine manufacturers in order to ensure recognition of their airworthiness and type certificate by other civil aviation authorities. This proposed rulemaking is a necessary step to meet this obligation for the United States.

D. U.S. Airplane Regulations and the International Community

The EPA and the FAA work within the standard-setting process of ICAO's CAEP to help establish international emission standards and related requirements, which individual member States adopt into domestic law and regulations. Historically, under this approach, international emission standards have first been adopted by ICAO, and subsequently the EPA has initiated rulemakings under CAA section 231 to establish domestic standards that are at least as stringent as ICAO's standards. After EPA promulgates aircraft engine emission standards, CAA section 232 requires the FAA to issue regulations to ensure compliance with the EPA aircraft engine emission standards when issuing airworthiness certificates pursuant to its authority under Title 49 of the United States Code. This proposed rule continues this historical rulemaking approach.

1. International Regulations and U.S. Obligations

The EPA has worked with the FAA since 1973, and later with ICAO, to develop domestic and international standards and other recommended practices pertaining to aircraft engine emissions. The Convention on International Civil Aviation (commonly known as the 'Chicago Convention') was signed in 1944 at the Diplomatic Conference held in Chicago. The Chicago Convention establishes the legal framework for the development of international civil aviation. The primary objective is ''that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [12] In 1947, ICAO was established, and later in that same year ICAO became a specialized agency of the United Nations (UN). ICAO sets international standards for aviation safety, security, efficiency, capacity, and environmental protection and serves as the forum for cooperation in all fields of international civil aviation. ICAO works with the Chicago Convention's member States and global aviation organizations to develop international Standards and Recommended Practices (SARPs), which member States reference when developing their domestic civil aviation regulations. The United States is one of 193 currently participating ICAO member States.[13] [14]

In the interest of global harmonization and international air commerce, the Chicago Convention urges its member States to ''collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, . . . in all matters which such uniformity will facilitate and improve air navigation.'' The Chicago Convention also recognizes that member States may adopt national standards that are more or less stringent than those agreed upon by ICAO or standards that are different in character or comply with the ICAO standards by other means. Any member State that finds it impracticable to comply in all respects

[12] ICAO, 2006: *Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[13] Members of ICAO's Assembly are generally termed member States or contracting States. These terms are used interchangeably throughout this preamble.

[14] There are currently 193 contracting states according to ICAO's website: *https://www.icao.int/MemberStates/Member%20States.English.pdf* (last accessed March 16, 2020).

with any international standard or procedure, or that determines it is necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, is required to give notification to ICAO of the differences between its own practice and that established by the international standard.[15]

ICAO's work on the environment focuses primarily on those problems that benefit most from a common and coordinated approach on a worldwide basis, namely aircraft noise and engine emissions. SARPs for the certification of aircraft noise and aircraft engine emissions are contained in Annex 16 to the Chicago Convention. To continue to address aviation environmental issues, in 2004, ICAO established three environmental goals: (1) Limit or reduce the number of people affected by significant aircraft noise; (2) limit or reduce the impact of aviation emissions on local air quality; and (3) limit or reduce the impact of aviation GHG emissions on the global climate.

The Chicago Convention has a number of other features that govern international commerce. First, member States that wish to use aircraft in international transportation must adopt emission standards that are at least as stringent as ICAO's standards if they want to ensure recognition of their airworthiness certificates. Member States may ban the use of any aircraft within their airspace that does not meet ICAO standards.[16] Second, the Chicago Convention indicates that member States are required to recognize the airworthiness certificates issued or rendered valid by the contracting State in which the aircraft is registered provided the requirements under which the certificates were issued are equal to or above ICAO's minimum standards.[17] Third, to ensure that international commerce is not unreasonably constrained, a member State that cannot meet or deems it necessary to adopt regulations differing from the international standard is obligated to notify ICAO of the differences between its domestic regulations and ICAO standards.[18]

ICAO's CAEP, which consists of members and observers from states, intergovernmental and non-governmental organizations representing the aviation industry and environmental interests, undertakes ICAO's technical work in the environmental field. The Committee is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impacts of international civil aviation. CAEP's terms of reference indicate that ''CAEP's assessments and proposals are pursued taking into account: Technical feasibility; environmental benefit; economic reasonableness; interdependencies of measures (for example, among others, measures taken to minimize noise and emissions); developments in other fields; and international and national programs.'' [19] The ICAO Council reviews and adopts the recommendations made by CAEP. It then reports to the ICAO Assembly, the highest body of the organization, where the main policies on aviation environmental protection are adopted and translated into Assembly Resolutions. If ICAO adopts a CAEP proposal for a new environmental standard, it then becomes part of ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[20] [21]

The FAA plays an active role in ICAO/CAEP, including serving as the representative (member) of the United States at annual ICAO/CAEP Steering Group meetings, as well as the ICAO/CAEP triennial meetings, and contributing technical expertise to CAEP's working groups. The EPA serves as an advisor to the U.S. member at the annual ICAO/CAEP Steering Group and triennial ICAO/CAEP meetings, while also contributing technical expertise to CAEP's working groups and assisting and advising FAA on aviation emissions, technology, and environmental policy matters. In turn, the FAA assists and advises the EPA on aviation environmental issues, technology and airworthiness certification matters.

CAEP's predecessor at ICAO, the Committee on Aircraft Engine Emissions (CAEE), adopted the first international SARPs for aircraft engine emissions that were proposed in 1981.[22] These standards limited aircraft engine emissions of hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X). The 1981 standards applied to newly manufactured engines, which are those engines built after the effective date of the regulations—also referred to as in-production engines. In 1993, ICAO adopted a CAEP/2 proposal to tighten the original NO_X standard by 20 percent and amend the test procedures.[23] These 1993 standards applied both to newly certificated turbofan engines (those engine models that received their initial type certificate after the effective date of the regulations, referred to as newly certificated engines or new type design engines) and to in-production engines; the standards had different effective dates for newly certificated engines and in-production engines. In 1995, CAEP/3 recommended a further tightening of the NO_X standards by 16 percent and additional test procedure amendments, but in 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At the CAEP/4 meeting in 1998, the Committee adopted a similar 16 percent NO_X reduction proposal, which ICAO approved in 1998. Unlike the CAEP/2 standards, the CAEP/4 standards applied only to new type design engines after December 31, 2003. In 2004, CAEP/6 recommended a 12 percent NO_X reduction, which ICAO approved in 2005.[24] [25] The CAEP/6 standards applied

[15] ICAO, 2006: *Doc 7300-Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[16] ICAO, 2006: *Convention on International Civil Aviation, Article* 33, *Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf*(last accessed March 16, 2020).

[17] ICAO, 2006: *Convention on International Civil Aviation, Article 33, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[18] ICAO, 2006: *Convention on International Civil Aviation, Article 38, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[19] ICAO: CAEP Terms of Reference. Available at *http://www.icao.int/environmental-protection/Pages/Caep.aspx#ToR* (last accessed March 16, 2020).

[20] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, 174 pp. Available at *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. AN16–2.

[21] CAEP develops new emission standards based on an assessment of the technical feasibility, cost, and environmental benefit of potential requirements.

[22] ICAO, 2017: *Aircraft Engine Emissions: Foreword,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, 174pp. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. AN16–2.

[23] CAEP conducts its work triennially. Each 3-year work cycle is numbered sequentially and that identifier is used to differentiate the results from one CAEP meeting to another by convention. The first technical meeting on aircraft emission standards was CAEP's predecessor, *i.e.,* CAEE. The first meeting of CAEP, therefore, is referred to as CAEP/2.

[24] CAEP/5 did not address new airplane engine emission standards.

to new engine designs certificated after December 31, 2007. In 2010, CAEP/8 recommended a further tightening of the NO_X standards by 15 percent for new engine designs certificated after December 31, 2013.[26] [27] The Committee also recommended that the CAEP/6 standards be applied to in-production engines, which cut off the production of CAEP/4 compliant engines with the exception of spare engines; ICAO adopted these as standards in 2011.[28]

At the CAEP/10 meeting in 2016, the Committee agreed to the first airplane CO_2 emission standards, which ICAO approved in 2017. The CAEP/10 CO_2 standards apply to new type design airplanes for which the application for a type certificate will be submitted on or after January 1, 2020, some modified in-production airplanes on or after January 1, 2023, and all applicable in-production airplanes built on or after January 1, 2028.

2. EPA's Regulation of Aircraft Engine Emissions and the Relationship to International Aircraft Standards

As required by the CAA, the EPA has been engaged in reducing harmful air pollution from airplane engines for over 40 years, regulating gaseous exhaust emissions, smoke, and fuel venting from engines.[29] We have periodically revised these regulations. In a 1997 rulemaking, for example, we made our emission standards and test procedures more consistent with those of ICAO's CAEP for turbofan engines used in commercial aviation with rated thrusts greater than 26.7 kilonewtons.[30] These ICAO requirements are generally referred to as CAEP/2 standards.[31] The 1997 rulemaking included new NO_X emission standards for newly manufactured commercial turbofan engines [32] [33] and for newly certificated commercial turbofan engines.[34] [35] It also included a CO emission standard for in-production commercial turbofan engines.[36] In 2005, we promulgated more stringent NO_X emission standards for newly certificated commercial turbofan engines.[37] That final rule brought the U.S. standards closer to alignment with ICAO CAEP/4 requirements that became effective in 2004. In 2012, we issued more stringent two-tiered NO_X emission standards for newly certificated and in-production commercial and non-commercial turbofan engines, and these NO_X standards align with ICAO's CAEP/6 and CAEP/8 standards that became effective in 2013 and 2014, respectively.[38] [39] The EPA's actions to regulate certain pollutants emitted from aircraft engines come directly from the authority in section 231 of the CAA, and we have aligned the U.S. emissions requirements with those promulgated by ICAO. All of these previous emission standards have generally been considered anti-backsliding standards (most aircraft engines meet the standards), which are technology following.

The EPA and FAA worked from 2009 to 2016 within the ICAO/CAEP standard-setting process on the development of the international Airplane CO_2 Emission Standards. In this action, we are proposing to adopt GHG standards equivalent to the ICAO Airplane CO_2 Emission Standards. As stated earlier in this Section II, the standards established in the United States need to be at least as stringent as the ICAO Airplane CO_2 Emission Standards in order to ensure global acceptance of FAA airworthiness certification. Also, as a result of the 2016 Findings, as described later in Section V, the EPA is obligated under section 231 of the CAA to propose and issue emission standards applicable to GHG emissions from the classes of engines used by covered aircraft included in the 2016 Findings.

When the EPA proposed the aircraft GHG findings in 2015, we included an aircraft greenhouse gas emission standards advance notice of proposed rulemaking (henceforth the ''2015 ANPR'') [40] that provided information on the international process for setting the ICAO Airplane CO_2 Emission Standards. Also, the 2015 ANPR described and sought input on the potential use of section 231 of the CAA to adopt and implement the corresponding international Airplane CO_2 Emission Standards domestically as a CAA section 231 GHG standard. Section IV provides a summary of the ANPR comments that we received.

E. Consideration of Whole Airplane Characteristics

In addressing CO_2 emissions, ICAO adopted an approach that measures the fuel efficiency from the perspective of whole airplane design—an airframe and engine combination. Specifically, ICAO adopted CO_2 emissions test procedures based on measuring the performance of the whole airplane rather than the

[25] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16,Volume II, Fourth Edition, July 2017, 174pp. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. AN16–2.

[26] CAEP/7 did not address new aircraft engine emission standards.

[27] ICAO, 2010: *Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,* CAEP/8–WP/80 Available in Docket EPA–HQ–OAR–2010–0687.

[28] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, Amendment 9, 174 pp. CAEP/8 corresponds to Amendment 7 effective on July 18, 2011. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. AN16–2.

[29] U.S. EPA, 1973: Emission Standards and Test Procedures for Aircraft; Final Rule, 38 FR 19088 (July 17, 1973).

[30] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 62 FR 25355 (May 8, 1997).

[31] The full CAEP membership meets every three years and each session is denoted by a numerical identifier. For example, the second meeting of CAEP is referred to as CAEP/2, and CAEP/2 occurred in 1994.

[32] This does not mean that in 1997 we promulgated requirements for the re-certification or retrofit of existing in-use engines.

[33] Those engines built after the effective date of the regulations that were already certificated to pre-existing standards are also referred to as in-production engines.

[34] In the existing EPA regulations, 40 CFR part 87, newly certificated aircraft engines are described as engines of a type or model of which the date of manufacture of the first individual production model was after the implementation date. Newly manufactured aircraft engines are characterized as engines of a type or model for which the date of manufacturer of the individual engine was after the implementation date.

[35] Those engine models that received their initial type certificate after the effective date of the regulations are also referred to as new engine designs.

[36] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 62 FR 25355 (May 8, 1997).

[37] U.S. EPA, 2005: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 70 FR 69664 (November 17, 2005).

[38] U.S. EPA, 2012: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 77 FR 36342 (June 18, 2012).

[39] While ICAO's standards were not limited to ''commercial'' airplane engines, our 1997 standards were explicitly limited to commercial engines, as our finding that NO_X and carbon monoxide emissions from airplane engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare was so limited. See 62 FR 25358 (May 8, 1997). In the 2012 rulemaking, we expanded the scope of that finding and of our standards pursuant to CAA section 231(a)(2)(A) to include such emissions from both commercial and non-commercial airplane engines based on the physical and operational similarities between commercial and noncommercial civilian airplane and to bring our standards into full alignment with ICAO's.

[40] U.S. EPA, 2015: *Proposed Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking,* 80 FR 37758 (July 1, 2015).

airplane engines alone.[41] The ICAO standards account for three factors: Aerodynamics, airplane weight, and engine propulsion technologies. These airplane performance characteristics determine the overall CO_2 emissions. Rather than measuring a single chemical compound, the ICAO CO_2 emissions test procedures measure fuel efficiency based on how far an airplane can fly on a single unit of fuel at the optimum cruise altitude and speed.

The three factors—and technology categories that improve these factors—are described as follows:[42]

- *Weight:* Reducing basic airplane weight[43] via structural changes to increase the commercial payload or extend range for the same amount of thrust and fuel burn;
- *Propulsion (thermodynamic and propulsion efficiency):* Advancing the overall specific performance of the engine, to reduce the fuel burn per unit of delivered thrust; and
- *Aerodynamic:* Advancing the airplane aerodynamics to reduce drag and its associated impacts on thrust.

As examples of technologies that support addressing aircraft engine CO_2 emissions accounting for the airplane as a whole, manufacturers have already achieved significant weight reduction with the introduction of advanced alloys and composite materials and lighter weight control systems (*e.g.,* fly-by-wire)[44] and aerodynamic improvements with advanced wingtip devices such as winglets.

The EPA agrees with ICAO's approach to measure the fuel efficiency based on the performance of the whole airplane. Accordingly, under section 231 of the CAA, the EPA is proposing regulations that are consistent with this approach. We are proposing GHG test procedures that are the same as the ICAO CO_2 test procedures. (See Section V.H for details on the proposed test procedures.)

As stated earlier in Section II, section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. For a standard promulgated under CAA section 231(a)(2)(A) to be ''applicable to'' emissions of air pollutants from aircraft engines, it could take many forms and include multiple elements in addition to a numeric permissible engine exhaust rate. For example, EPA rules adopted pursuant to CAA section 231 have addressed fuel venting to prevent the discharge of raw fuel from the engine and have adopted test procedures for exhaust emission standards. See 40 CFR part 87, subparts B and G.

Given both the absence of a statutory directive on what form a CAA section 231 standard must take (in contrast to, for example, CAA section 129(a)(4), which requires numerical emissions limitations for emissions of certain pollutants from solid waste incinerators) and the D.C. Circuit's 2007 *NACAA* ruling that section 231 of the CAA confers an unusually broad degree of discretion on the EPA in establishing airplane engine emission standards, the EPA proposes to control GHG emissions in a manner identical to how ICAO's standards control CO_2 emissions—with a fuel efficiency standard based on the characteristics of the whole airplane. While this proposed standard incorporates characteristics of airplane design as adopted by ICAO, the EPA is not asserting independent regulatory authority over airplane design.

III. Summary of the 2016 Findings

On August 15, 2016,[45] the EPA issued two findings regarding GHG emissions from aircraft engines. First, the EPA found that elevated concentrations of GHGs in the atmosphere endanger the public health and welfare of current and future generations within the meaning of section 231(a)(2)(A) of the CAA. The EPA made this finding specifically with respect to the same six well-mixed GHGs—CO_2, methane, N_2O, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—that together were defined as the air pollution in the 2009 Endangerment Finding under section 202(a) of the CAA and that together were found to constitute the primary cause of climate change. Second, the EPA found that emissions of those six well-mixed GHGs from certain classes of engines used in certain aircraft[46] cause or contribute to the air pollution—the aggregate group of the same six GHGs—that endangers public health and welfare under CAA section 231(a)(2)(A).

The EPA identified U.S. covered aircraft as subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven (*e.g.,* turboprop) aircraft with a MTOM greater than 8,618 kilograms. See Section V of this proposed rule for examples of airplanes that correspond to the U.S. covered aircraft identified in the 2016 Findings.[47] The EPA did not at that time make findings regarding whether other substances emitted from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA also did not make a cause or contribute finding regarding GHG emissions from engines not used in U.S. covered aircraft (*i.e.,* those used in smaller turboprops, smaller jet aircraft, piston-engine aircraft, helicopters and military aircraft).

The EPA explained that the collective GHG emissions from the classes of engines used in U.S. covered aircraft contribute to the national GHG emission inventories[48] and estimated global GHG

[41] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, 432pp. Available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). ICAO Document 10069 is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog, and it is copyright protected; Order No. 10069. See Appendix C (starting on page 5C–1) of this report.

[42] ICAO, *Environmental Report 2010—Aviation and Climate Change,* 2010, which is located at *http://www.icao.int/environmental-protection/Pages/EnvReport10.aspx* (last accessed March 16, 2020).

[43] Although weight reducing technologies affect fuel burn, they do not affect the metric value for the proposed GHG standard. The standard is a function of maximum takeoff mass (MTOM). Reductions in airplane empty weight (excluding usable fuel and the payload) can be canceled out or diminished by a corresponding increase in payload, fuel, or both—when MTOM is kept constant. Section V and VII provide a further description of the metric value and the effects of weight reducing technologies.

[44] Fly-by-wire refers to a system which transmits signals from the cockpit to the airplane's control surfaces electronically rather than mechanically. AirlineRatings.com, Available at *https://www.airlineratings.com/did-you-know/what-does-the-term-fly-by-wire-mean/* (last accessed on March 16, 2020).

[45] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[46] Certain aircraft in this context are referred to interchangeably as ''covered airplanes,'' ''US covered airplanes,'' or airplanes throughout this notice of proposed rulemaking.

[47] 81 FR 54423, August 15, 2016.

[48] In 2014, classes of engines used in U.S. covered airplanes contribute to domestic GHG inventories as follows: 10 percent of all U.S. transportation GHG emissions, representing 2.8 percent of total U.S. emissions.

U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

emissions.[49] [50] [51] [52] The 2016 Findings accounted for the majority (89 percent) of total U.S. aircraft GHG emissions.[53] [54]

As explained in the 2016 Findings,[55] only two of the six well-mixed GHGs, CO_2 and N_2O, are emitted from covered aircraft. CO_2 represents 99 percent of all GHGs emitted from both total U.S. aircraft and U.S. covered aircraft, and N_2O represents 1 percent of GHGs emitted from total U.S. aircraft and U.S. covered aircraft.[56] Modern aircraft are overall consumers of methane.[57] Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are not products of aircraft engine fuel combustion. (Section V.I discusses controlling two of the six well-mixed GHGs—CO_2 and N_2O— in the context of the details of the proposed rule.)

IV. Summary of Advance Notice of Proposed Rulemaking and Comments Received

A. Summary

As described earlier in Section II, the 2015 ANPR[58] discussed the issues arising from the ICAO/CAEP proceedings for the international Airplane CO_2 Emission Standards. The ANPR requested public comment on a variety of issues to help ensure transparency and to obtain views on airplane engine GHG emission standards that the EPA might potentially adopt under the CAA section 231. This section provides a summary of the ANPR comments that the EPA received in 2015.

All major stakeholders (airplane manufacturers, engine manufacturers, airlines, states, and environmental organizations) expressed their support for the United States' efforts in ICAO/CAEP for the adoption of the international Airplane CO_2 Emission Standards, as well as the subsequent EPA adoption of a domestic GHG standard.

The states and environmental organizations commented that the U.S. aircraft sector is the single largest GHG emissions source yet to be regulated among the domestic transportation sectors. They indicated that the EPA should adopt airplane GHG emission standards that materially reduce GHG emissions from the U.S. airplane sector in the near- to mid-term, beyond the expected ''business-as-usual'' improvement absent GHG emission standards. These commenters stated that the airplane GHG emission standards should be technology-forcing standards.

The airplane manufacturers, aircraft engine manufacturers, and airlines commented that the U.S. should adopt airplane GHG emission standards that are equivalent to ICAO/CAEP's standards. These commenters indicated that aviation is a global industry which requires common, world-wide standards. Airplanes are uniquely mobile assets that are designed to fly anywhere in the world, and consistency amongst national rules makes sure there is a level playing field globally for the aviation industry. In addition, they asserted that the CAEP terms of reference for adopting airplane emission standards (which include technical feasibility, environmental benefit, and economic reasonableness[59]), as described earlier in Section II.D.1, line up with the criteria for adopting such standards under section 231 of the CAA. Therefore, the U.S. should align with those terms and criteria in continuing their efforts in the ICAO/CAEP proceedings and in subsequently adopting the ICAO/CAEP Airplane CO_2 Emission Standards domestically.

All of the comments received on the 2015 ANPR are located in the docket for the 2016 Findings under Docket ID No. EPA–HQ–OAR–2014–0828. See the ANPR phase of that docket.

V. Details for the Proposed Rule

For the proposed rule, this section describes the fuel efficiency metric that would be used as a measure of airplane GHG emissions, the size and types of airplanes that would be affected, the emissions levels, the applicable test procedures, and the associated reporting requirements. As explained earlier in

[49] In 2010, classes of engines used in U.S. covered airplanes contribute to global GHG inventories as follows: 26 percent of total global airplane GHG emissions, representing 2.7 percent of total global transportation emissions and 0.4 percent of all global GHG emissions.

U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[50] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

[51] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[52] The domestic inventory comparisons are for the year 2014, and global inventory comparisons are for the year 2010. The rationale for the different years is described in section V.B.4 of the 2016 Findings, 81 FR 54422 (August 15, 2016).

[53] Covered U.S. aircraft GHG emissions in the 2016 Findings were from airplanes that operate in and from the U.S. and thus contribute to emissions in the U.S. This includes emissions from U.S. domestic flights, and emissions from U.S. international bunker flights (emissions from the combustion of fuel used by airplanes departing the U.S., regardless of whether they are a U.S. flagged carrier—also described as emissions from combustion of U.S. international bunker fuels). For example, a flight departing Los Angeles and arriving in Tokyo, regardless of whether it is a U.S. flagged carrier, is considered a U.S. international bunker flight. A flight from London to Hong Kong is not.

[54] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks:* 1990–2014, 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

[55] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[56] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[57] Methane emissions are no longer considered to be emitted from aircraft gas turbine engines burning jet fuel A at higher power settings. Modern aircraft jet engines are typically net consumers of methane (Santoni et al. 2011). Methane is emitted at low power and idle operation, but at higher power modes aircraft engines consume methane. Over the range of engine operating modes, aircraft engines are net consumers of methane on average.

[58] 80 FR 37758 (July 1, 2015).

[59] CAEP's terms of reference indicate that ''CAEP's assessments and proposals are pursued taking into account: technical feasibility; environmental benefit; economic reasonableness; interdependencies of measures (for example, among others, measures taken to minimize noise and emissions); developments in other fields; and international and national programs.'' ICAO: CAEP Terms of Reference. Available at *http://www.icao.int/environmental-protection/Pages/Caep.aspx#ToR* (last accessed March 16, 2020).

Section III and in the 2016 Findings,[60] only two of the six well-mixed GHGs—CO_2 and N_2O—are emitted from covered aircraft. Both CO_2 and N_2O emissions scale with fuel burn, thus allowing them to be controlled through fuel efficiency.

We are proposing that the GHG emission regulations for this proposed rule would be specified in a new part in title 40 of the CFR—40 CFR part 1030. The existing aircraft engine regulations applicable to HC, NO_X, CO, and smoke would remain in 40 CFR part 87.

In order to promote international harmonization of aviation standards and to avoid placing U.S. manufacturers at a competitive disadvantage that likely would result if EPA were to adopt standards different from the standards adopted by ICAO, the EPA is proposing to adopt standards for GHG emissions from certain classes of engines used on airplanes that match the scope, stringency, and timing of the CO_2 standards adopted by ICAO. The EPA and the FAA worked within ICAO to help establish the international CO_2 emission standards, which under the Chicago Convention individual member States then adopt into domestic law and regulations in order to implement and enforce them against subject manufacturers. A member State that adopts domestic regulations differing from the international standard—in either scope, stringency or timing—is obligated to notify ICAO of the differences between its domestic regulations and the ICAO standards.[61]

Under the longstanding EPA and FAA rulemaking approach to regulate airplane emissions, international emission standards have been adopted by ICAO, with significant involvement from the FAA and the EPA, and subsequently the EPA has undertaken rulemakings under CAA section 231 to establish domestic standards that are the same as or at least as stringent as ICAO's standards. Then, CAA section 232 requires the FAA to issue regulations to ensure compliance with the EPA standards. In 2015, EPA issued an advance notice of proposed rulemaking[62] which noted EPA and FAA's engagement in ICAO to establish an international CO_2 standard and EPA's potential use of section 231 to adopt corresponding airplane GHG emissions standards domestically. This proposed rulemaking continues this statutory paradigm.

The proposed rule, if adopted, would facilitate the acceptance of U.S. manufactured airplanes and airplane engines by member States and airlines around the world. We anticipate U.S. manufacturers would be at a significant competitive disadvantage if the U.S. fails to adopt standards that are aligned with the ICAO standards for CO_2 emissions. Member States may ban the use of any airplane within their airspace that does not meet ICAO standards.[63] If the EPA were to adopt no standards or standards that were not as stringent as ICAO's standards, U.S. civil airplane manufacturers could be forced to seek CO_2 emissions certification from an aviation certification authority of another country (other than the FAA) in order to market their airplanes for international operation.

Having invested significant effort and resources, working with FAA and the Department of State, to gain international consensus to adopt the first-ever CO_2 standards for airplanes, the EPA believes that meeting the United States' obligations under the Chicago Convention by aligning domestic standards with the ICAO standards, rather than adopting more stringent standards, will have substantial benefits for future international cooperation on airplane emission standards, and such cooperation is the key for achieving worldwide emission reductions. Nonetheless, the EPA also analyzed the impacts of two more stringent alternatives, and the results of our analyses are described in chapters 4, 5, and 6 of the Draft Technical Support Document (TSD) which can be found in the docket for this rulemaking. The analyses show that one alternative would result in limited additional costs, but no additional GHG emission reductions compared to the proposed standards. The other alternative would have further limited additional costs and some additional GHG emission reductions compared to the proposed standards, but the additional emission reductions are relatively small from this alternative and do not justify differentiating from the international standards and disrupting international harmonization. ICAO intentionally established its standards at a level which is technology following, to adhere to its definition of technical feasibility that is meant to consider the emissions performance of in-production and in-development airplanes, including types that would first enter into service by about 2020. Thus, the additional emission reductions associated with the more stringent alternatives are relatively small because all but one of the affected airplanes either meet the stringency levels or are expected to go out of production by the effective dates. In addition, requiring U.S. manufacturers to certify to a different standard than has been adopted internationally (even one more stringent) could have disruptive effects on manufacturers' ability to market planes for international operation. Consequently, the EPA is not proposing either of these alternatives.

A. Airplane Fuel Efficiency Metric

For the international Airplane CO_2 Emission Standards, ICAO developed a metric system to allow the comparison of a wide range of subsonic airplane types, designs, technology, and uses. While ICAO calls this a CO_2 emissions metric, it is a measure of fuel efficiency, which is directly related to CO_2 emitted by aircraft engines. The ICAO metric system was designed to differentiate between fuel-efficiency technologies of airplanes and to equitably capture improvements in propulsive and aerodynamic technologies that contribute to a reduction in the airplane CO_2 emissions. In addition, the international metric system accommodates a wide range of technologies and designs that manufacturers may choose to implement to reduce CO_2 emissions from their airplanes. However, because of an inability to define a standardized empty weight across manufacturers and types of airplanes, the metric is based on the MTOM of the airplane. This metric does not directly reward weight reduction technologies because the MTOM of an airplane will not be reduced when weight reduction technologies are applied so that cargo carrying capacity or range can be increased. Further, while weight reduction technologies can be used to improve airplane fuel efficiency, they may also be used to allow increases in

[60] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[61] ICAO, 2006: *Convention on International Civil Aviation, Article 38, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[62] U.S. EPA, 2015: *Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Proposed Rule,* 80 FR 37758 (July 1, 2015).

[63] ICAO, 2006: *Convention on International Civil Aviation, Article* 33, *Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf*(last accessed March 16, 2020).

payload,[64] equipage, and fuel load.[65] Thus, even though weight reducing technologies increase the airplane fuel efficiency, this improvement in efficiency frequently would not be reflected in operation.

The ICAO metric system consists of a CO_2 emissions metric (Equation V–1) and a correlating parameter.[66]

Equation V-1: International CO_2 Emissions Metric for airplanes

$$ICAO\ CO_2\ \text{Emissions}\ Metric\ = \frac{\left(\frac{1}{SAR}\right)_{avg}}{RGF^{0.24}}$$

The ICAO CO_2 emissions metric uses an average of three Specific Air Range (SAR) test points that is normalized by a geometric factor representing the physical size of an airplane. SAR is a measure of airplane cruise performance, which measures the distance an airplane can travel on a unit of fuel. Here the inverse of SAR is used (1/SAR), which has the units of kilograms of fuel burned per kilometer of flight; therefore, a lower metric value represents a lower level of airplane CO_2 emissions (*i.e.,* better fuel efficiency). The SAR data are measured at three gross weight points used to represent a range of day-to-day airplane operations (at cruise).[67]

$(1/SAR)_{avg}$ [68] is calculated at 3 gross weight fractions of Maximum Take Off Mass (MTOM): [69]

- *High gross mass:* 92% MTOM
- *Mid gross mass:* Average of high gross mass and low gross mass
- *Low gross mass:* (0.45 * MTOM) + (0.63 * (MTOM^0.924))

The Reference Geometric Factor (RGF) is a non-dimensional measure of the fuselage size of an airplane normalized by 1 square meter, generally considered to be the shadow area of the airplane's pressurized passenger compartment.[70]

When the ICAO CO_2 emissions metric is correlated against MTOM, it has a positive slope. The international Airplane CO_2 Emission Standards use the MTOM of the airplane as an already certificated reference point to compare airplanes. In this action, we propose to use MTOM as the correlating parameter as well.

We are proposing to adopt ICAO's airplane CO_2 emissions metric (shown in Equation V–1) as the measure of airplane fuel efficiency as a surrogate for GHG emissions from covered airplanes (hereafter known as the ''fuel efficiency metric'' or ''fuel burn metric''). This is because the fuel efficiency metric controls emissions of both CO_2 and N_2O, the only two GHG emitted by airplane engines (see Section V.I for further information). Consistent with ICAO, we are also proposing to adopt MTOM as a correlating parameter to be used when setting emissions limits.

B. Covered Airplane Types and Applicability

1. Maximum Takeoff Mass Thresholds

The proposed GHG rule would apply to civil subsonic jet airplanes (turbojet or turbofan airplanes) with certificated MTOM over 5,700 kg (12,566 lbs.) and propeller-driven civil airplanes (turboprop airplanes) over 8,618 kg (19,000 lbs.). These applicability criteria are the same as those in the ICAO Airplane CO_2 Emission Standards and correspond to the scope of the 2016 Findings. The applicability of the proposed rule is limited to civil subsonic airplanes and does not extend to civil supersonic airplanes.[71] Through this action, as described earlier in Section II, the EPA is fully discharging its obligations under the CAA that were triggered by the 2016 Findings. Once EPA and FAA fully promulgate the airplane GHG emission standards domestically, the United States regulations will align with ICAO Annex 16 standards.

Examples of covered airplanes under the proposed GHG rules include smaller civil jet airplanes such as the Cessna Citation CJ3+, up to and including the largest commercial jet airplanes—the Boeing 777 and the Boeing 747. Other examples of covered airplanes include larger civil turboprop airplanes, such as the ATR 72 and the Viking Q400.[72] [73] The proposed GHG rules would not apply to smaller civil jet airplanes (*e.g.,* Cessna Citation M2), smaller civil turboprop airplanes (*e.g.,* Beechcraft King Air 350i), piston-engine airplanes, helicopters, and military airplanes.

2. Applicability

The proposed rule would apply to all covered airplanes, in-production and new type designs, produced after the respective effective dates of the standards except as provided in V.B.3. There are different regulatory emissions levels and/or applicability dates depending on whether the covered airplane is in-production before the

[64] Payload is the weight of passengers, baggage, and cargo.

FAA Airplane Weight & Balance Handbook (Chapter 9, page 9–10, file page 82) *https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/media/FAA-H-8083-1.pdf* (x)(last accessed on March 16, 2020).

[65] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[66] Annex 16 Volume III Part II Chapter 2 sec. 2.2. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

[67] . ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, AN/192, Available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Report of the Tenth Meeting report is found on page 27 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. 10069.

[68] Avg means average.

[69] Annex 16 Vol. III Part II Chapter 2 sec. 2.3. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

[70] Annex 16 Vol. III Appendix 2. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

[71] Currently, civilian supersonic airplanes are not in operation. The international standard did not consider the inclusion of supersonic airplanes in the standard. More recently, there has been renewed interest in the development of civilian supersonic airplanes. This has caused ICAO to begin considering how existing emission standards should be revised for new supersonic airplanes. The US is involved in these discussions and at this point plans to work with ICAO to develop emission standards on the international stage prior to adopting them domestically.

[72] This was previously owned by Bombardier and was sold to Viking in 2018, November 8, 2018 (Forbes).

[73] It should be noted that there are no US domestic manufacturers that produce turboprops that meet the MTOM thresholds. These airplanes are given as examples but will be expected to be certificated by their national aviation certification authority.

applicability date or is a new type design.

The proposed in-production standards would only be applicable to previously type certificated airplanes, newly-built on or after the applicability date (described in V.D.1), and would not apply retroactively to airplanes that are already in-service.

3. Exceptions

Consistent with the applicability of the ICAO standards, the EPA is proposing applicability language that excepts the following airplanes: Amphibious airplanes, airplanes initially designed or modified and used for specialized operational requirements, airplanes designed with an RGF of zero,[74] and those airplanes specifically designed or modified and used for fire-fighting purposes. Airplanes in these categories proposed to be excepted are generally designed or modified in such a way that their designs are well outside of the design space of typical passenger or freight carrying airplanes. For example, amphibious airplanes are by necessity designed with fuselages that resemble boats as much as airplanes. As such, their aerodynamic efficiency characteristics fall well outside of the range of airplanes used in developing the ICAO Airplane CO_2 Emission Standards and our proposed GHG rules.

Airplanes designed or modified for specialized operational requirements could include a wide range of activities, but all of them require performance that was outside of the scope considered during the development of the ICAO standards. Such airplanes could include

- airplanes that required capacity to carry cargo that is not possible by using less specialized airplanes (*e.g.* civil variants of military transports);[75]
- airplanes that required capacity for very short or vertical take-offs and landings;
- airplanes that required capacity to conduct scientific,[76] research, or humanitarian missions exclusive of commercial service; or
- airplanes that required similar factors.

The EPA requests comments on proposed exceptions for specialized operational requirements. Some exceptions are based on the use of the airplane after civil certification (*e.g.,* use for firefighting). The EPA requests comment on the proposed definitions of these excepted airplanes.

4. New Airplane Types and In-Production Airplane Designations

The proposed rule recognizes differences between previously type certificated airplanes that are in production and new type designs presented for original certification.

- *In-production airplanes:* Those airplane types which have already received a Type Certificate[77] from the FAA, and for which manufacturers either have existing undelivered sales orders or would be willing and able to accept new sales orders. The term can also apply to the individual airplane manufactured according to the approved design Type Certificate, and for which an Airworthiness Certificate is required before the airplane is permitted to operate.[78] [79]
- *New type designs:* Airplane types for which original certification is applied for (to the FAA) on or after the compliance date of a rule, and which have never been manufactured prior to the compliance date of a rule.

Certificated designs may subsequently undergo design changes such as new wings, engines, or other modifications that would require changes to the type certificated design. These modifications happen more frequently than the application for a new type design. For example, a number of airplanes have undergone significant design changes (including the Boeing 747–8, Boeing 737 Max, Airbus 320 Neo, Airbus A330 Neo, and Boeing 777–X). As with a previous series of redesigns, which included the Boeing 777–200LR in 2004, 777–300ER in 2006, Airbus 319 in 1996, and Airbus 330–200 in 1998, incremental improvements are expected to continue to be more frequent than major design changes over the next decade—following these more recent major programs.[80] [81]

New type designs are infrequent, and it is not unusual for new type designs to take 8–10 years to develop, from preliminary design to entry into service.[82] The most recent new type designs introduced in service were the Airbus A350 in 2015,[83] the Airbus A220 (formerly known as the Bombardier C-Series) in 2016,[84] and the Boeing 787 in 2011.[85] [86] However, it is unlikely more than one new type design will be presented for certification in the next ten years.[87] New type designs (and some redesigns) typically yield large fuel burn reductions—10 percent to 20 percent over the prior generation they replace (considered a step-change in fuel burn improvement). As one might expect, these significant fuel burn reductions do not happen frequently. Also, airplane development programs are expensive.[88]

[74] RGF refers to the pressurized compartment of an airplane, generally meant for passengers and/or cargo. If an airplane is unpressurized, the calculated RGF of the airplane would be zero (0). These airplanes are very rare, and the few that are in service are used for special missions. An example is Boeing's Dreamlifter.

[75] This is not expected to include freight versions of passenger airplanes such as the Boeing 767F, Boeing 747–8F, or Airbus A330F. Rather, this is intended to except airplanes such as the Lockheed L–100.

[76] For example, the NASA SOFIA airborne astronomical observatory.

[77] A Type Certificate is a design approval whereby the FAA ensures that the manufacturer's designs meet the minimum requirements for airplane safety and environmental regulations. According to ICAO Cir 337, a Type Certificate is ''[a] document issued by a Contracting State to define the design of an airplane type and to certify that this design meets the appropriate airworthiness requirements of that State.'' A Type Certificate is issued once for each new type design airplane, and modified as an airplane design is changed over the course of its production life.

[78] ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, AN/192, Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Report of the Tenth Meeting report is found on page 27 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. 10069.

[79] In existing U.S. aviation emissions regulations, in-production means newly-manufactured or built after the effective date of the regulations—and already certificated to pre-existing rules. This is similar to the current ICAO definition for in-production airplane types for purposes of the international CO_2 standard.

[80] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[81] Insofar as we are going through a wave of major redesign and service entry now, prospects for further step-function improvements will be low in the coming 10–15 years. (ICF International, *CO2 Analysis of CO2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.)

[82] ICF International, 2015: *CO2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[83] The Airbus A350 was announced in 2006 and received its type certification in 2014. The first model, the A350–900 entered service with Qatar Airways in 2015.

[84] The Bombardier C-series was announced in 2005 and received its type certification in 2015. The first model, the C100 entered service with Swiss Global Air Lines in 2016.

[85] Boeing, 2011: Boeing Unveils First 787 to Enter Service for Japan Airlines, December 14. Available at *http://boeing.mediaroom.com/2011-12-14-Boeing-Unveils-First-787-to-Enter-Service-for-Japan-Airlines* (last accessed March 16, 2020).

[86] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[87] Ibid.

[88] Analysts estimate a new single aisle airplane would have cost $10–12 billion to develop. The A380 and 787 are estimated to each have cost around $20 billion to develop; the A350 is estimated to have cost $15 billion, excluding engine development. Due to the large development cost of a totally new airplane design, manufacturers are opting to re-wing or re-engine their airplane. Boeing is said to have budgeted $5 billion for the re-wing of the 777, and Airbus and Boeing have budgeted

At ICAO, the difference between in-production airplanes and new type designs has been used to differentiate two different pathways by which fuel efficiency technologies can be introduced into civil airplane designs.

When a new requirement is applied to an in-production airplane, there may be a real and immediate effect on the manufacturer's ability to continue to build and deliver it in its certificated design configuration and to make business decisions regarding future production of that design configuration. Manufacturers need sufficient notice to make design modifications that allow for compliance and to have those modifications certificated by their certification authorities. In the United States, applying a new requirement to an in-production airplane means that a newly produced airplane subject to this rule that does not meet the GHG standards would likely be denied an airworthiness certificate after January 1, 2028. As noted above in V.B.2, in-service airplanes are not subject to the ICAO CO_2 standards and likewise would not be subject to these proposed GHG standards.

For new type designs, this proposed rule would have no immediate effect on airplane production or certification for the manufacturer. The standards that a new type design must meet are those in effect when the manufacturer applies for type certification. The applicable design standards at the time of application remain frozen over the typical 5-year time frame provided for completing the type certification process. Because of the investments and resources necessary to develop a new type design, manufacturers have indicated that it is important to have knowledge of the level of future standards at least 8 years in advance of any new type design entering service.[89] Because standards are known early in the design and certification process, there is more flexibility in how and what technology can be incorporated into a new type design. (See Section VII describing the Technology Response for more information on this).

To set standards at levels that appropriately reflect the feasibility to incorporate technology and lead time, the level and timing of the proposed standards would be different for in-production airplanes and new type designs. This is discussed further in Sections V.C and V.D below, describing standards for new type designs and in-production airplanes, and Section VII, discussing the technology response.

C. GHG Standard for New Type Designs

1. Applicability Dates for New Type Designs

The EPA is proposing that the GHG standards would apply to the same airplanes as those identified as within the scope of the international standards adopted by ICAO in 2017, in terms of maximum take-off weight thresholds, passenger capacity, and reference to dates of applications for original type certificates. In this way, EPA's standards would align with ICAO's in defining those airplanes that will become subject to our standards. Consequently, for subsonic jet airplanes over 5,700 kg MTOM and certificated with more than 19 passenger seats, and for turboprop airplanes over 8,618 kg MTOM, the proposed regulations would apply to all airplanes for which application for an original type certificate is made to the FAA on or after January 1, 2020. For subsonic jet airplanes over 5,700 kg MTOM with 19 passenger seats or fewer, the proposed regulations would apply to all airplanes for which an original type certification application was made to the FAA on or after January 1, 2023.

Consistency with international standards is important for manufacturers, as they noted in comments to our ANPR in 2017, and to propose criteria to identify those airplanes to be covered by our standards that differ from those covered by ICAO's standards—either in terms of maximum take-off mass, passenger capacity, or dates of applications for new original type certificates—would not be expected by airplane manufacturers and engine manufacturers, and would introduce unnecessary uncertainty into the airplane type certification process.

The EPA understands that by adopting the same effective date as ICAO, January 1, 2020, for defining those type certification applications subject to the standards, we are employing a date that has already passed. Since no airplane manufacturer has in fact yet submitted an application for a new type design certification since January 1, 2020, no manufacturer would currently need to amend any already submitted application to address the GHG standards. Neither the EPA nor the FAA is aware of any anticipated original new type design application expected to be submitted before the EPA's standards are promulgated and effective that would need amendment to reflect the GHG standards. Therefore, no airplane manufacturer is expected to be adversely affected by adoption of the same applicability dates as ICAO's applicability dates for new type design certification applications, including the January 1, 2020, date.

The EPA recognizes that new regulatory requirements have differing impacts on items that are already in production and those yet to be built. Airplane designs that have yet to undergo original type certification can more easily be adapted for new regulatory requirements, compared with airplanes already being produced subject to older, existing design standards. The agency has experience adopting regulations that acknowledge these differences, such as in issuing emission standards for stationary sources of hazardous air pollutants (which often impose more stringent standards for new sources, defined based on dates that precede dates of final rule promulgation, than for existing sources). See, *e.g.,* 42 U.S.C. 7412(a)(4), defining ''new source'' to mean a stationary source the construction or reconstruction of which is commenced after the EPA proposes regulations establishing an emission standard. In addition, the EPA has previously, for the Tier 4 NO_X aircraft engine standards, defined the scope of aircraft engines that were to become subject to the standards based on a date that preceded the effective date of the final standards, while at the same time providing that the standards applied as prescribed after the effective date of the rule. See, *e.g.,* 40 CFR 87.23(d)(1)(vi) and (vii).

Here, the U.S. airplane manufacturers that would be subject to these GHG standards participated in the development of them at ICAO and have been aware of and supported ICAO's use of the January 1, 2020, date for new type design certificate applications as triggering applicability of the international standards, knowing for several years that any as-yet undetermined new designs would have to comply with the international standards in order to be marketable internationally. Consequently, EPA proposes that adoption of the January 1, 2020, date to define which future new type design certification applications

$1–2 billion each for the re-engine of the A320 and the 737, respectively (excluding engine development costs). Embraer has publicly stated that it will need to spend $1–2 billion to re-wing the EMB–175 and variants. (ICF International, *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.)

[89] ICAO policy is that the compliance date of an emissions standard must be at least 3 years after it has been agreed to by CAEP. Adding in the 5-year certification window, this means that the level of the standard can be known 8 years prior to entry into service date for a new type design. Manufacturers also have significant involvement in the standard development process at ICAO, which begins at least 3 years before any new standard is agreed to.

would need to meet the GHG standards is reasonable and in harmony with the 2017 ICAO Airplane CO2 Emission Standards. Adoption of the same dates for new type design certification applications, as well as for maximum take-off mass thresholds and passenger capacity cutoffs, will also prevent any need for the United States to file a difference with ICAO as would be required under the Chicago Convention.

2. Regulatory Limit for New Type Designs

The EPA proposes that the GHG emissions limit for new type designs would be a function of the airplane certificated MTOM and consist of three levels described below in Equation V–2, Equation V–3, and Equation V–4.[90]

Equation V-2: New Type Designs with a MTOM less than or equal to 60 000 kg

$$Maximum\ permitted\ value\ =$$

$$10^{\left(-2.73780 + (0.681310 * \log_{10}(MTOM)) + \left(-0.0277861 * \left(\log_{10}(MTOM)\right)^2\right)\right)}$$

Equation V-3: New Type Designs with a MTOM greater than 60 000 kg, and less than or equal to 70 395 kg:

$$Maximum\ permitted\ value\ =\ 0.764$$

Equation V-4: New Type Designs with a MTOM greater than 70 395 kg

$$Maximum\ permitted\ value\ =$$

$$10^{\left(-1.412742 + (-0.020517 * \log_{10}(MTOM)) + \left(0.0593831 * (\log_{10}(MTOM))^2\right)\right)}$$

Figure V–1 and Figure V–2 show the numerical limits of the proposed new type design rules and how the airplane types analyzed in Sections VI and VII relate to this limit. Figure V–2 shows only the lower MTOM range of Figure V–1 to better show the first two segments of the limit line. These plots below show the airplane fuel efficiency metric values as they were modeled. This includes all anticipated/modeled technology responses, improvements, and production assumptions in response to the market and the proposed rules. (See Section VI and VII for more information about this.) These proposed GHG emission limits are the same as the limits of the ICAO Airplane CO_2 Emission Standards.

[90] Annex 16 Vol. III Part II Chapter 2 sec. 2.4.2 (a), (b), and (c). ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

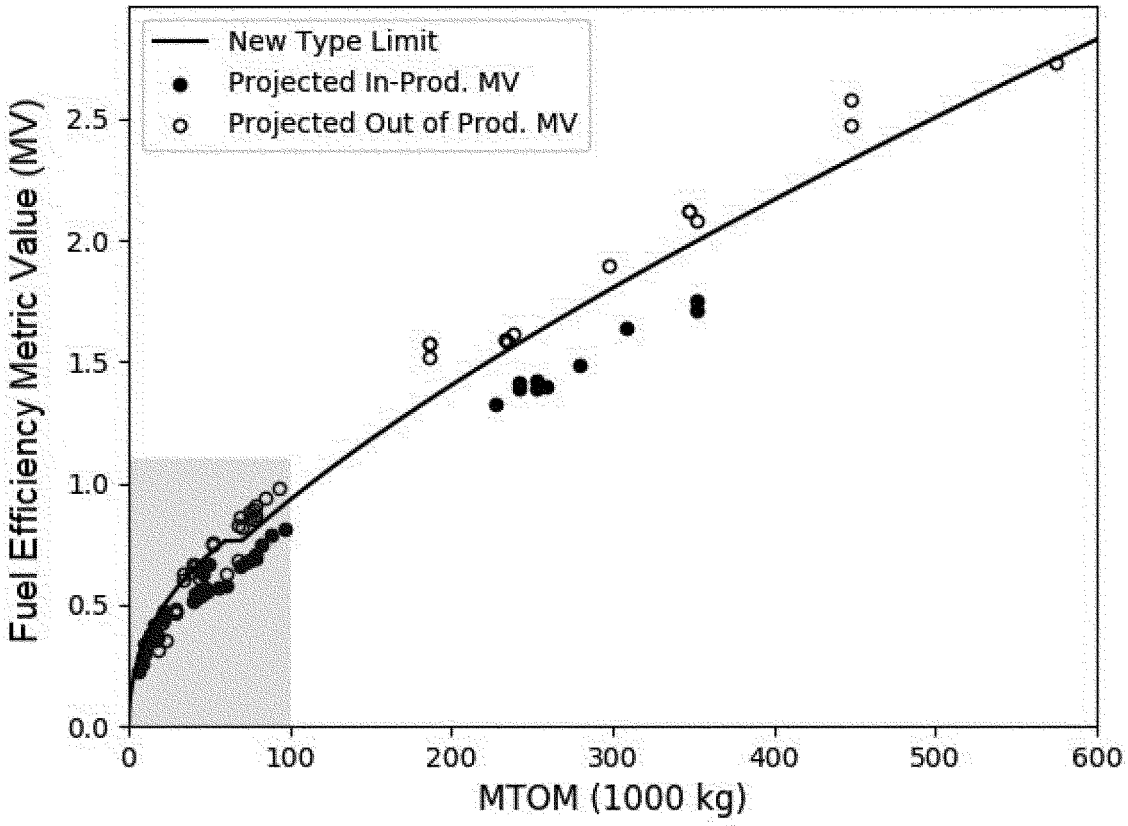


Figure V-1 - Proposed New Type Design Rule

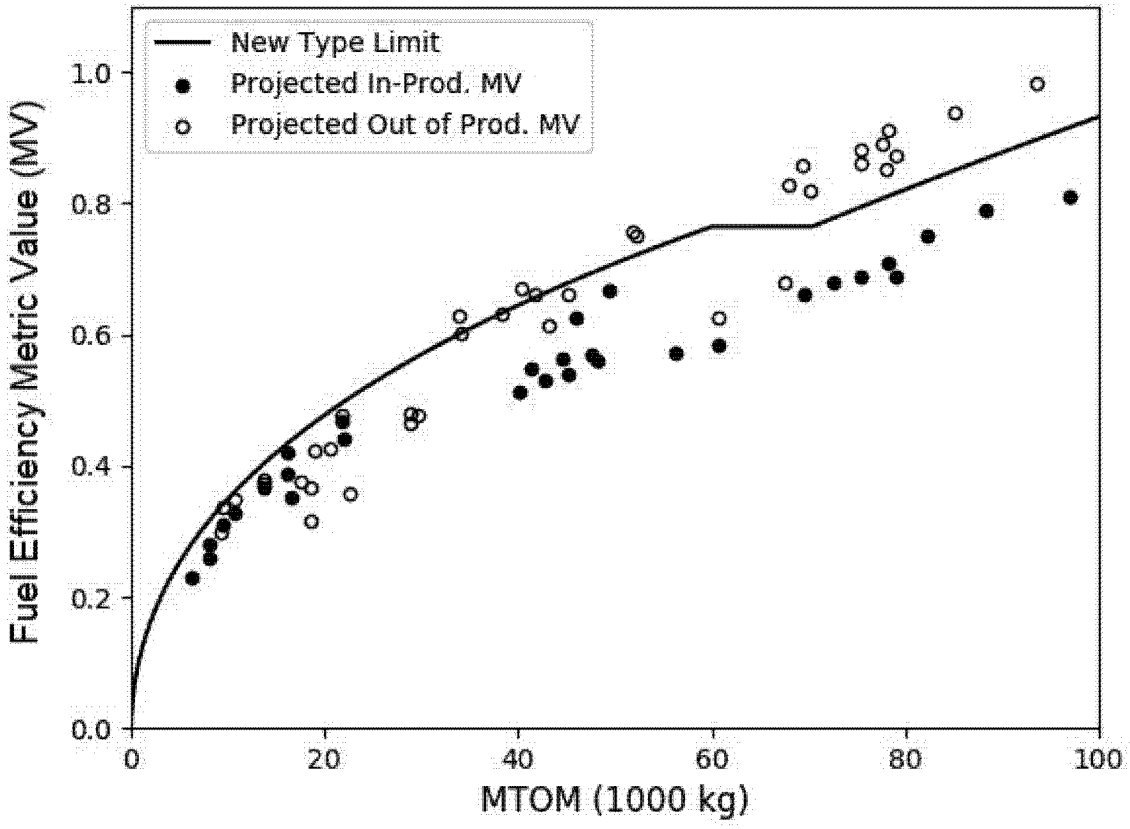


Figure V-2 - Proposed New Type Design Rule - Zoomed in to highlights MTOM less than 100,000kg

When analyzing potential levels of the standard, ICAO determined, based on assessment of available data, that there were significant performance differences between large and small airplanes. Airplanes with an MTOM less than 60 tons [91] are either business jets or regional jets. The physical size of smaller airplanes presents scaling challenges that limit technology improvements that can readily be made on larger airplanes.[92] This leads to requiring higher capital costs to implement the technology relative to the sale price of the airplanes.[93] Business jets (generally less than 60 tons MTOM) tend to operate at higher altitudes and faster speeds than larger commercial traffic.

Based on these considerations, when developing potential levels for the international standards, ICAO further realized that curve shapes of the data differed for large and small airplanes (on MTOM versus metric value plots). Looking at the dataset, there was originally a gap in the data at 60 tons.[94] This natural gap allowed a ''kink'' point (*i.e.,* change in the slope of the proposed standard) to be established between larger commercial airplanes and smaller business jets and regional jets. The introduction of this kink point provided flexibility at ICAO to consider standards at appropriate levels for airplanes above and below 60 tons.

The level proposed to apply to new type designs was set to reflect the performance for the latest generation of airplanes. The CO_2 emission standards agreed to at ICAO, and the GHG standards proposed here, are meant to be technology following standards. This means the rule reflects the performance and technology achieved by existing airplanes (in-production and in-development airplanes [95]).[96]

Airplanes of less than 60 tons with 19 passenger seats or fewer have additional economic challenges to technology development compared with similar sized commercial airplanes. ICAO sought to reduce the burden on manufacturers of airplanes with 19 seats or fewer, and thus ICAO agreed to delay the applicability of the new type designs for 3 years. In maintaining consistency with the international decision, the applicability dates in this proposed rule reflect this difference determined by ICAO (see Section VII for further information).

As described earlier in Section II, consistency with the international standards would facilitate the acceptance of U.S. airplanes by member States and airlines around the world, and it would ensure that U.S.

[91] In this rulemaking, 60 tons means 60 metric tons (or tonnes), which is equal to 60,000 kilograms (kg). 1 ton means 1 metric ton (or tonne), which is equal to 1,000 kg.

[92] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[93] U.S., *United States Position on the ICAO Aeroplane CO_2 Emissions Standard,* Montréal, Canada, CAEP10 Meeting, February 1–12, 2016, Presented by United States, CAEP/10–WP/59. Available in the docket for this proposed rulemaking, Docket EPA–HQ–OAR–2018–0276.

[94] Initial data that were reviewed at ICAO did not include data on the Bombardier C-Series airplane. Once data were provided for this airplane, it was determined by ICAO that while the airplane did cross the 60 tons kink point, this did not pose a problem for analyzing stringency options, because the airplane passes all options considered.

[95] In-development airplanes are airplanes that were in-development when setting the standard at ICAO but will be in production by the applicability dates. These could be new type designs (*e.g.* Airbus A350) or redesigned airplanes (*e.g.* Boeing 737Max).

[96] Note: Figure V–1 and Figure V–2 show the metric values used in the EPA modeling for this action. These values differ from those used at ICAO. The rationale for this difference is discussed below in section VII of this proposed rule, and in chapter 2 of the Draft TSD.

manufacturers would not be at a competitive disadvantage compared with their international competitors. Consistency with the international standards would also place an anti-backsliding cap on future emissions of airplanes by ensuring that all new type design airplanes are at least as efficient as today's airplanes.

The EPA requests comment on all aspects of the proposed new type design rule, including the level of the standard, timing, and differentiation between airplane categories.

D. GHG Standard for In-Production Airplane Types

1. Applicability Dates for In-Production Airplane Types

The EPA is proposing the same compliance dates for the proposed GHG rule as those adopted by ICAO for its CO_2 emission standards. Section V.D.2 below describes the rationale for these proposed dates and the time provided to in-production types.

All airplanes type certificated prior to January 1, 2020, and newly built after January 1, 2028, would be required to comply with the proposed in-production rule. This proposed GHG regulation would function as a production cutoff for airplanes that do not meet the fuel efficiency levels described below.

i. Changes for Non-GHG Certificated Airplane Types

After January 1, 2023, and until January 1, 2028, an applicant that submits a modification to the type design of a non-GHG certificated airplane that increases the Metric Value of the airplane [97] would be required to demonstrate compliance with the in-production rule. This proposed earlier applicability date for in-production airplanes, of January 1, 2023, is the same as that adopted by ICAO and is similarly designed to capture modifications to the type design of a non-GHG certificated airplanes newly manufactured prior to the January 1, 2028, production cut-off date. The January 1, 2028 production cut-off date was introduced by ICAO as an anti-backsliding measure that gives notice to manufacturers that non-compliant airplanes will not receive airworthiness certification after this date.

An application for certification of a modified airplane on or after January 1, 2023, would trigger compliance with the in-production GHG emissions limit provided that the airplane's GHG emissions metric value for the modified version increases by more than 1.5 percent from the prior version of the airplane. As with changes to GHG certificated airplanes, introduction of a modification that does not adversely affect the airplane fuel efficiency Metric Value would not be required to comply with this GHG rule at the time of that change. Manufacturers may seek to certificate any airplane to this standard, even if the criteria do not require compliance.

As an example, if a manufacturer chooses to shorten the fuselage of a type certificated airplane, such action would not automatically trigger the requirement to certify to the in-production GHG rule. The fuselage shortening of a certificated type design would not be expected to adversely affect the metric value, nor would it be expected to increase the certificated MTOM. Again, a manufacturer may choose to recertificate this change in type design for GHG compliance.

This earlier effective date for in-production airplanes is expected to help encourage some earlier compliance for new airplanes. However, it is expected that manufacturers would likely volunteer to certify to the in-production rule when applying to the FAA for these types of changes.

2. Regulatory Limit for In-Production Type Designs

The EPA proposes that the emissions limit for in-production airplanes be a function of airplane certificated MTOM and consist of three MTOM ranges as described below in Equation V–5, Equation V–6, and Equation V–7.[98]

Equation V-5: In-production airplanes with a MTOM less than or equal to 60 000 kg:

$$Maximum\ permitted\ value\ =$$

$$10^{-2.57535 + \left(0.609766 * log10(MTOM)\right) + \left(-0.0191302 * \left(log10(MTOM)\right)^2\right)}$$

Equation V-6: In-production airplanes with a MTOM greater than 60 000 kg, and less than or equal to 70 107 kg

$$Maximum\ permitted\ value\ =\ 0.797$$

Equation V-7: In-production airplanes with a MTOM greater than 70 107 kg

$$Maximum\ permitted\ value\ =$$

$$10^{-1.39353 + \left(-0.020517 * log10(MTOM)\right) + \left(0.0593831 * \left(log10(MTOM)\right)^2\right)}$$

Figure V–3 and Figure V–4 show the numerical limits of the proposed in-production rules and the relationship of the airplane types analyzed in Sections VI and VII to this limit. Figure V–4 shows only the lower MTOM range of

[97] Note that V.D.1.i, Changes for non-GHG certified Airplane Types, is different than the No GHG Change Threshold described in V.F.1 below. V.F.1 applies only to airplanes that *have previously been* certificated to a GHG rule. V.D.1.i only applies only to airplane types that *have not been* certificated for GHG.

[98] Annex 16 Vol. III Part II Chapter 2 sec. 2.4.2 (d), (e), and (f). ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

Figure V–3 to better show the first two segments of the limit line. These plots below show the airplane CO_2 metric values as they were modeled. This includes all anticipated/modeled technology responses, improvements, and production assumptions in response to the market and the proposed rules. (See Sections VI and VII for more information about this.) These proposed GHG emission limits are the same as the limits of the ICAO Airplane CO_2 Emission Standards.

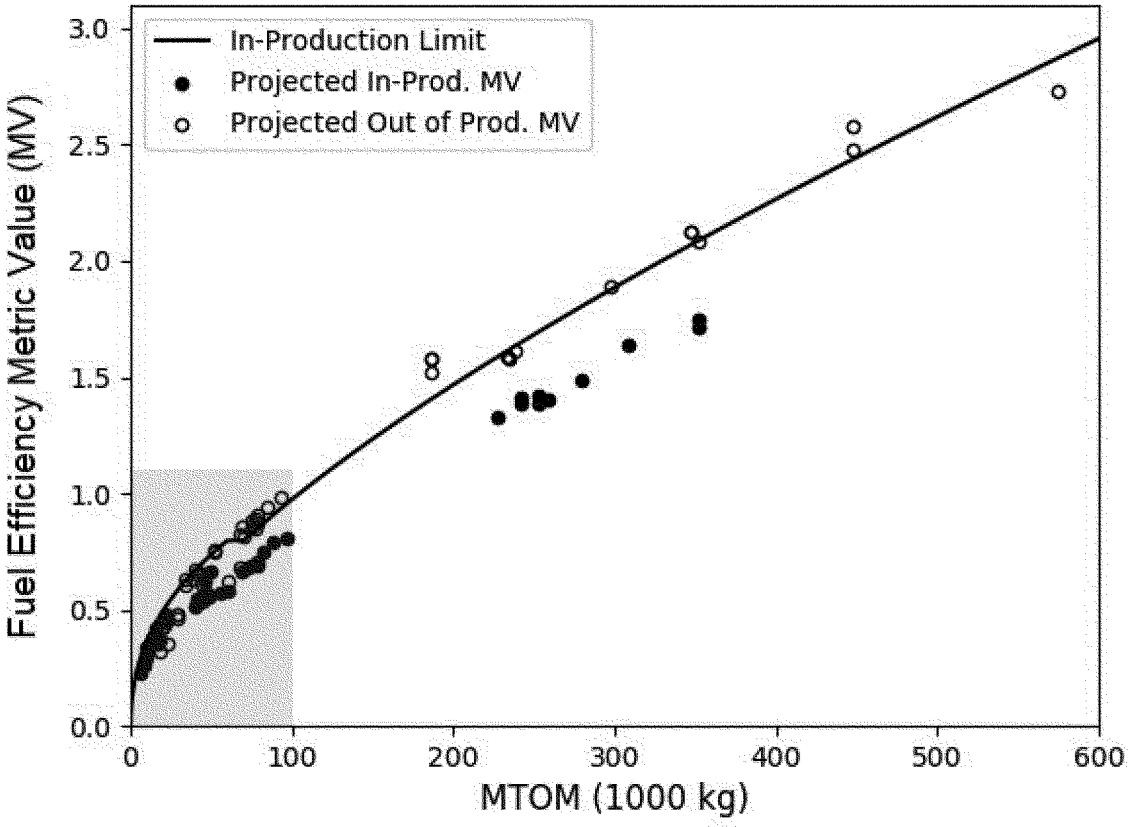


Figure V-3 - Proposed In-Production Rule

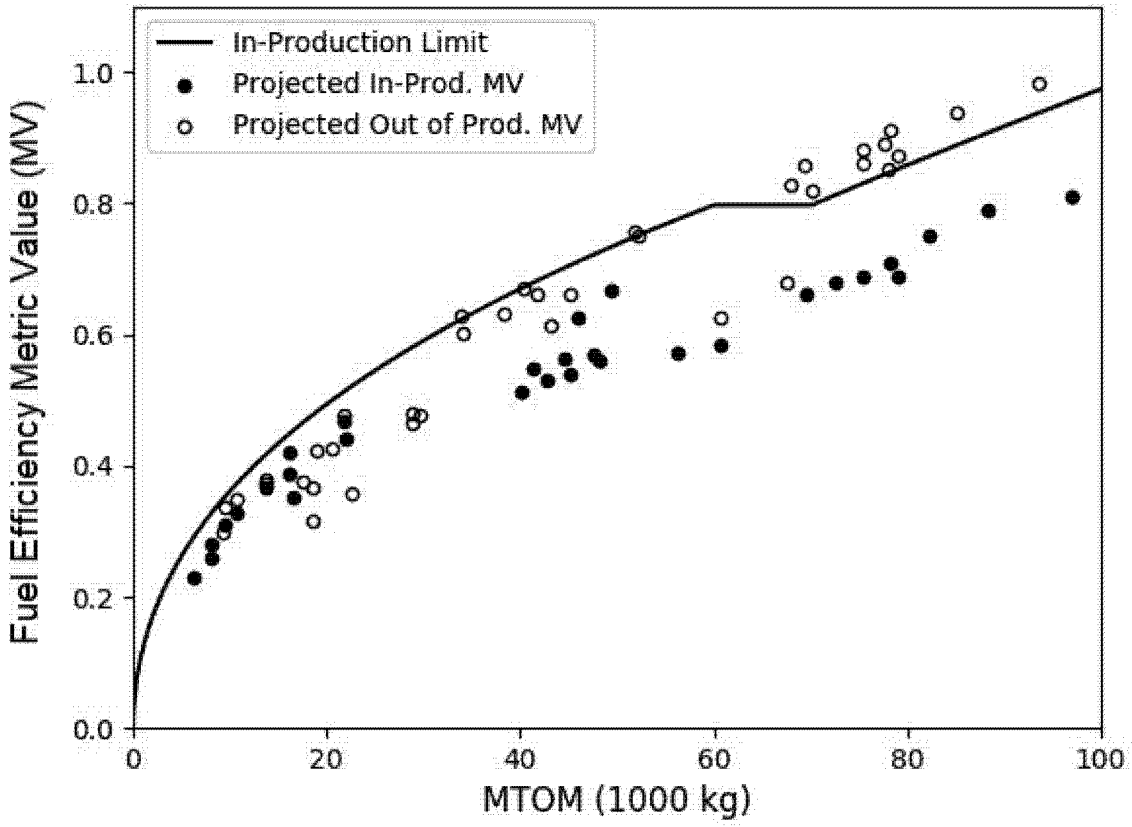


Figure V-4 - Proposed In-Production Rule - zoomed in to highlights MTOM less than 100,000kg

As discussed in Section V.C above, a kink point was added at 60 tons to accommodate a change in slope observed between large and small airplanes. The flat section starting at 60 tons is used as a transition to connect the curves for larger and smaller airplanes.

While the same technology is considered for both new type design and in-production airplanes, there would be a practical difference in compliance for in-production airplanes. Manufacturers would need to test and certify each type design to the GHG standard prior to January 1, 2028, or else newly produced airplanes would likely be denied an airworthiness certificate. In contrast, new type design airplanes have yet to go into production, but these airplanes would need to be designed to comply with the standards for new type designs (for an application for a new type design certificate on or after January 1, 2020). This poses a challenge for setting the level of the in-production standard, because sufficient time needs to be provided to allow for the GHG certification process and the engineering and airworthiness certifications needed for improvements. The more stringent the in-production standard is, the more time that is necessary to provide manufacturers to modify production of their airplanes. ICAO determined that while the technology to meet the proposed in-production level is available in 2020 (the new type design applicability date), additional time beyond the new type design applicability date was necessary to provide sufficient time for manufacturers to certify all of their products. The EPA agrees that additional time is appropriate.

Section VII describes the analysis that the EPA conducted to determine the cost and benefits of adopting this standard. Consistent with the ICAO standard, this proposed rule would apply to all in-production airplanes built on or after January 1, 2028, and to all in-production airplanes that have any modification that trigger the change criteria after January 1, 2023.

The proposed levels of the in-production GHG standards are the same as ICAO's CO_2 standards, and they reflect the emission performance of current in-production and in-development airplanes. As discussed in Section V.B.4 above and in Section VII, the regulations reflect differences in economic feasibility for introducing modifications to in-production airplanes and new type designs. The standards adopted by ICAO, and proposed here, for in-production airplanes were developed to reflect these differences.

The EPA requests comment on all aspects of the proposed in-production rule, including the level, timing, and differentiation between airplane categories.

E. Exemptions From the Proposed GHG Rules

On occasion, manufacturers may need additional time to comply with a standard. The reasons for needing a temporary exemption from regulatory requirements vary and may include circumstances beyond the control of the manufacturer. The FAA is familiar with these actions, as it has handled the similar engine emission standards under its CAA authority to enforce the standards adopted by the EPA. The FAA has considerable authority under its authorizing legislation and its regulations to deal with these events.[99]

[99] Title 49 of the United States Code, sec. 44701(f), vests power in the FAA Administrator to issue exemptions as long as the public interest condition is met, and, pursuant to sec. 232(a) of the CAA, the Administrator may use that power ''in the execution of all powers and duties vested in him under this section'' ''to insure compliance'' with emission standards.

Since requests for exemptions are requests for relief from the enforcement of these standards (as opposed to a request to comply with a different standard than set by the EPA), this rule would continue the relationship between the agencies by proposing that any request for exemption be filed with the FAA under its established regulatory paradigm. The instructions for a submitting a petition for exemption to the FAA can be found in 14 CFR part 11, specifically § 11.63. Section 11.87 lists the information that must be filed in a petition, including a reason ''why granting your petition is in the public interest.'' Any request for exemption would need to cite the regulation that the FAA will adopt to carry out its duty of enforcing the standard set by the EPA. A list of requests for exemption received by the FAA is routinely published in the **Federal Register**.

The primary criterion for any exemption filed with the FAA is whether a grant of exemption would be in the public interest. The FAA will continue to consult with EPA on all petitions for exemption that the FAA receives regarding the enforcement of aircraft engine and emission standards adopted under the CAA.

F. Application of Rules for New Version of an Existing GHG-Certificated Airplane

Under the international Airplane CO_2 Emission Standards, a new version of an existing CO_2-certificated airplane is one that incorporates modifications to the type design that increase the MTOM or increase its CO_2 Metric Value more than the No-CO_2-Change Threshold (described in V.F.1 below). ICAO's standards provide that once an airplane is CO_2 certificated, all subsequent changes to that airplane must meet at least the regulatory level of the parent airplane. For example, if the parent airplane is certificated to the in-production level, then all subsequent versions must also meet the in-production level. This would also apply to voluntary certifications under ICAO's standards. If a manufacturer seeks to certificate an in-production airplane type to the level applicable to a new type design, then future versions of that airplane must also meet the same regulatory level. Once certificated, subsequent versions of the airplane may not fall back to a less stringent regulatory GHG level.

If the FAA finds that a new original type certificate is required for any reason, the airplane would need to comply with the regulatory level applicable to a new type design.

The EPA is proposing provisions for versions of existing GHG-certificated airplanes that are the same as the ICAO requirements for the international Airplane CO_2 Emission Standards. These provisions would reduce the certification burden on manufacturers by clearly defining when a new metric value must be established for the airplane.

1. No Fuel Efficiency Change Threshold for GHG-Certificated Airplanes

There are many types of modifications that could be introduced on an airplane design that could cause slight changes in GHG emissions (*e.g.* changing the fairing on a light,[100] adding or changing an external antenna, changing the emergency exit door configuration, etc.). To reduce burden on both certification authorities and manufacturers, a set of no CO_2 emissions change thresholds was developed for the ICAO Airplane CO_2 Emission Standards as to when new metric values would need to be certificated for changes. The EPA proposes to adopt these same thresholds in its GHG rules.

Under this proposal, an airplane would be considered a modified version of an existing GHG certificated airplane, and therefore have to recertify, if it incorporates a change in the type design that either (a) increases its maximum take-off mass, or (b) increases its GHG emissions evaluation metric value by more than the no-fuel efficiency change threshold percentages described below and in Figure V–5:[101]

- For airplanes with a MTOM greater than or equal to 5,700 kg, the threshold value decreases linearly from 1.35 to 0.75 percent for an airplane with a MTOM of 60,000 kg.
- For airplanes with a MTOM greater than or equal to 60,000 kg, the threshold value decreases linearly from 0.75 to 0.70 percent for airplanes with a MTOM of 600,000 kg.
- For airplanes with a MTOM greater than or equal to 600,000 kg, the threshold value is 0.70 percent.

[100] A fairing is ''*a structure on the exterior of an aircraft or boat, for reducing drag.*'' *https://www.dictionary.com/browse/fairing.*

[101] Annex 16, Volume III, Part 1, Chapter 1. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

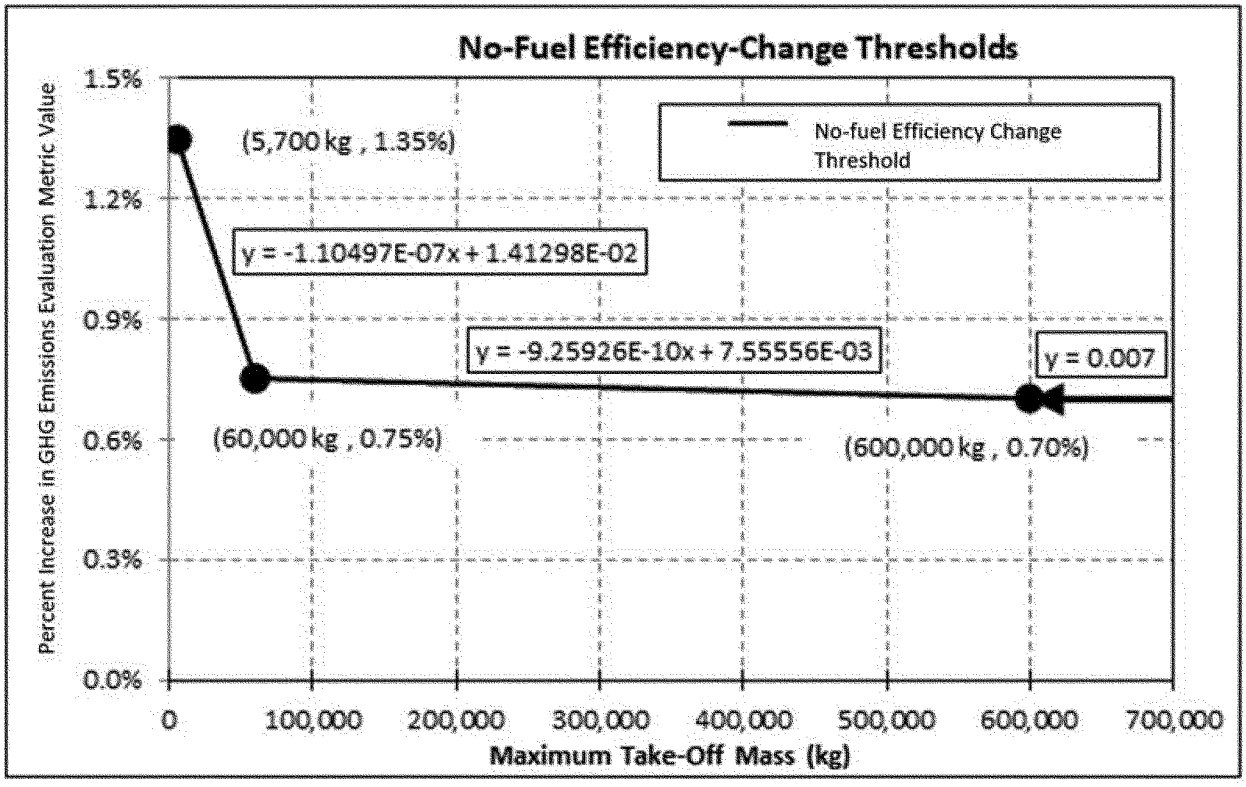


Figure V-5: Proposed No Fuel Efficiency Change Thresholds for GHG Certificated Airplanes (ICAO Adopted No CO_2 Emissions Change Thresholds)

The threshold is dependent on airplane size, because the potential fuel efficiency changes to an airplane are not constant across all airplanes. For example, a change to the fairing surrounding a wing light, or the addition of an antenna to a small business jet, may have greater impacts on the airplane's metric value than a similar change would on a large twin aisle airplane.

These GHG changes would be assessed on a before-change and after-change basis. If there is a flight test as part of the certification, the metric value (MV) change could be assessed based on the change in calculated metric value of flights with and without the change.

A modified version of an existing GHG certificated airplane would be subject to the same regulatory level as the airplane from which it was modified. A manufacturer may also choose to voluntarily comply with a later or more stringent standard.[102]

Under this proposed rule, when a change is made to an airplane type that does not exceed the no-change threshold, the fuel efficiency metric value would not change. There would be no method to track these changes to airplane types over time. This feature of the proposed rule would not remove the requirement for a manufacturer to demonstrate that the airplane type would still meet the rule after a given change. If an airplane type has, for example, a 10 percent compliance margin under the rule, then a small adverse change less than the threshold may not require the re-evaluation of the airplane metric value. However, if the compliance margin for a type design is less than the no GHG change criteria, a manufacturer would be required to prove that it meets the rule to certify the adverse change.

Under the proposed rule, a manufacturer that introduces modifications that reduce GHG emissions can request voluntary recertification from the FAA. There would be no required tracking or accounting of GHG emissions reductions made to an airplane unless it is voluntarily re-certificated.

The EPA proposes to adopt as part of the GHG rules the no-change thresholds for modifications to airplanes discussed above, which are the same as the provisions in the international standard. We believe that these thresholds would maintain the effectiveness of the rule while limiting the burden on manufacturers to comply. The proposed regulations reference specific test and other criteria that were adopted internationally in the ICAO standards setting process.

G. Annual Reporting Requirement

As described later in this section, the EPA proposes to collect information about airplane GHG emissions and related parameters to help inform the development of future policy, assessments of emissions inventories, and specific technologies.

In May of 1980, ICAO's CAEE recognized that certain information relating to environmental aspects of aviation should be organized into one document. This document became ICAO's ''Annex 16 to the Convention on International Civil Aviation, International Standards and Recommended Practices, Environmental Protection'' and was split into two volumes—Volume I, addressing Aircraft Noise, and Volume II, addressing Aircraft Engine Emissions. Annex 16 has continued to grow since its inception, and today Annex 16 Volume

[102] ETM Vol. III sec. 2.2.3. ICAO, 2018: *Environmental Technical Manual Volume III—Procedures for the CO_2 Emissions Certification of Aeroplanes, First Edition, Doc 9501,* 64 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Environmental Technical Manual Volume III is found on page 77 of the English Edition 2020 catalog and is copyright protected; Order No. 9501–3.

II includes a list of reporting requirements for an aircraft engine to comply with the ICAO emission standards.[103] These requirements include information relating to engine identification and characteristics, fuel usage, data from engine testing, data analysis, and the results derived from the test data. Additionally, this list of aircraft engine requirements is supplemented with voluntarily reported information which has been assembled into an electronic spreadsheet, entitled ICAO Aircraft Engine Emissions Databank (EDB),[104] in order to aid with criteria pollutant emission calculations and analysis as well as help inform the general public.

The new international Airplane CO_2 Emission Standards adopted by ICAO in 2017 are prescribed in ICAO Annex 16, Volume III titled, Aeroplane CO_2 Emissions. Building on the precedent from ICAO Annex 16 Volume I and II and the ICAO Aircraft Engine Emissions Databank, ICAO is planning to develop a similar public database of voluntarily reported information related to the international Airplane CO_2 Emission Standards, and this database is referred to as the ICAO CO_2 Certification Database (CO_2DB). The information requested by ICAO to go in the CO_2DB will include only information that is not considered by industry to be commercially sensitive. This means that the ICAO CO_2DB will include only information to identify the airplane type (manufacturer, engine type(s), MTOM, etc.), the regulatory limit, and certified emissions metric value (and only where voluntarily reported by manufacturers). This will not include the individual components of the metric equation (*e.g.* RGF or SAR values described in Equation V–1). (Note later in this section (V.G.1) we describe the manner in which the EPA treats information that has been claimed to be confidential business information. Further information is also included in the Information Collection Request Supporting Statement.[105])

In order to assess the GHG emission impacts of the proposed standards and to inform future actions, the EPA needs to understand how the proposed GHG standards affect the in-production fleet. Thus, we need access to timely, representative emissions data of the fleet at the requisite model level. The EPA needs information on technology, performance parameters, and emissions data to conduct accurate technology assessments, compile airplane emission inventories, and develop appropriate policy. While the FAA would have access to technical information during certification, the EPA would not be able to access this information provided to FAA, and these circumstances reinforce the need for the EPA reporting requirement.

Having the information updated each year would allow the EPA to assess technology trends. It would also assist the EPA to stay abreast of any developments in the characteristics of the industry. The EPA would begin to collect data as airplanes start to become certificated. The EPA does not expect a full dataset on all in-production airplanes until shortly after the in-production applicability date of January 1, 2028. In the context of EPA's standard-setting role under the CAA with regard to aircraft engine emissions, it is consistent with our policy and practice to ask for timely and reasonable reporting of emission certification testing and other information that is relevant to our mission.[106] Under the CAA, we are authorized to require manufacturers to establish and maintain necessary records, make reports, and provide such other information as we may reasonably require to discharge our functions under the Act. (See 42 U.S.C. 7414(a)(1).)

We are proposing to require that airplane manufacturers submit an annual production report directly to the EPA [107] with specific information for each individual airplane sub-model that (1) is designed to operate at subsonic speeds, (2) is subject to EPA's GHG emission standards, and (3) has received a type certificate. More specifically, the scope of the proposed production report would include subsonic jet powered airplanes with certificated MTOM over 5,700 kg and turboprop powered airplanes with certificated MTOM over 8,618 kg. We are also proposing that this information be reported to us in a timely manner, which would allow us to ensure that any public policy that we create based on this information will be well informed.

The proposed reporting elements for each affected airplane sub-model are listed below.

- Company corporate name as listed on the airplane type certificate;
- Calendar year for which reporting;
- Complete airplane sub-model name (this would generally include the model name and the sub-model identifier, but may also include a type certificate family identifier);
- The airplane type certificate number, as issued by the FAA (specify if the sub-model also has a type certificate issued by a certificating authority other than the FAA);
- Date of issue of airplane type certificate and/or exemption (*i.e.* month and year);
- Number of engines on the airplane;
- Company corporate name, as listed on the engine type certificate;
- Complete engine sub-model name (this would generally include the model name and the sub-model identifier, but may also include an engine type certificate family identifier);
- Company corporate name as listed on the propeller type certificate—as applicable;
- Complete propeller sub-model name (this would generally include the model name and the sub-model identifier, but may also include propeller an engine type certificate family identifier);
- Date of application for certification to airplane GHG standards;
- Emission standard to which the airplane is certificated (*i.e.,* the specific Annex 16, Volume III, edition number and publication date in which the numerical standards first appeared);
- If this is a modified airplane for emissions certification purposes, identify the original certificated airplane model;
- Production volume of the airplane sub-model for the previous calendar year, or if zero, state that the airplane model is not in production and list the date of manufacture (month and year) of the last airplane produced;
- Number of exempt airplanes produced,[108] if applicable;

[103] ICAO, Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume II, Aircraft Engine Emissions, Part III, Chapter 2, Section 2.4. ICAO, 2017: *Annex 16 Volume II—Environmental Protection—Aircraft Engine Emissions, Fourth Edition,* Incorporating Amendments 1–9, 174 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume II is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–2.

[104] The European Aviation Safety Agency (EASA) hosts the ICAO Aircraft Engine Emissions Databank on behalf of ICAO. Available at: *https://www.easa.europa.eu/easa-and-you/environment/icao-aircraft-engine-emissions-databank* (last accessed March 16, 2020).

[105] Draft ICR Supporting Statement 2626.01, available in the public Docket.

[106] The FAA already requires much of the information EPA is seeking through the certification process but is unable to share it because of confidentiality agreements with engine manufacturers. Also, that information is part of a much larger submission, making it difficult to extract the specific reporting elements for EPA.

[107] The proposed report would be submitted only to EPA. No separate submission or communication of any kind is required for the FAA.

[108] Airplanes produced under an exemption would still be required to report all information for all fields. In the case new type designs that are built

- Certificated MTOM;
- GHG Emissions Metric Value;
- Regulatory level;
- Margin to regulatory level;
- RGF.

The EPA is proposing to collect additional elements or information beyond what ICAO will request for the voluntary CO_2DB. These additional elements are the RGF and annual production volume. From the list above, the ICAO CO_2DB will only include the airplane identification information, MTOM, and Metric Value. ICAO limited the information in the public CO_2DB for the following reasons: (a) To recognize the concerns of manufacturers to exclude commercially sensitive information and (b) to expedite manufacturers' voluntary submissions for populating the dataset. These reasons would not pertain to the EPA reporting requirement because (a) the EPA's CBI regulations would prevent the disclosure of confidential business information (see V.G.1 below), and (b) the EPA reporting of information would be required, preventing delays in manufacturers' submissions. The EPA requests comment on the scope of this proposed information request including any concerns related to reporting any of this information. The EPA also requests comment on whether we should require reporting of additional information.

The proposed annual report would be submitted for each calendar year in which a manufacturer produces any airplane subject to emission standards as previously described. These reports would be due by February 28 of each year, starting with the 2020 calendar year, and cover the previous calendar year. This report would be sent to the Designated EPA Program Officer. Where information provided for any previous year remains valid and complete, the manufacturer would be allowed to report the production figures and to state that there are no changes instead of resubmitting the original information. To facilitate and standardize reporting, we expect to specify a particular format for this reporting in the form of a spreadsheet or database template that we would provide to each manufacturer. As noted previously, we intend to use the proposed reports to help inform any further public policy approaches regarding airplane GHG emissions that we consider, including possible future emissions rules, as well as to help provide transparency to the general public. Subject to the applicable requirements of 42 U.S.C. 7414(c), 18 U.S.C. 1905, and 40 CFR part 2, all data received by the Administrator that is not confidential business information may be posted on our website and would be updated annually. By collecting and publicly posting this information on EPA's website, we believe that this information would be useful to the general public to help inform public knowledge regarding airplane GHG emissions.

We have assessed the potential reporting burden associated with the proposed annual reporting requirement. That assessment is presented in Sections VII.D.4 and IX.C of this proposed rule.

1. Confidentiality

In general, emission data and related technical information collected under CAA section 114 cannot be treated as confidential business information (CBI). Consistent with governing EPA regulations, however, where manufacturers show what information they consider confidential by marking, circling, stamping or some other method, and if the EPA determines that the information is confidential, the EPA would store said information as CBI pursuant to 40 CFR part 2 and 40 CFR 1068.10. If manufacturers send the EPA information without marking it is CBI, the EPA may make it available to the public without further notice to the manufacturer. Although CBI determinations are usually made on a case-by-case basis, the EPA has issued guidance on what constitutes emission data that cannot be considered CBI (56 FR 7042, February 21, 1991).

H. Test and Measurement Procedures

The international certification test procedures have been developed based upon industry's current best practices for establishing the cruise performance of their airplanes and on input from certification authorities. These procedures include specifications for airplane conformity, weighing, fuel specifications, test condition stability criteria, required confidence intervals, measurement instrumentation required, and corrections to reference conditions. In this action, we are proposing to incorporate by reference the test procedures for the ICAO Airplane CO_2 Emission Standards. Adoption of these test procedures would maintain consistency among all ICAO member States.

Airplane flight tests, or FAA approved performance models, would be used to determine SAR values that form the basis of the GHG metric value. Under the proposed rule, flight testing to determine SAR values shall be conducted within the approved normal operating envelope of the airplane, when the airplane is steady, straight, level, and trim, at manufacturer-selected speed and altitude.[109] The rule would provide that flight testing must be conducted at the ICAO-defined reference conditions where possible,[110] and that when testing does not align with the reference conditions, corrections for the differences between test and reference conditions shall be applied.[111]

We are proposing to incorporate by reference, in proposed § 1030.23(d), certain procedures found in ICAO Annex 16, Volume III.

I. Controlling Two of the Six Well-Mixed GHGs

As described earlier in Section V.A and V.H, we are proposing to adopt the ICAO test procedures and fuel efficiency metric.[112] The ICAO test procedures for the international Airplane CO_2 Emission Standards measure fuel efficiency (or fuel burn), and ICAO uses fuel efficiency in the metric (or equation) for determining compliance. As explained earlier in Section III and in the 2016 Findings,[113] only two of the six well-mixed GHGs—CO_2 and N_2O—are emitted from covered aircraft. Although there is not a standardized test procedure for directly measuring airplane CO_2 or N_2O emissions, the test

and fixed (or changed) in the same year, separate lines should be used to record the exempt and complaint configurations and metric values.

[109] It is expected that manufacturers will choose conditions that result in the highest SAR value for a given certification mass. Manufacturers may choose other than optimum conditions to determine SAR; however, doing so will be at their detriment.

[110] Annex 16, Vol. III, sec. 2.5. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

[111] Annex 16, Vol. III, Appendix 1. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3.

[112] ICAO's certification standards and procedures for airplane CO_2 emissions are based on the consumption of fuel (or fuel burn). ICAO uses the term CO_2 for its standards and procedures, but ICAO is actually regulating or measuring the rate of an airplane's fuel burn (or fuel efficiency). As described earlier, to convert an airplane's rate of fuel burn (for jet fuel) to a CO_2 emissions rate, a 3.16 kilograms of CO_2 per kilogram of fuel burn emission index needs to be applied.

[113] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

procedure for fuel efficiency scales with the limiting of both CO_2 and N_2O emissions, as they both can be indexed on a per-unit-of-fuel-burn basis. Therefore, both CO_2 and N_2O emissions can be controlled as airplane fuel burn is limited.[114] Since limiting fuel burn is the only means by which airplanes control their GHG emissions, the fuel-burn-based metric (or fuel-efficiency-based metric) reasonably serves as a surrogate for controlling both CO_2 and N_2O.

Since CO_2 emissions represent nearly all GHG emissions from airplanes and ICAO's CO_2 test procedures measure fuel efficiency by using a fuel-efficiency-based metric, we propose to harmonize with the ICAO CO_2 standard—by proposing to adopt an aircraft engine GHG [115] standard that also employs a fuel efficiency metric that will also scale with both CO_2 and N_2O emissions. The proposed aircraft engine GHG standard would control both CO_2 and N_2O emissions, without the need for adoption of engine exhaust emissions rates for either CO_2 or N_2O. However, the air pollutant regulated by these standards would remain the aggregate of the six well-mixed GHGs.[116]

VI. Aggregate GHG and Fuel Burn Methods and Results

This section describes the EPA's emission impacts analysis for the proposed standards. This section also describes the assumptions and data sources used to develop the baseline GHG emissions inventories and the potential consequences of the proposed standards on aviation emissions. Consistent with Executive Order 12866, we analyzed the impacts of alternatives (using similar methodologies), and the results for these alternatives are described in chapters 4 and 5 of the Draft Technical Support Document (TSD).

As described earlier in Section II, the manufacturers of affected airplanes and engines have already developed or are developing technologies that meet the 2017 ICAO Airplane CO_2 Emission Standards. The EPA expects that the manufacturers will comply with the ICAO Airplane CO_2 Emission Standards even in advance of member States' adoption into domestic regulations. Therefore, the EPA expects that the proposed GHG standards would not, beyond limited reporting costs, impose an additional burden on manufacturers. In keeping with the ICAO/CAEP need to consider technical feasibility in standard setting, the ICAO Airplane CO_2 Emission Standards reflect demonstrated technology that will be available in 2020.

As described below, the analysis for the proposed GHG standards considered individual airplane types and market forces. We have assessed GHG emission reductions needed for airplane types (or airplane models) to meet the proposed GHG standards compared to the improvements that are driven by market competition and are expected to occur in the absence of any standard (business as usual improvements). A summary of these results is described later in this section. Additional details can be found in chapter 5 of the accompanying Draft TSD for the proposed standards.

A. What methodologies did the EPA use for the emissions inventory assessment?

The EPA participated in ICAO/CAEP's standard-setting process for the international Airplane CO_2 Emission Standards. CAEP provided a summary of the results from this analysis in the report of its tenth meeting,[117] which occurred in February 2016. However, due to the commercial sensitivity of the data used in the analysis, much of the underlying information is not available to the public. For the U.S. domestic GHG standards, however, we are making our analysis, data sources, and model assumptions transparent to the public so all stakeholders affected by the proposed standards can understand how the agency derives its decisions. Thus, the EPA has conducted an independent impact analysis based solely on publicly available information and data sources. An EPA report detailing the methodology and results of the emissions inventory analysis [118] was peer-reviewed by multiple independent subject matter experts, including experts from academia and other government agencies, as well as independent technical experts.[119]

The methodologies the EPA uses to assess the impacts of the proposed GHG standards are summarized in a flow chart shown in Figure VI–1. This section describes the impacts of the proposed GHG standards. Essentially, the approach is to compare the GHG emissions of the business as usual baseline in the absence of standards with those emissions under the proposed GHG standards.

[114] For jet fuel, the emissions index or emissions factor for CO_2 is 3.16 kilograms of CO_2 per kilogram of fuel burn (or 3,160 grams of CO_2 per kilogram of fuel burn). For jet fuel, the emissions index for nitrous oxide is 0.1 grams of nitrous oxide per kilogram of fuel burn (which is significantly less than the emissions index for CO_2). Since CO_2 and nitrous oxide emissions are indexed to fuel burn, they are both directly tied to fuel burn. Controlling CO_2 emissions means controlling fuel burn, and in turn this leads to limiting nitrous oxide emissions. Thus, controlling CO_2 emissions would scale with limiting nitrous oxide emissions.

SAE, 2009, *Procedure for the Calculation of Airplane Emissions,* Aerospace Information Report, AIR5715, 2009–07 (pages 45–46). The nitrous oxide emissions index is from this report.

ICAO, 2016: *ICAO Environmental Report 2016, Aviation and Climate Change,* 250 pp. The CO_2 emissions index is from this report. Available at *https://www.icao.int/environmental-protection/Documents/ICAO%20Environmental%20Report%202016.pdf* (last accessed March 16, 2020).

[115] See section II.E (*Consideration of Whole Airplane Characteristics*) of this proposed rule for a discussion on regulating emissions from the whole airplane.

[116] Although compliance with the proposed GHG standard would be measured in terms of fuel efficiency, the EPA considers the six well-mixed GHGs to be the regulated pollutant for the purposes of the proposed standard.

[117] ICAO, 2016: *Doc 10069—Report of the Tenth Meeting, Montreal,1–12 February 2016, Committee on Aviation Environmental Protection, CAEP 10,* 432pp., pages 271 to 308, is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog and is copyright protected. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report.

[118] U.S. EPA, 2020: Technical Report on Aircraft Emissions Inventory and Stringency Analysis, July 2020, 52pp.

[119] RTI International and EnDyna, *EPA Technical Report on Aircraft Emissions Inventory and Stringency Analysis: Peer Review,* July 2019, 157pp.

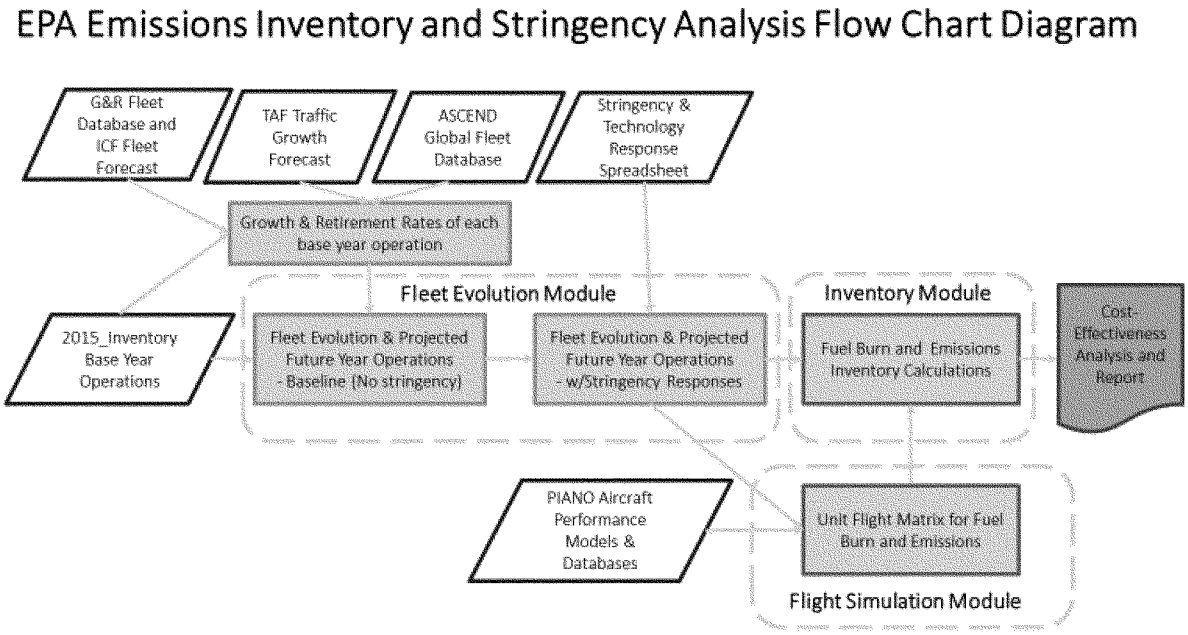


Figure VI-1 EPA Regulatory Analysis Flow Chart

The first step of the EPA analysis is to create a baseline, which is constructed from the unique airport origin-destination (OD) pairs and airplane combinations in the 2015 base year. As described further in the next section, these base year operations are then evolved to future year operations, 2016–2040, by emulating the market driven fleet renewal process to define the baseline (without the proposed GHG regulatory requirements). The same method then is applied to define the fleet evolution under the proposed GHG standards, except that different potential technology responses are defined for the airplanes impacted by the proposed GHG standards. Specifically, they are either modified to meet the standards or removed from production. Once the flight activities for all analysis scenarios are defined by the fleet evolution module, then fuel burn and GHG [120] emissions are modelled for all the scenarios with a physics-based airplane performance model known as PIANO.[121] A brief account of the methods, assumptions, and data sources used is given below, and more details can be found in chapter 4 of the Draft TSD.

1. Fleet Evolution Module

To develop the baseline, the EPA used FAA 2015 operations data as the basis to project future fleet operations out to 2040. The year-to-year activity growth rate was determined by the FAA 2015–2040 Terminal Area Forecast [122] (TAF) based on airport OD-pairs, route groups (domestic or international), and airplane types. The retirement rate of a specific airplane is determined by the age of the airplane and the retirement curve of its associated airplane type. Retirement curves of major airplane types are derived statistically based on data from the FlightGlobal Fleets Analyzer database [123] (also known as ASCEND Online Fleets Database—hereinafter ''ASCEND'').

EPA then linked the 2015 FAA operations data to the TAF and ASCEND-based growth and retirement rates by matching the airport and airplane parameters. Where the OD-pair and airplane match between the operations data and the TAF, then the exact TAF year-on-year growth rates were applied to grow 2015 base year activities to future years. For cases without exact matches, growth rates from progressively more aggregated levels were used to grow the future year activities.[124]

The retirement rate was based on the exact age of the airplane from ASCEND for airplanes with a known tail number. When the airplane tail number was not known, the aggregated retirement rate of the next level matching fleet (*e.g.,* airplane type or category as defined by

[120] To convert fuel burn to CO_2 emissions, we used the conversion factor of 3.16 kg/kg fuel for CO_2 emissions, and to convert to the six well-mixed GHG emissions, we used 3.19 kg/kg fuel for CO_2 equivalent emissions. Our method for calculating CO_2 equivalent emissions is based on SAE AIR 5715, 2009: Procedures for the Calculation of Aircraft Emissions and the EPA publication: Emissions Factors for Greenhouse Gas Inventories, EPA, last modified 4, April 2014, *https://www.epa.gov/sites/production/files/2015-07/documents/emission-factors_2014.pdf* (last accessed March 16, 2020).

[121] PIANO is the Aircraft Design and Analysis Software by Dr. Dimitri Simos, Lissys Limited, UK, 1990–present; Available at *www.piano.aero* (last accessed March 16, 2020). PIANO is a commercially available airplane design and performance software suite used across the industry and academia.

[122] FAA 2015–2040 Terminal Area Forecast, the Terminal Area Forecast (TAF) is the official FAA forecast of aviation activity for U.S. airports. It contains active airports in the National Plan of Integrated Airport Systems (NPIAS) including FAA-towered airports, Federal contract-towered airports, non-Federal towered airports, and non-towered airports. Forecasts are prepared for major users of the National Airspace System including air carrier, air taxi/commuter, general aviation, and military. The forecasts are prepared to meet the budget and planning needs of the FAA and provide information for use by state and local authorities, the aviation industry, and the public.

[123] FlightGlobal Fleets Analyzer is a subscription based online data platform providing comprehensive and authoritative source of global airplane fleet data (also known as ASCEND database) for manufacturers, suppliers and Maintenance, Repair, Overhaul (MRO) providers. *https://signin.cirium.com* (last accessed December 16, 2019).

[124] For example, in the absence of exact airplane match, the aggregated growth rate of airplane category is used; in case of no exact OD-pair match, the growth rate of route group is used. Outside the U.S. the non-US flights were modelled with global average growth rates from ICAO for passenger and freighter operations and from the Bombardier forecast for business jets. See chapter 5 of the Draft TSD for details.

ASCEND) was used to calculate the retirement rates for future years.

Combining the growth and retirement rates together, we calculate the future year growth and replacement (G&R) market demands. These future year G&R market demands are aligned to each base year flight, and the future year flights are allocated with available G&R airplanes [125] using an equal-product market-share selection process.[126] The market demand allocation is made based on ASK (Available Seat Kilometer) for passenger operations, ATK (Available Tonne Kilometer) for freighter operations, and number of operations for business jets.

For the 2015 base-year analysis, the baseline (no regulation) modelling includes continuous (2016–2040) annual fuel efficiency improvements. The modelling tracks the year airplanes enter the fleet and applies the type-specific fuel efficiency improvement [127] via an annual adjustment factor based on the makeup of the fleet in a particular year. Since there is uncertainty associated with the fuel-efficiency improvement assumption, the analysis also includes a sensitivity scenario without this assumption in the baseline.[128] The EPA fleet evolution model focuses on U.S. aviation, including both domestic and international flights (with U.S. international flights defined as flights departing from the U.S. but landing outside the U.S.). This is the same scope of operations used for the EPA *Inventory of U.S. Greenhouse Gas Emissions and Sinks.*[129] However, because aviation is an international industry and manufacturers of covered airplanes sell their products globally, the analysis also covers the global fleet evolution and emissions inventories for reference (but at a much less detailed level for traffic growth and fleet evolution outside of the U.S.).

The fleet evolution modelling for the proposed regulatory scenarios defines available G&R airplanes for various market segments based on the technology responses identified by ICF, a contractor for EPA, as described later in Section VII.[130]

2. Full Flight Simulation Module

PIANO version 5.4 was used for all the emissions modelling. PIANO v5.4 (2017 build) has 591 airplane models (including many project airplanes still under development, *e.g.,* the B777–9X) and 56 engine types in its airplane and engine databases. PIANO is a physics-based airplane performance model used widely by industry, research institutes, non-governmental organizations and government agencies to model airplane performance metrics such as fuel consumption and emissions characteristics based on specific airplane and engine types. We use it to model airplane performance for all phases of flight from gate to gate including taxi-out, takeoff, climb, cruise, descent, approach, landing, and taxi-in in this analysis.

To simplify the computation, we made the following modeling assumptions: (1) Assume airplanes fly great circle distance (which is the shortest distance along the surface of the earth between two airports) for each origin-destination (OD) pair. (2) Assume still air flights and ignore weather or jet stream effects. (3) Assume no delays in takeoff, landing, enroute, and other flight-related operations. (4) Assume a load factor of 75 percent maximum payload capacity for all flights except for business jet where 50 percent is assumed. (5) Use the PIANO default reserve fuel rule [131] for a given airplane type. (6) Assume a one-to-one relationship between metric value improvement and fuel burn improvement for airplanes with better fuel-efficiency technology insertions (or technology responses).

Given the flight activities defined by the fleet evolution module in the previous section, we generated a unit flight matrix to summarize all the PIANO outputs of fuel burn, flight distance, flight time, emissions, etc. for all flights uniquely defined by a combination of departure and arrival airports (OD-pairs), airplane types, and engine types. This matrix includes millions of flights and forms the basis for our analysis (including the sensitivity studies).

3. Emissions Module

The GHG emissions calculation involves summing the outputs from the first two modules for every flight in the database. This is done globally, and then the U.S. portion is segregated from the global dataset. The same calculation is done for the baseline and the proposed GHG standard. When a surrogate airplane is used to model an airplane that is not in the PIANO database, or when a technology response is required for an airplane to pass a standard level, an adjustment factor is also applied to model the expected performance of the intended airplane and technology responses.

The differences between the proposed GHG standards and the baseline provide quantitative measures to assess the emissions impacts of the proposed GHG standards. A brief summary of these results is described in the next two sections. More details can be found in chapter 5 of the Draft TSD.

B. What are the baseline CO_2 emissions?

The commercial aviation marketplace is continually changing, with new origin-destination markets and new, more fuel-efficient airplanes growing in number and replacing existing airplanes in air carrier (or airline) fleets. This behavior introduces uncertainty to the future implications of this rulemaking. Since there is uncertainty, multiple baseline/scenarios may be analyzed to explore a possible range of implications of the proposed rule.

For the analysis in this proposed rulemaking and consistent with our regulatory impact analyses for all other sectors, the EPA is analyzing additional baseline/scenarios that reflect a business-as-usual continually improving baseline with respect to fleet fuel efficiency. We also evaluated a baseline scenario that is fixed to reflect 2016 technology levels (*i.e.,* no continual improvement in fuel-efficient technology), and this baseline scenario

[125] The airplane G&R database contains all the EPA-known in-production and in-development airplanes that are projected to grow and replace the global base-year fleet over the 2015–2040 analysis period. This airplane G&R database, the annual continuous improvements, and the technology responses are available in the 2018 ICF Report.

[126] EPA uses equal product market share (for all airplane present in the G&R database), but attention has been paid to make sure that competing manufacturers have reasonable representative products in the G&R database.

[127] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[128] Note that the ICAO analysis did not use a continuous improvement assumption, but instead technology was assumed to stay at its current state. Specifically, current airplane types would have the same metric value in 2040 as they did in 2016, unless they were changed to meet the ICAO CO_2 standards.

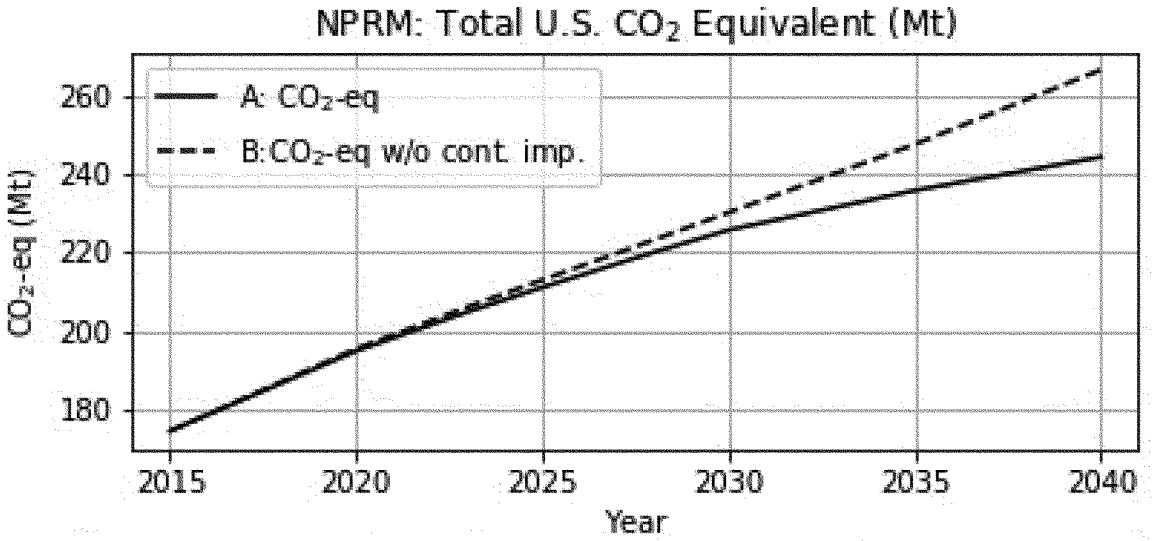
[129] U.S. EPA, 2018: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016, 1,184 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–18–003, April 2018. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2016* (last accessed March 16, 2020).

[130] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[131] For typical medium/long-haul airplanes, the default reserve settings are 200 NM diversion, 30 minutes hold, plus 5% contingency on mission fuel. Depending on airplane types, other reserve rules such as U.S. short-haul, European short-haul, National Business Aviation Association—Instrument Flight Rules (NBAA–IFR) or Douglas rules are used as well.

is consistent with the approach used by ICAO.[132]

For the EPA analysis, the baseline GHG emissions are assessed for 2015, 2020, 2023, 2025, 2028, 2030, 2035, and 2040. The projected baseline GHG emissions for all U.S. flights (domestic and international) are shown in Figure VI–2 and Figure VI–3, both with and without the continuous (2016–2040) fuel-efficiency improvement assumption. More detailed breakdowns for the passenger, freighter, and business market segments can be found in chapter 5 of the Draft TSD. It is worth noting that the U.S. domestic market is relatively mature, with a lower growth rate than those for most international markets. The forecasted growth rate for the U.S. domestic market combined with the Continuous Improvement Assumption results in a low GHG emissions growth rate in 2040 for the U.S. domestic market. However, it should be noted that this is one set of assumptions combined with a market forecast. Actual air traffic and emissions growth may vary as a result of a variety of factors.[133]

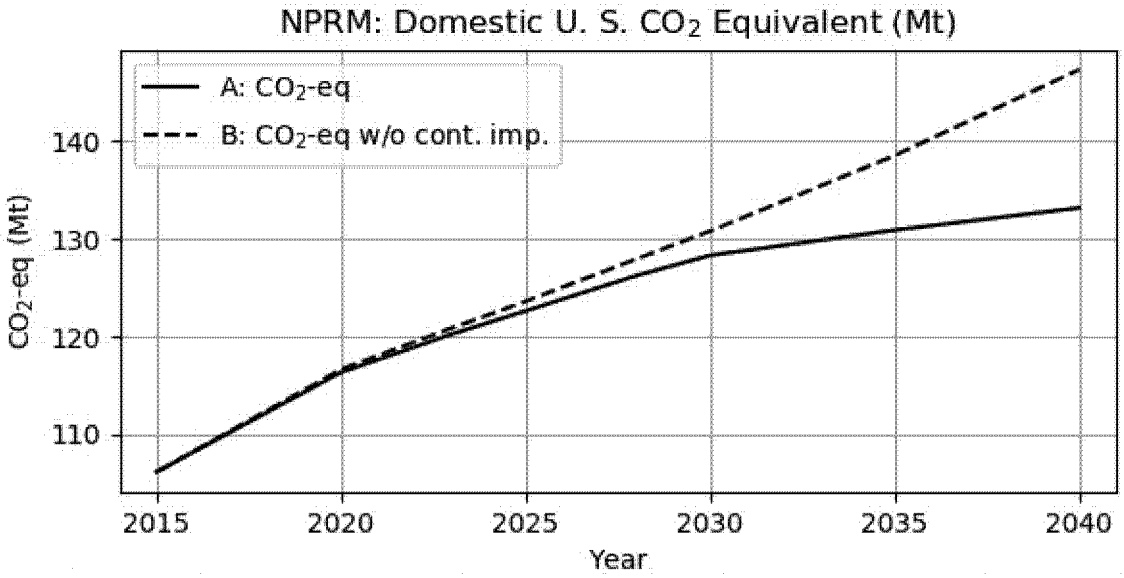


	2015	2020	2023	2025	2028	2030	2035	2040
A	174.16	194.74	204.83	211.1	220.13	225.83	236.0	244.6
B	174.16	195.3	206.08	213.0	223.31	230.33	247.86	267.02

Figure VI-2 - NPRM Main Analysis Baselines With and Without an Adjustment for Projected Continuous Improvement for the U.S. Total Aviation CO_2-eq Emissions in Megatonne (Mt)[133]

[132] A comparison of the EPA and ICAO modeling approaches and results is available in chapter 5 and 6 of the Draft TSD.

[133] To convert fuel burn to CO_2 emissions, we used the conversion factor of 3.16 kg/kg fuel for CO_2 emissions, and to convert to the six well-mixed GHG emissions, we used 3.19 kg/kg fuel for CO_2 equivalent emissions. Our method for calculating CO_2 equivalent emissions is based on SAE AIR 5715, 2009: Procedures for the Calculation of Aircraft Emissions and the EPA publication: Emissions Factors for Greenhouse Gas Inventories, EPA, last modified 4, April 2014. *https://www.epa.gov/sites/production/files/2015-07/documents/emission-factors_2014.pdf* (last accessed March 16, 2020).



	2015	2020	2023	2025	2028	2030	2035	2040
A	106.15	116.35	120.25	122.62	126.24	128.31	130.9	133.17
B	106.15	116.64	120.88	123.6	127.94	130.79	138.52	147.31

Figure VI-3 NPRM Main Analysis Baselines With and Without an Adjustment for Projected Continuous Improvement for the U.S. Domestic Aviation CO_2-eq Emissions in Megatonne (Mt)

Conceptually, the difference between the EPA and ICAO baselines is illustrated in Figure VI–4. The solid line represents the historical growth of emissions from the dawn of the jet age in 1960s to the present (2016). In this time, air traffic and operations have increased and offset the technology improvements. The long-dashed line (_ _) and dot-dash-dot (_. _) lines represent different assumptions used by the EPA and ICAO to create baseline future inventories to compare the benefits of potential standards. The two baselines start in 2016, but their different assumptions lead to very different long-term forecasts. The EPA method (long dash) uses the input from an independent analysis conducted by ICF [134] to develop a Projected Continuous Improvement baseline to model future improvements similar to historical trends. The ICAO method creates a baseline using a Constant Technology Assumption that freezes the airplane technology going forward. This means that the in-production airplanes at that date will be built with no changes indefinitely into the future. The dot-dot-dash (_. . _) line compares this Constant Technology Assumption to the solid historical emissions growth. Thus, the projected benefits of any standards will be different depending upon the baseline that is assumed. We believe all these baselines are valid relative to their assumptions. To understand the true meaning of the analysis and make well-informed policy decisions, one must consider the underlying assumptions carefully.

[134] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

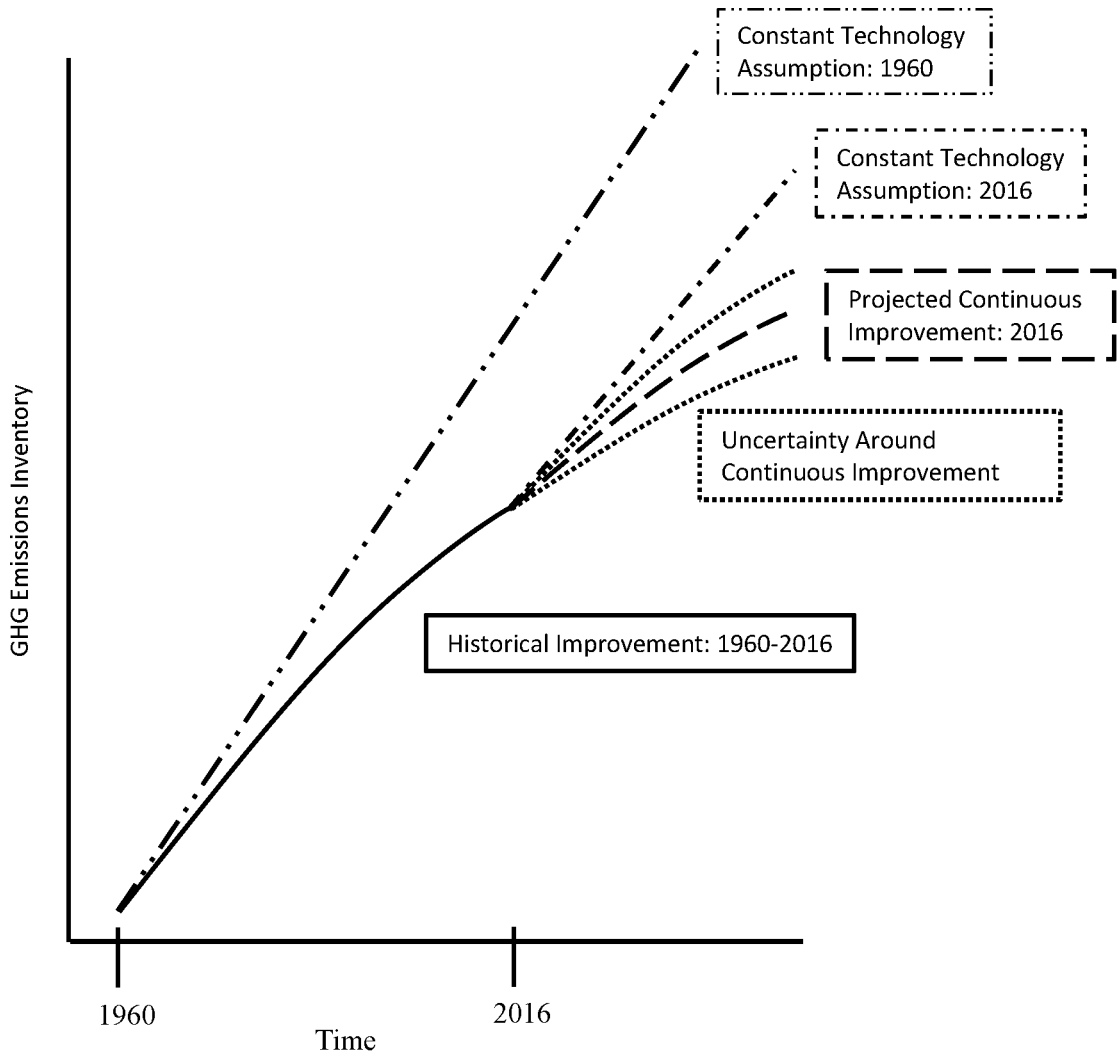


Figure VI-4 Illustration of different baselines relative to historical GHG emissions inventory

C. What are the projected effects in fuel burn and GHG emissions?

Based on the technology response described in Section VII.C and the baseline Continuous Improvement Assumption, the proposed GHG standards are not expected to result in reductions in fuel burn and GHG emissions beyond the baseline. This result makes sense because all of the airplanes in the G&R fleet either will meet the standard level associated with the proposed GHG standards or are expected to be out of production by the time the standards take effect, according to our NPRM technology responses.[135] In other words, the existing or expected fuel efficiency technologies from airplane and engine manufacturers that were the basis of the ICAO standards, which match the proposed standards, demonstrate technological feasibility. Thus, we do not project a cost (except for limited reporting costs as described in Section VII) or benefit for the proposed GHG standards (further discussion on the rationale for no expected reductions and no costs is provided later in this section and Section VII).

The projected zero reduction in GHG emissions is quite different from the results of the ICAO analysis mentioned in VI.A, which bounds the range of analysis exploration given the uncertainties involved with predicting the implications of this proposed rule. The agency has conducted sensitivity studies around our main analysis to understand the differences[136] between our analysis and ICAO's (further detail on the differences in the analyses and the sensitivity studies is provided in the Draft TSD). These sensitivity studies show that the no cost-no benefit conclusion is quite robust. For example, even if we assume no continuous improvement, the projected GHG emissions reductions for the proposed standards would still be zero since all the non-compliant airplanes (A380 and 767 freighters) are assumed to be out of production by 2028 (according to ICF analysis), the proposed standard effective year. Furthermore, even if we

[135] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[136] The differences in the analyses include different assumptions. Our analysis assumes continuous improvement and ICAO's analysis does not. Also, we make different projections about the end of production of the A380 and 767 compared to ICAO.

assume A380 and 767 freighters will continue production till 2030 and not making any improvement between 2015 and 2027, the GHG emissions reductions will still be an order of magnitude lower than the ICAO results since all emissions reductions will come from just 3 years' worth of production (2028 to 2030) of A380 and 767 freighters.[137] Considering that both airplanes are close to the end of their production life cycle by 2028 and low market demands for them, these limited emissions reductions may not be realized at all if the manufacturers are granted exemptions. Thus, the agency analysis results in a no cost-no benefit conclusion that is reasonable for the proposed GHG standards. At the same time, we note that this is distinct from the ICAO analysis, which did not use production end dates for airplanes nor a continually improving baseline.

In summary, the ICAO Airplane CO_2 Emission Standards, which match the proposed GHG standards, were predicated on demonstrating technological feasibility; *i.e.* that manufacturers of affected airplanes and engines have already developed or are developing technologies that meet the 2017 ICAO Airplane CO_2 Emission Standards. The EPA expects that the manufacturers will comply with the ICAO Airplane CO_2 Emission Standards even in advance of member States' adoption into domestic regulations. Therefore, the EPA expects that the proposed airplane GHG standards would not, beyond limited reporting costs, impose an additional burden on manufacturers.

VII. Technological Feasibility and Economic Impacts

This section describes the technological feasibility and costs of the proposed airplane GHG rule. This section describes the agency's methodologies for assessing technological feasibility and estimated costs of the proposed standards. Consistent with Executive Order 12866, we analyzed the technological feasibility and costs of alternatives (using similar methodologies), and the results for these alternatives are described in chapter 6 of the Draft TSD.

The EPA and FAA participated in the ICAO analysis that informed the adoption of the international Airplane CO_2 Emission Standards. A summary of that analysis was published in the report of ICAO/CAEP's tenth meeting,[138] which occurred in February 2016. However, due to the commercial sensitivity of much of the underlying data used in the ICAO analysis, the ICAO-published report (which is publicly available) provides only limited supporting data for the ICAO analysis. The EPA Draft TSD for this proposed rulemaking compares the ICAO analysis to the EPA analysis.

For the purposes of evaluating the proposed GHG regulations based on publicly available and independent data, the EPA had an analysis conducted of the technological feasibility and costs of the international Airplane CO_2 Emission Standards through a contractor (ICF) study.[139] [140] The results, developed by the contractor, include estimates of technology responses and non-recurring costs for the proposed domestic GHG standards, which are equivalent to the international Airplane CO_2 Emission Standards. Technologies and costs needed for airplane types to meet the proposed GHG regulations were analyzed and compared to the improvements that are anticipated to occur in the absence of regulation. In addition, costs were evaluated for EPA's proposed annual reporting requirement that was described earlier in Section V.G. The methods used in and the results from the analysis are described in the following paragraphs—and in further detail in chapter 2 of the Draft TSD for this proposed rulemaking.

A. Market Considerations

Prior to describing our technological feasibility and cost analysis, potential market impacts of the proposed GHG regulations are discussed in this section. As described earlier, airplanes and airplane engines are sold around the world, and international airplane emission standards help ensure the worldwide acceptability of these products. Airplane and airplane engine manufacturers make business decisions and respond to the international market by designing and building products that conform to ICAO's international standards. However, ICAO's standards need to be implemented domestically for products to prove such conformity. Domestic action through EPA rulemaking and subsequent FAA rulemaking enables U.S. manufacturers to obtain internationally recognized FAA certification, which for the proposed GHG standards would ensure type certification consistent with the requirements of the international Airplane CO_2 Emission Standards. This is important, as compliance with the international standards (via FAA type certification) is a critical consideration in airlines' purchasing decisions. By implementing the requirements that conform to ICAO requirements in the United States, we would remove any question regarding the compliance of airplanes certificated in the United States. The proposed rule, if adopted, would facilitate the acceptance of U.S. airplanes and airplane engines by member States and airlines around the world. Conversely, U.S. manufacturers would be at a competitive disadvantage compared with their international competitors without this domestic action.

In considering the aviation market, it is important to understand that the international Airplane CO_2 Emission Standards were predicated on demonstrating technological feasibility; *i.e.,* that manufacturers have already developed or are developing improved technology that meets the 2017 ICAO CO_2 standards, and that the new technology will be integrated in airplanes throughout the fleet in the time frame provided before the implementation of the standards' effective date. Therefore, as described in Section VI.C, the EPA projects that these proposed standards would impose no additional burden on manufacturers beyond the proposed reporting requirement.

While recognizing that the international agreement was predicated on demonstrated technological feasibility, without access to the underlying ICAO/CAEP data it is informative to evaluate individual airplane models relative to the proposed equivalent U.S. regulations. Therefore,

[137] On February 14, 2019, Airbus made an announcement to end A380 production by 2021 after Emirates airlines reduced its A380 order by 39 and replaced them with A330 and A350. (The Airbus press release is available at: *https://www.airbus.com/newsroom/press-releases/en/2019/02/airbus-and-emirates-reach-agreement-on-a380-fleet--sign-new-widebody-orders.html,* last accessed on February 10, 2020). EPA's analysis was conducted prior to Airbus's announcement, so the analysis does not consider the impact of the A380 ending production in 2021. The early exit of A380, compared to the modeled scenarios, fits the general trend of reduced demands for large quad engine airplanes projected by the ICF technology responses and is consistent with our conclusion of no cost and no benefit for this rule.

[138] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP/10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected; Order No. 10069. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report.

[139] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[140] ICF International, 2015: *CO_2 Analysis of CO_2–Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

the technologies and costs needed for airplane types to meet the proposed rule were compared to the improvements that are expected to occur in the absence of standards (business as usual improvements). A summary of these results is described later in this section.

B. Conceptual Framework for Technology

As described in the 2015 ANPR, the EPA contracted with ICF to develop estimates of technology improvements and responses needed to modify in-production airplanes to comply with the international Airplane CO_2 Emission Standards. ICF conducted a detailed literature search, performed a number of interviews with industry leaders, and did its own modeling to estimate the cost of making modifications to in-production airplanes.[141] Subsequently, for this proposed rulemaking, the EPA contracted with ICF to update its analysis (herein referred to as the ''2018 ICF updated analysis'').[142] It had been three years since the initial 2015 ICF analysis was completed, and the EPA had ICF update the assessment to ensure that the analysis included in this proposed rulemaking reflects the current status of airplane GHG technology improvements. Therefore, ICF's assessment of technology improvements was updated since the 2015 ANPR was issued.[143]

The long-established ICAO/CAEP terms of reference were taken into account when deciding the international Airplane CO_2 Emission Standards, principal among these being technical feasibility. ''For the ICAO CO_2 certification standard setting, technical feasibility refers to any technology expected to be demonstrated to be safe and airworthy proven to Technology Readiness Level[144] (TRL) 8 by 2016 or shortly thereafter (per CAEP member guidance; approximately 2017), and expected to be available for application in the short term (approximately 2020) over a sufficient range of newly certificated airplanes.''[145] This means that the analysis that informed the international standard considered the emissions performance of in-production and on-order or in-development[146] airplanes, including types that would first enter into service by about 2020. (ICAO/CAEP's analysis was completed in 2015 for the February 2016 ICAO/CAEP meeting.)

In assessing the airplane GHG rule proposed in this action, the 2018 ICF updated analysis, which was completed a few years after the ICAO analysis, was able to use a different approach for technology responses. ICF based these responses on technology that would be available at TRL8 by 2017 and assumed continuous improvement of CO_2 metric values for in-production and in-development (or on-order) airplanes from 2010 to 2040 based on the incorporation of these technologies onto these airplanes over this same timeframe. Also, ICF considered the end of production of airplanes based on the expected business-as-usual status of airplanes (with the continuous improvement assumptions). This approach is described in further detail later in Section VII.C. The ICF approach differed from ICAO's analysis for years 2016 to 2020 and diverged even more for years 2021 and after. Since ICF was able to use the proposed effective dates in their analysis of the proposed airplane GHG standard (for new type design airplanes 2020, or 2023 for airplanes with less than 19 seats, and for in-production airplanes 2028), ICF was able to differentiate between airplane GHG technology improvements that would occur in the absence of the proposed standard (business as usual improvements) compared against technology improvements/responses that would be needed to comply with the proposed standard. ICF's approach is appropriate for the EPA-proposed GHG standard because it is based on more up-to-date inputs and assumptions.

C. Technological Feasibility

1. Technology Principles and Application

i. Short- and Mid-Term Methodology

ICF analyzed the feasible technological improvements to new in-production airplanes and the potential GHG emission reductions they could generate. For this analysis, ICF created a methodological framework to assess the potential impact of technology introduction on airplane GHG emissions for the years 2015–2029 (upcoming short and mid-term). This framework included five steps to estimate annual metric value (baseline metric values were generated using PIANO data[147]) improvements for technologies that are being or will be applied to in-production airplanes. First, ICF identified the technologies that could reduce GHG emissions of new in-production airplanes. Second, ICF evaluated each technology for the amount of potential GHG reduction and the mechanisms by which this reduction could be achieved. These first two steps were analyzed by airplane category. Third and fourth, the technologies were passed through technical success probability and commercial success probability screenings, respectively. Finally, individual airplane differences were assessed within each airplane category to generate GHG emission reduction projections by technology by airplane model—at the airplane family level (*e.g.,* 737 family). ICF refers to their methodological framework for projection of the metric value improvement or reduction as the expected value methodology. The expected value methodology is a projection of the annual fuel efficiency metric value improvement[148] from 2015–2029 for all the technologies that would be applied to each airplane (or

[141] ICF International, 2015: *CO_2 Analysis of CO_2–Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[142] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[143] As described earlier in section V, the ICAO test procedures for the international airplane CO_2 standards measure fuel efficiency (or fuel burn). Only two of the six well-mixed GHGs—CO_2 and N_2O are emitted from airplanes. The test procedures for fuel efficiency scale with the limiting of both CO_2 and N_2O emissions, as they both can be indexed on a per-unit-of-fuel-burn basis. Therefore, both CO_2 and N_2O emissions can be controlled as airplane fuel burn is limited. Since limiting fuel burn is the only means by which airplanes control their GHG emissions, the fuel burn (or fuel efficiency) reasonably serves as a surrogate for controlling both CO_2 and N_2O.

[144] TRL is a measure of Technology Readiness Level. CAEP has defined TRL8 as the ''actual system completed and 'flight qualified' through test and demonstration.'' TRL is a scale from 1 to 9, TRL1 is the conceptual principle, and TRL9 is the ''actual system 'flight proven' on operational flight.'' The TRL scale was originally developed by NASA. ICF International, *CO_2 Analysis of CO_2-Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, see page 40, March 17, 2015.

[145] ICAO, 2016: *Report of the Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected: Order No. 10069. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The statement on technological feasibility is located in Appendix C (page 5C–15, paragraph 6.2.1) of this report.

[146] Aircraft that are currently in-development, but were anticipated to be in production by about 2020.

[147] To generate metric values, the 2015 ICF analysis and 2018 ICF updated analysis used PIANO (Project Interactive Analysis and Optimization) data so that their analyses results can be shared publicly. Metric values developed utilizing PIANO data are similar to ICAO metric values. PIANO is the Aircraft Design and Analysis Software by Dr. Dimitri Simos, Lissys Limited, UK, 1990-present; Available at *www.piano.aero* (last accessed March 16, 2020). PIANO is a commercially available aircraft design and performance software suite used across the industry and academia.

[148] Also referred to as the constant annual improvement in CO_2 metric value.

business as usual improvement in the absence of a standard).

As a modification to the 2015 ICF analysis, the 2018 ICF updated analysis extended the metric value improvements at the airplane family level (*e.g.,* 737 family) to the more specific airplane variant level (*e.g.,* 737–700, 737–800, etc.). Thus, to estimate whether each airplane variant complied with the proposed GHG standard, ICF projected airplane family metric value reductions to a baseline (or base year) metric value of each airplane variant. ICF used this approach to estimate metric values for 125 airplane models allowing for a comparison of the estimated metric value for each airplane model to the level of the proposed GHG standard at the time the standard would go into effect.

In addition, ICF projected which airplane models would end their production runs (or production cycle) prior to the effective date of the proposed GHG standard. These estimates of production status, at the time the standard would go into effect, further informed the projected response of airplane models to the proposed standard. Further details of the short- and mid-term methodology are provided in chapter 2 of the Draft TSD.

ii. Long-Term Methodology

To project metric value improvements for the long-term, years 2030–2040, ICF generated a different methodology compared with the short- and mid-term methodology. The short- and mid-term methodology is based on forecasting metric value improvements contributed by specific existing technologies that are implemented, and ICF projects that about the 2030 timeframe a new round of technology implementation would begin that leads to developing a different method for predicting metric value improvements for the long term. For 2030 or later, ICF used a parametric approach to project annual metric value improvements. This approach included three steps. First, for each airplane type, technical factors were identified that drive fuel burn and metric value improvements in the long-term (*i.e.,* propulsive efficiency, friction drag reduction), and the fuel burn reduction prospect index [149] was estimated on a scale of 1 to 5 for each technical factor (chapter 2 of the Draft TSD describes these technical factors in detail). Second, a long-term market prospect index was generated on a scale of 1 to 5 based on estimates of the amount of potential research and development (R&D) put into various technologies for each airplane type. Third, the long-term market prospect index for each airplane type was combined with its respective fuel burn reduction prospect index to generate an overall index score for its metric value improvements. A low overall index score would indicate that the airplane type will have a reduced annual metric value reduction (the metric value decreases yearly at a slower rate relative to an extrapolated short- and mid-term annual metric value improvement), and a high overall index score would indicate an accelerated annual metric value improvement (the metric value decreases yearly at a quicker rate relative to an extrapolated short- and mid-term annual metric value improvement). Further details of the long-term methodology are provided in chapter 2 of the Draft TSD.

2. What technologies did the EPA consider to reduce GHG emissions?

ICF identified and analyzed seventy different aerodynamic, weight, and engine (or propulsion) technologies for fuel burn reductions. Although weight-reducing technologies affect fuel burn, they do not affect the metric value for the proposed GHG rule.[150] Thus, ICF's assessment of weight-reducing technologies was not included in this proposed rule, which excluded about one-third of the technologies evaluated by ICF for fuel burn reductions. In addition, based on the methodology described earlier in Section VII.C, ICF utilized a subset of the about fifty aerodynamic and engine technologies they evaluated to account for the improvements to the metric value for the proposed standard (for in-production and in-development airplanes [151]).

A short list of the aerodynamic and engine technologies that were considered to improve the metric value of the proposed rule is provided below. Chapter 2 of the Draft TSD provides a more detailed description of these technologies.

- *Aerodynamic technologies:* The airframe technologies that accounted for the improvements to the metric values from airplanes included aerodynamic technologies that reduce drag. These technologies included advance wingtip devices, adaptive trailing edge, laminar flow control, and riblet coatings.
- *Engine technologies:* The engine technologies that accounted for reductions to the metric values from airplanes included architecture and cooling technologies. Architecture technologies included ultra-high bypass engines and the fan drive gear, and cooling technologies included compressor airfoil coating and turbine air cooling.

3. Technology Response and Implications of the Proposed Standard

The EPA does not project that the proposed GHG rule would cause manufacturers to make technical improvements to their airplanes that would not have occurred in the absence of the rule. The EPA projects that the manufacturers would meet the proposed standards independent of the EPA standards, for the following reasons (as was described earlier in Section VII.A):

- Manufacturers have already developed or are developing improved technology in response to the ICAO standards that match the proposed GHG regulations;
- ICAO decided on the international Airplane CO_2 Emission Standards, which are equivalent to the proposed GHG standards, based on proven technology by 2016/2017 that was expected to be available over a sufficient range of in-production and on-order airplanes by approximately 2020. Thus, most or nearly all in-production and on-order airplanes already meet the levels of the proposed standards;
- Those few in-production airplane models that do not meet the levels of the proposed GHG standards are at the end of their production life and are expected to go out of production in the near term; and

[149] The fuel burn reduction prospect index is a projected ranking of the feasibility and readiness of technologies (for reducing fuel burn) to be implemented for 2030 and later. There are three main steps to determine the fuel burn reduction prospect index. First, the technology factors that mainly contribute to fuel burn were identified. These factors included the following engine and airframe technologies as described below: (Engine) sealing, propulsive efficiency, thermal efficiency, reduced cooling, and reduced power extraction and (Airframe) induced drag reduction and friction drag reduction. Second, each of the technology factors were scored on the following three scoring dimensions that will drive the overall fuel burn reduction effectiveness in the outbound forecast years: Effectiveness of technology in reducing fuel burn, likelihood of technology implementation, and level of research effort required. Third, the scoring of each of the technical factors on the three dimensions were averaged to derive an overall fuel burn reduction prospect index.

[150] The metric value does not directly reward weight reduction technologies because such technologies are also used to allow for increases in payload, equipage and fuel load. Thus, reductions in empty weight can be canceled out or diminished by increases in payload, fuel, or both; and, this varies by operation. Empty weight refers to operating empty weight. It is the basic weight of an airplane including the crew, all fluids necessary for operation such as engine oil, engine coolant, water, unusable fuel and all operator items and equipment required for flight, but excluding usable fuel and the payload.

[151] Airplanes that are currently in-development but will be in production by the applicability dates. These could be new type designs or redesigned airplanes.

• These few in-production airplane models anticipated to go out of production are being replaced or are expected to be replaced by in-development airplane models (airplane models that have recently entered service or will in the next few years) in the near term—and these in-development models have much improved metric values compared to the in-production airplane model they are replacing.

Based on the approach described above in Sections VII.C.1 and VII.C.2, ICF assessed the need for manufacturers to develop technology responses for in-production and in-development airplane models to meet the proposed GHG standards (for airplane models that were projected to be in production by the effective dates of the proposed standards and would be modified to meet these standards, instead of going out of production). After analyzing the results of the approach/methodology, ICF estimated that all airplane models (in-production and in-development airplane models) would meet the levels of the proposed standard or be out of production by the time the standard would become effective. Thus, a technology response is not necessary for airplane models to meet the proposed rule. This result confirms that the international Airplane CO_2 Emission Standards are technology-following standards, and that the EPA's proposed GHG standards as they would apply to in-production and in-development airplane models would also be technology following.[152]

For the same reasons, a technology response is not necessary for new type design airplanes to meet the GHG rule proposed in this action. The EPA is currently not aware of a specific model of a new type design airplane that is expected to enter service after 2020. Additionally, any new type design airplanes introduced in the future would have an economic incentive to improve their fuel burn or metric value at the level of or less than the proposed rule.

D. Costs Associated With the Program

This section provides the elements of the cost analysis for technology improvements, including certification costs, and recurring costs. As described, above, the EPA does not anticipate new technology costs due to the proposed GHG rule; however, there would be some costs associated with our annual reporting requirement. While recognizing that the proposed GHG rule does not have non-recurring costs (NRC), certification costs, or recurring costs, it is informative to describe the elements of these costs.

1. Non-Recurring Costs

Non-recurring cost (NRC) consists of the cost of engineering and integration,[153] testing (flight and ground testing) and tooling, capital equipment, and infrastructure. As described earlier for the technology improvements and responses, ICF conducted a detailed literature search, conducted a number of interviews with industry leaders, and did its own modeling to estimate the NRC of making modifications to in-production airplanes. The EPA used the information gathered by ICF for assessing the cost of individual technologies, which were used to build up NRC for incremental improvements (a bottom-up approach). These improvements would be for 0 to 10 percent improvements in the airplane CO_2 metric value, and this magnitude of improvements is typical for in-production airplanes (the focus of our analysis). In the initial 2015 ICF analysis, ICF developed NRC estimates for technology improvements to in-production airplanes, and in the 2018 ICF updated analysis these estimates have been brought up to date. The technologies available to make improvements to airplanes are briefly listed earlier in Section VII.C.2.

The methodology for the development of the NRC for in-production airplanes consisted of six steps. First, technologies were categorized either as minor performance improvement packages (PIPs) with 0 to 2 percent (or less than 2 percent) fuel burn improvements or as larger incremental updates with 2 to 10 percent improvements. Second, the elements of non-recurring cost were identified (*e.g.,* engineering and integration costs), as described earlier. Third, these elements of non-recurring cost are apportioned by incremental technology category for single-aisle airplanes (*e.g.,* for the category of an airframe minor PIP, 85 percent of NRC is for engineering of integration costs, 10 percent is for testing, and 5 percent is for tooling, capital equipment, and infrastructure).[154] Fourth, the NRC elements were scaled to the other airplane size categories (from the baseline single-aisle airplane category). Fifth, we estimated the NRC costs for single-aisle airplane and applied the scaled costs to the other airplane size categories.[155] Sixth, we compiled technology supply curves by airplane model, which enabled us to rank incremental technologies from most cost effective to the least cost effective. For determining technical responses by these supply curves, it was assumed that the manufacturer would invest in and incorporate the most cost-effective technologies first and go on to the next most cost-effective technology to attain the metric value improvements needed to meet the standard. Chapter 2 of the Draft TSD provides a more detailed description of this NRC methodology for technology improvements and results.

2. Certification Costs

After the EPA issues the final rulemaking for the proposed GHG standards, the FAA would issue a rulemaking to enforce compliance to these standards, and any potential certification costs for the GHG standards would be attributed to the FAA rulemaking. However, it is informative to discuss certification costs.

As described earlier, manufacturers have already developed or are developing technologies to respond to ICAO standards that are equivalent to the proposed standards, and they will comply with the ICAO standards in the absence of U.S. regulations. Also, this proposed rulemaking would potentially provide for a cost savings to U.S. manufacturers since it would enable them to domestically certify their airplane (via subsequent FAA rulemaking) instead of having to certify with foreign certification authorities (which would occur without this EPA rulemaking). If the proposed GHG standards, which match the ICAO standards, are not adopted in the U.S., the U.S. civil airplane manufacturers would have to certify to the ICAO standards at higher costs because they would have to move their entire certification program(s) to a non-U.S.

[152] As described earlier, this result is different from the ICAO analysis, which did not use continuous improvement CO_2 metric values nor production end dates for products.

[153] Engineering and Integration includes the engineering and Research & Development (R&D) needed to progress a technology from its current level to a level where it can be integrated onto a production airframe. It also includes all airframe and technology integration costs.

[154] For the incremental technology category of an engine minor PIP, 35 percent of NRC is for engineering of integration costs, 50 percent is for testing, and 15 percent is for tooling, capital equipment, and infrastructure. For the category of a large incremental upgrade, 55 percent of NRC is for engineering of integration costs, 40 percent is for testing, and 5 percent is for tooling, capital equipment, and infrastructure.

[155] Engineering and integration costs and tooling, capital equipment, and infrastructure costs were scaled by airplane realized sale price from the single-aisle airplane category to the other airplane categories. Testing costs were scaled by average airplane operating costs.

certification authority.[156] Thus, there are no new certification costs for the proposed rule. However, it is informative to describe the elements of the certification cost, which include obtaining an airplane, preparing an airplane, performing the flight tests, and processing the data to generate a certification test report (*i.e.,* test instrumentation, infrastructure, and program management).

The ICAO certification test procedures to demonstrate compliance with the international Airplane CO_2 Emission Standards—incorporated by reference in this proposed rulemaking—were based on the existing practices of airplane manufacturers to measure airplane fuel burn (and to measure high-speed cruise performance).[157] Therefore, some manufacturers already have or would have airplane test data (or data from high-speed cruise performance modelling) to certify their airplane to the standard, and they would not need to conduct flight testing for certification to the standard. Also, these data would already be part of the manufacturers' fuel burn or high-speed performance models, which they can use to demonstrate compliance with the international Airplane CO_2 Emission Standards. In the absence of the standard, the relevant CO_2 or fuel burn data would be gathered during the typical or usual airplane testing that the manufacturer regularly conducts for non-GHG standard purposes (*e.g.,* for the overall development of the airplane and to demonstrate its airworthiness). In addition, such data for new type design airplanes (where data has not been collected yet) would be gathered in the absence of a standard. Also, the EPA is not making any attempt to quantify the costs associated with certification by the FAA.

3. Recurring Operating Costs

For the same reasons there are no NRC and certification costs for the proposed rule as discussed earlier, there would be no recurring costs (recurring operating and maintenance costs) for the proposed rule; however, it is informative to describe elements of recurring costs. The elements of recurring costs for incorporating fuel saving technologies would include additional maintenance, material, labor, and tooling costs. Our analysis shows that airplane fuel efficiency improvements typically result in net cost savings through the reduction in the amount of fuel consumed. If technologies add significant recurring costs to an airplane, operators (*e.g.,* airlines) would likely reject these technologies.

4. Reporting Requirement Costs

There would be some costs for the proposed annual reporting requirement for GHG emissions-related information. (See Section V.G for a description of the reports.) There is a total of 10 civil airplane manufacturers that would be affected. It is expected that these manufacturers will voluntarily report to the ICAO-related CO_2 Certification Database (CO_2DB). We expect the incremental reporting burden for these manufacturers to be small because we would be adding only 2 basic reporting categories to those already requested by the CO_2DB, as described earlier in Section V.G. Also, the reporting burden would be small because all of the information we would be requiring will be readily available—since it would be gathered for non-GHG standard purposes (as noted earlier in this Section VII).

We have estimated the annual burden and cost would be about 6 hours and $543 per manufacturer. With ten manufacturers submitting reports, the total burden for manufacturers of this proposed reporting requirement (for three years)[158] would be estimated to be 180 hours, for a total cost of $16,290.

E. Summary of Benefits and Costs

Should the proposed airplane GHG emission standards, which match the ICAO Airplane CO_2 Emission Standards, be finalized, all U.S. airplane models (in-production and in-development airplane models) should be in compliance with the proposed standards, by the time the standards would become applicable. Therefore, there would only be limited costs from the proposed annual reporting requirement and no additional benefits from complying with these proposed standards—beyond the benefits from maintaining consistency or harmonizing with the international standards.

VIII. Aircraft Engine Technical Amendments

The EPA, through the incorporation by reference of ICAO Annex 16, Volume II, Third Edition (July 2008), requires the same test and measurement procedures as ICAO for emissions from aircraft engines. See our regulations at 40 CFR 87.8(b)(1). At the CAEP/10 meeting in February 2016, several minor technical updates and corrections to the test and measurement procedures were approved and ultimately included in a Fourth Edition of ICAO Annex 16, Volume II (July 2017). The EPA played an active role in the CAEP process during the development of these revisions and concurred with their adoption. Thus, we are proposing to update the incorporation by reference in § 87.8(b) of our regulations to refer to the new Fourth Edition of ICAO Annex 16, Volume II (July 2017), replacing the older Third Edition.

Most of these ICAO Annex 16 updates and corrections to the test and measurement procedures were editorial in nature and merely served to clarify the procedures rather than change them in any substantive manner. Additionally, some updates served to correct typographical errors and incorrect formula formatting. However, there is one change contained in these ICAO Annex 16 updates that warrants additional discussion here: A change to the certification test fuel specifications.

Fuel specification bodies establish limits on jet fuels properties for commercial use so that aircraft are safe and environmentally acceptable in operation. For engine emissions certification testing, the ICAO fuel specification prior to CAEP10 was a minimum 1 percent volume of naphthalene content and a maximum content of 3.5 percent (1.0–3.5%). However, the ASTM International specification is 0.0–3.0 percent naphthalene, and an investigation found that it is challenging to source fuels for engine emissions certification testing that meet the minimum 1% naphthalene level. In many cases, engine manufacturers were forced to have fuels custom blended for certification testing purposes at a cost premium well above that of commercial jet fuel. Additionally, such custom blended fuels needed to be ordered well in advance and shipped by rail or truck to the testing facility. In order to potentially alleviate the cost and logistical burden that the naphthalene specification of certification fuel presented, CAEP undertook an effort to analyze and consider whether it would be appropriate to align the ICAO Annex

[156] In addition, European authorities charge fees to airplane manufacturers for the certification of their airplanes, but FAA does not charge fees for certification.

[157] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP/10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected; Order No. 10069. See Appendix C of this report. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020).

[158] Information Collection Requests (ICR) for reporting requirements are renewed triennially.

16 naphthalene specification for certification fuel with that of in-use commercial fuel.

Prior to the CAEP10 meeting, technical experts (including the EPA) reviewed potential consequences of a test fuel specification change and concluded that there would be no effect on gaseous emissions levels and a negligible effect on the 'Smoke Number' (SN) level as long as the aromatic and hydrogen content remains within the current emissions test fuel specification limits. ICAO subsequently adopted the ASTM International specification of 0.0–3.0 percent naphthalene for the engine emissions test fuel specification and no change to the aromatic and hydrogen limits, which was incorporated into the Fourth Edition of ICAO Annex 16, Volume II, (July 2017).

The EPA is proposing, through the incorporation of the Annex revisions in § 87.8(b), to adopt the new naphthalene specification for certification testing into U.S. regulations. This proposed change will have the benefit of more closely aligning the certification fuel specification for naphthalene with actual in-use commercial fuel properties while reducing the cost and logistical burden associated with certification fuel procurement for engine manufacturers. As previously mentioned, all the other changes associated with updating the incorporation by reference of ICAO Annex 16, Volume II, are editorial or typographical in nature and merely intended to clarify the requirements or correct mistakes and typographical errors in the Annex.

IX. Statutory Authority and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. The OMB has determined that this proposed action raises ''. . . novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' This proposed action addresses novel policy issues due to the international nature of civil aviation and the development of related emissions standards. Accordingly, the EPA submitted this proposed action to the OMB for review under E.O. 12866 and E.O. 13563. Any changes made in response to OMB recommendations have been documented in the docket. Sections I.C.3 and VII.E of this preamble summarize the cost and benefits of this action. The supporting information is available in the docket.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Sections I.C.3. and VII.E. of this preamble summarize the cost and benefits of this action. The supporting information is available in the docket.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2626.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

In order to understand how the proposed GHG standards are affecting the in-production fleet, we need access to timely, representative emissions data of the fleet at the requisite model level. The EPA needs the information on technology, performance parameters, and emissions data to conduct accurate technology assessments, compile airplane emission inventories, and develop appropriate policy. The ICAO CO_2DB (discussed in Section V.G) will only include the airplane identification information, MTOM, and Metric Value. The EPA proposes to collect additional elements or information beyond what ICAO will request for the voluntary CO_2DB. These additional elements would be the RGF and the annual production volume. In general, we would expect the manufacturers to claim this additional information as confidential business information (CBI), and under such circumstances we would treat it accordingly under 40 CFR part 2 and 40 CFR 1068.10. The EPA does not expect a full dataset on all in-production airplanes until shortly after the in-production applicability date of January 1, 2028. In the context of EPA's standard-setting role under the CAA with regard to aircraft engine emissions, it is consistent with our policy and practice to ask for timely and reasonable reporting of emission certification testing and other information that is relevant to our mission.[159] Under the CAA, we are authorized to require manufacturers to establish and maintain necessary records, make reports, and provide such other information as we may reasonably require to discharge our functions under the Act. (See 42 U.S.C. 7414(a)(1).)

Respondents/affected entities: Airplane manufacturers.

Respondent's obligation to respond: Mandatory, under the authority of 42 U.S.C. 7414(a)(1).

Estimated number of respondents: Ten.

Frequency of response: Annual.

Total estimated burden: 60 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,430 (per year), includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. Additionally, written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notification 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.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. Among the potentially affected entities (manufacturers of covered airplanes and

[159] The FAA already requires much of the information EPA is seeking through the certification process but is unable to share it because of confidentiality agreements with engine manufacturers. Also, that information is part of a much larger submission, making it difficult to extract the specific reporting elements for EPA.

engines for those airplanes) there is one small business potentially affected by this proposed action. This one small business is a manufacturer of aircraft engines. The costs we are projecting associated with this proposal is that associated with the annual reporting requirement discussed in Section IX.C. However, that reporting requirement would apply to the manufacturers of covered airplanes, not to the manufacturers of aircraft engines. Thus, the reporting burden would not impact the one small business potentially affected by these proposed regulations. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed action would regulate the manufacturers of airplanes and aircraft engines and would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. These proposed airplane GHG regulations are not expected to result in any changes to airplane fuel consumption beyond what would have otherwise occurred in the absence of this proposed rule, as discussed in Section VI.C.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action involves technical standards.

In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference the use of test procedures contained in ICAO's International Standards and Recommended Practices Environmental Protection, Annex 16, Volumes II and III, along with the modifications contained in this rulemaking. This includes the following standards and test methods:

Standard or test method	Regulation	Summary
ICAO 2017, *Aircraft Engine Emissions,* Annex 16, Volume II, Fourth Edition, July 2017.	40 CFR 87.1, 40 CFR 87.42(c), and 40 CFR 87.60(a) and (b).	Test method describes how to measure gaseous and smoke emissions from airplane engines.
ICAO 2017, *Aeroplane CO_2 Emissions,* Annex 16, Volume III, First Edition, July 2017.	40 CFR 1030.23(d), 40 CFR 1030.25(d), 40 CFR 1030.90(d), and 40 CFR 1030.105.	Test method describes how to measure the fuel efficiency of airplanes.

The material from the ICAO Annex 16, Volume II is an updated version of the document that is already incorporated by reference in 40 CFR 87.1, 40 CFR 87.42(c), and 40 CFR 87.60(a) and (b). For both this document and ICAO Annex 16, Volume III, we intend to include in the final rule any amendments adopted subsequent to the referenced 2017 publications.

The referenced standards and test methods may be obtained through the International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, (514) 954–8022, *www.icao.int,* or *sales@icao.int.*

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). It provides similar levels of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

List of Subjects

40 CFR Part 87

Air pollution control, Aircraft, Environmental protection, Incorporation by reference.

40 CFR Part 1030

Air pollution control, Aircraft, Environmental protection, Greenhouse gases, Incorporation by reference.

Andrew Wheeler,

Administrator.

For the reasons set forth above, EPA proposes to amend 40 CFR chapter I as follows:

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

■ 1. The authority citation for part 87 continues to read as follows:

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

■ 2. Section 87.8 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 87.8 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. EPA, Air and Radiation Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) * * *

(1) Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume II—Aircraft Engine Emissions, Fourth Edition, July 2017 (ICAO Annex 16, Volume II). IBR approved for §§ 87.1, 87.42(c), and 87.60(a) and (b).

* * * * *

■ 3. Add part 1030 to read as follows:

PART 1030—CONTROL OF GREENHOUSE GAS EMISSIONS FROM ENGINES INSTALLED ON AIRPLANES

Scope and Applicability

Sec.
1030.1 Applicability.
1030.5 State standards and controls.
1030.10 Exemptions.

Subsonic Airplane Emission Standards and Measurement Procedures

1030.20 Fuel efficiency metric.
1030.23 Specific air range (SAR).
1030.25 Reference geometric factor (RGF).
1030.30 GHG emission standards.
1030.35 Change criteria.

Reporting and Recordkeeping

1030.90 Airplane production report to the EPA.
1030.95 Recordkeeping.
1030.98 Confidential business information.

Reference Information

1030.100 Abbreviations.
1030.105 Definitions.
1030.110 Incorporation by reference.

Authority: 42 U.S.C. 7401–7671q.

Scope and Applicability

§ 1030.1 Applicability.

(a) Except as provided in paragraph (c) of this section, when an aircraft engine subject to 40 CFR part 87 is installed on an airplane that is described in this section and subject to title 14 of the Code of Federal Regulations, the airplane may not exceed the Greenhouse Gas (GHG) standards of this part when certification under title 14 is sought.

(1) A subsonic jet airplane that has—

(i) A type certificated maximum passenger seating capacity of 20 seats or more;

(ii) A maximum take-off mass (MTOM) greater than 5,700 kg; and

(iii) An application for original type certification that is submitted on or after January 1, 2020.

(2) A subsonic jet airplane that has—

(i) A type certificated maximum passenger seating capacity of 19 seats or fewer;

(ii) A MTOM greater than 5,700 kg, but not greater than 60,000 kg; and

(iii) An application for original type certification that is submitted on or after January 1, 2023.

(3) A propeller-driven airplane that has—

(i) A MTOM greater than 8,618 kg; and

(ii) An application for original type certification that is submitted on or after January 1, 2020.

(4) A subsonic jet airplane that is a modified version of an airplane whose original type certificated version was not required to have GHG emissions certification under this part and has—

(i) A MTOM greater than 5,700 kg; and

(ii) An application for certification that is submitted on or after January 1, 2023.

(5) A propeller-driven airplane that is a modified version of an airplane whose original type certificated version was not required to have GHG emissions certification under this part and has—

(i) A MTOM greater than 8,618 kg; and

(ii) An application for certification that is submitted on or after January 1, 2023.

(6) A subsonic jet airplane that has—

(i) A MTOM greater than 5,700 kg; and

(ii) An original certificate of airworthiness issued on or after January 1, 2028.

(7) A propeller-driven airplane that has—

(i) A MTOM greater than 8,618 kg; and

(ii) An original certificate of airworthiness issued on or after January 1, 2028.

(b) An airplane that incorporates modifications that change the fuel efficiency metric value of a prior version of airplane may not exceed the GHG standards of this part when certification under 14 CFR is sought. The criteria for modified airplanes are described in § 1030.35. A modified airplane may not exceed the metric value limit of the prior version under § 1030.30.

(c) The requirements of this part do not apply to:

(1) Subsonic jet airplanes having a MTOM at or below 5,700 kg.

(2) Propeller-driven airplanes having a MTOM at or below 8,618 kg.

(3) Amphibious airplanes.

(4) Airplanes initially designed, or modified and used, for specialized operations. These airplane designs may include characteristics or configurations necessary to conduct specialized operations that the EPA and the FAA have determined may cause a significant increase in the fuel efficiency metric value.

(5) Airplanes designed with a reference geometric factor of zero.

(6) Airplanes designed for, or modified and used for, firefighting.

§ 1030.5 State standards and controls.

No State or political subdivision of a State may adopt or attempt to enforce any airplane or aircraft engine standard with respect to emissions unless the standard is identical to a standard that applies to airplanes under this part.

§ 1030.10 Exemptions.

Each person seeking relief from compliance with this part at the time of certification must submit an application for exemption to the FAA in accordance with the regulations of 14 CFR parts 11 and 38. The FAA will consult with the EPA on each exemption application request before the FAA takes action.

Subsonic Airplane Emission Standards and Measurement Procedures

§ 1030.20 Fuel efficiency metric.

For each airplane subject to this part, including an airplane subject to the change criteria of § 1030.35, a fuel efficiency metric value must be calculated, using the following equation, rounded to three decimal places:

Fuel Efficiency metric value = (1/SAR)avg/(RGF^0.24)

Where the specific air range (SAR) is determined in accordance with § 1030.23, and the reference geometric factor is determined in accordance with § 1030.25. The fuel efficiency metric value is expressed in units of kilograms of fuel consumed per kilometer.

§ 1030.23 Specific air range (SAR).

(a) For each airplane subject to this part the SAR of an airplane must be determined by either—

(1) Direct flight test measurements.

(2) Using a performance model that is:

(i) Validated by actual SAR flight test data; and

(ii) Approved by the FAA before any SAR calculations are made.

(b) For each airplane model, establish a 1/SAR value at each of the following reference airplane masses:

(1) High gross mass: 92 percent maximum takeoff mass (MTOM).

(2) Low gross mass: (0.45 * MTOM) + (0.63 * (MTOM^0.924)).

(3) Mid gross mass: Simple arithmetic average of high gross mass and low gross mass.

(c) Calculate the average of the three 1/SAR values described in paragraph (b) of this section to calculate the fuel efficiency metric value in § 1030.20. Do not include auxiliary power units in any 1/SAR calculation.

(d) All determinations under this section must be made according to the procedures applicable to SAR in Paragraphs 2.5 and 2.6 of Annex 16, Volume III and Appendix 1 of Annex 16, Volume III (incorporated by reference in § 1030.110).

§ 1030.25 Reference geometric factor (RGF).

For each airplane subject to this part, determine the airplane's nondimensional reference geometric factor (RGF) for the fuselage size of each airplane model, calculated as follows:

(a) For an airplane with a single deck, determine the area of a surface (expressed in m^2) bounded by the maximum width of the fuselage outer mold line projected to a flat plane parallel with the main deck floor and the forward and aft pressure bulkheads except for the crew cockpit zone.

(b) For an airplane with more than one deck, determine the sum of the areas (expressed in m^2) as follows:

(1) The maximum width of the fuselage outer mold line, projected to a flat plane parallel with the main deck floor by the forward and aft pressure bulkheads except for any crew cockpit zone.

(2) The maximum width of the fuselage outer mold line at or above each other deck floor, projected to a flat plane parallel with the additional deck floor by the forward and aft pressure bulkheads except for any crew cockpit zone.

(c) Determine the non-dimensional RGF by dividing the area defined in paragraph (a) or (b) of this section by 1 m^2.

(d) All measurements and calculations used to determine the RGF of an airplane must be made according to the procedures for determining RGF in Appendix 2 of ICAO Annex 16, Volume III (incorporated by reference in § 1030.110).

§ 1030.30 GHG emission standards.

(a) The greenhouse gas emission standards in this section are expressed as maximum permitted values fuel efficiency metric values, as calculated under § 1030.20.

(b) The fuel efficiency metric value may not exceed the following, rounded to three decimal places:

For airplanes defined in . . .	With MTOM . . .	The standard is . . .
(1) Section 1030.1(a)(1) and (2)	5,700 < MTOM ≤ 60,000 kg	$10^{(-2.73780 + (0.681310 * \log_{10}(MTOM)) + (-0.0277861 * (\log_{10}(MTOM))\wedge 2))}$
(2) Section 1030.1(a)(3)	8,618 < MTOM ≤ 60,000 kg	$10^{(-2.73780 + (0.681310 * \log_{10}(MTOM)) + (-0.0277861 * (\log_{10}(MTOM))\wedge 2))}$:
(3) Section 1030.1(a)(1) and (3)	60,000 < MTOM ≤ 70,395 kg	0.764
(4) Section 1030.1(a)(1) and (3)	MTOM > 70,395 kg	$10^{(-1.412742 + (-0.020517 * \log_{10}(MTOM)): + (0.0593831 * (\log_{10}(MTOM))\wedge 2))}$
(5) Section 1030.1(a)(4) and (6)	5,700 < MTOM ≤ 60,000 kg	$10^{(-2.57535 + (0.609766 * \log_{10}(MTOM)) + (-0.0191302 * (\log_{10}(MTOM))\wedge 2))}$
(6) Section 1030.1(a)(5) and (7)	8,618 < MTOM ≤ 60,000 kg	$10^{(-2.57535 + (0.609766 * \log_{10}(MTOM)) + (-0.0191302 * (\log_{10}(MTOM))\wedge 2))}$:
(7) Section 1030.1(a)(4) through (7)	60,000 ≤ MTOM < 70,107 kg	0.797
(8) Section 1030.1(a)(4) through (7)	MTOM > 70,107 kg	$10^{(-1.39353 + (-0.020517 * \log_{10}(MTOM)) + (0.0593831 * (\log_{10}(MTOM))\wedge 2))}$

§ 1030.35 Change criteria.

(a) For an airplane that has demonstrated compliance with § 1030.30, any subsequent version of that airplane must demonstrate compliance with § 1030.30 if the subsequent version incorporates a modification that either increases—

(1) The maximum take-off mass; or

(2) The fuel efficiency metric value by more than:

(i) For airplanes with a MTOM greater than or equal to 5,700 kg, the value decreases linearly from 1.35 to 0.75 percent for an airplane with a MTOM of 60,000 kg.

(ii) For airplanes with a MTOM greater than or equal to 60,000 kg, the value decreases linearly from 0.75 to 0.70 percent for airplanes with a MTOM of 600,000 kg.

(iii) For airplanes with a MTOM greater than or equal to 600,000 kg, the value is 0.70 percent.

(b) For an airplane that has demonstrated compliance with § 1030.30, any subsequent version of that airplane that incorporates modifications that do not increase the MTOM or the fuel efficiency metric value in excess of the levels shown in paragraph (a) of this section, the fuel efficiency metric value of the modified airplane may be reported to be the same as the value of the prior version.

(c) For an airplane that meets the criteria of § 1030.1(a)(4) or (5), after January 1, 2023 and until January 1, 2028, the airplane must demonstrate compliance with § 1030.30 if it incorporates any modification that increases the fuel efficiency metric value by more than 1.5 per cent from the prior version of the airplane.

Reporting and Recordkeeping

§ 1030.90 Airplane production report to the EPA.

Manufacturers of airplanes subject to § 1030.1 must submit an annual report as specified in this section.

(a) You must submit the report for each calendar year in which you produce any airplanes that are subject to GHG emission standards under this part. The report is due by the following February 28. Include exempted airplanes in your report.

(b) Send the report to the Designated EPA Program Officer.

(c) In the report, identify your corporate name as listed on the airplane type certificate and the year for which you are reporting.

(d) Identify the complete name for each of your airplane sub-models and include the following information for each airplane sub-model that is covered by an FAA type certificate:

(1) Type certificate number from the FAA. Also identify type certificates issued by any organization other than the FAA. Identify the issue date of each type certificate (month and year).

(2) Submission date for the application to certify to the GHG emission standards in § 1030.30.

(3) Edition number and publication date of the applicable standards under Annex 16, Volume III.

(4) For modified airplanes under § 1030.35, the most recently certificated version.

(5) Maximum take-off mass and reference geometric factor.

(6) The number of installed engines for each airplane. Include the following information for each engine:

(i) The corporate name as listed on the engine type certificate.

(ii) The complete name for each of engine model.

(7) Include the following information from the propeller type certificate, if applicable:

(i) The corporate name as listed on the propeller type certificate.

(ii) The complete name for each propeller model.

(8) Fuel efficiency metric value and the calculated GHG emission standard.

(9) Identify the number of airplanes produced during the reporting period. If the number is zero, identify the date of manufacture for the last airplane you produced and state whether the airplane is out of production.

(10) For airplanes exempted under § 1030.10, identify the approval date for the exemption and the number of exempt airplanes.

(e) Include the following signed statement and endorsement by an authorized representative of your company: ''We submit this report under 40 CFR 1030.90. All the information in this report is true and accurate to the best of my knowledge.''

(f) Where information provided for the previous year remains valid and complete, you may report your production volumes and state that there are no changes, without resubmitting the other information specified in this section.

§ 1030.95 Recordkeeping.

(a) You must keep a copy of any reports or other information you submit to us for at least three years. If you use the same emissions data or other information to support a new certification, the three-year period restarts with each year that you continue to rely on the information.

(b) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

§ 1030.98 Confidential business information.

The provisions of 40 CFR 1068.10 apply for information you consider confidential.

Reference Information

§ 1030.100 Abbreviations.

The abbreviations used in this part have the following meanings:

TABLE 1 TO § 1030.100

EPA ...	U.S. Environmental Protection Agency.
FAA ...	U.S. Federal Aviation Administration.
GHG ..	greenhouse gas.
IBR	incorporation by reference.
ICAO ..	International Civil Aviation Organization.
MTOM	maximum take-off mass.
RGF ...	reference geometric factor.
SAR ...	specific air range.

§ 1030.105 Definitions.

The following definitions in this section apply to this part. Any terms not defined in this section have the meaning given in the Clean Air Act. The definitions follow:

Aircraft has the meaning given in 14 CFR 1.1, a device that is used or intended to be used for flight in the air.

Aircraft engine means a propulsion engine that is installed on or that is manufactured for installation on an airplane for which certification under 14 CFR is sought.

Airplane has the meaning given in 14 CFR 1.1, an engine-driven fixed-wing aircraft heavier than air, that is supported in flight by the dynamic reaction of the air against its wings.

Designated EPA Program Officer means the Director, Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; *complianceinfo@epa.gov.*

Exempt means to allow, through a formal case-by-case process, an airplane to be certificated and operated that does not meet the applicable standards of this part.

Greenhouse Gas (GHG) means an air pollutant that is the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

ICAO Annex 16, Volume III means Volume III of Annex 16 to the Convention on International Civil Aviation.

Maximum take-off mass (MTOM) is the maximum allowable take-off mass as stated in the approved certification basis for an airplane type design. Maximum take-off mass is expressed in kilograms.

Performance model is an analytical tool (or a method) validated using corrected flight test data that can be used to determine the specific air range values for calculating the fuel efficiency metric value.

Reference geometric factor is a non-dimensional number derived from a two-dimensional projection of the fuselage.

Round has the meaning given in 40 CFR 1065.1001.

Specific air range is the distance an airplane travels per unit of fuel consumed. Specific air range is expressed in kilometers per kilogram of fuel.

Subsonic means an airplane that has not been certificated under 14 CFR to exceed Mach 1 in normal operation.

Type certificated maximum passenger seating capacity means the maximum number of passenger seats that may be installed on an airplane as listed on its type certificate data sheet, regardless of the actual number of seats installed on an individual airplane.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

§ 1030.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744, and is available from the sources listed in this section. It is also available for inspection 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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, (514) 954–8022, *www.icao.int,* or *sales@icao.int.*

(1) Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume III—Aeroplane CO2 Emissions, First Edition,

July 2017 (ICAO Annex 16, Volume III).	IBR approved for §§ 1030.23(d) and 1030.25(d).

(2) [Reserved]

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15 CFR Parts 736, 744 and 762

Addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule); Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 744 and 762

[Docket No. 200813–0225]

RIN 0694–AH99

Addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: Huawei Technologies Co., Ltd. (Huawei) and a number of non-U.S. affiliates have been placed on the Entity List. In order to further address the continuing threat to U.S. national security and foreign policy interests posed by Huawei and its non-U.S. affiliates, the Bureau of Industry and Security (BIS) in this final rule is making three sets of changes to controls for Huawei and its listed non-U.S. affiliates under the Export Administration Regulations (EAR). First, BIS is adding additional non-U.S. affiliates of Huawei to the Entity List because they also pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States. Second, this rule removes a temporary general license for Huawei and its non-U.S. affiliates and replaces those provisions with a more limited authorization that will better protect U.S. national security and foreign policy interests. Third, in response to public comments, this final rule amends General Prohibition Three, also known as the foreign-produced direct product rule, to revise the control over certain foreign-produced items recently implemented by BIS. These revisions are consistent with the authority provided by the Export Control Reform Act of 2018 (ECRA).

DATES: This rule is effective August 17, 2020.

FOR FURTHER INFORMATION CONTACT: For questions on the foreign direct product change, contact Sharron Cook, Senior Export Policy Analyst, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (202) 714–6685 or email your inquiry to: *Sharron.Cook@bis.doc.gov.* For other questions on this rule, contact the Director, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, Phone: (949) 660–0144 or (408) 998–8806 or email your inquiry to: *ECDOEXS@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Huawei Technologies Co., Ltd. (Huawei) and sixty-eight of its non-U.S. affiliates were added to the Entity List effective May 16, 2019 (84 FR 22961, May 21, 2019). Effective August 19, 2019 (84 FR 43487, August 21, 2019), an additional forty-six non-U.S. affiliates were placed on the Entity List. Their addition to the Entity List imposed a licensing requirement under the Export Administration Regulations (EAR) regarding the export, reexport, or transfer (in-country) of most items subject to the EAR to any of these one hundred and fifteen listed Huawei entities. With this final rule, in order to better address the continuing threat to U.S. national security and U.S. foreign policy interests posed by Huawei and its non-U.S. affiliates, the Bureau of Industry and Security (BIS) is making three sets of changes to controls for Huawei and its non-U.S. affiliates under the EAR.

First, BIS is adding thirty-eight additional non-U.S. affiliates of Huawei to the Entity List because they also pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States. This rule also revises the Huawei entry and the entries of three existing Huawei affiliate entries on the Entity list, two under the destination of China and one under Brazil.

Second, this rule removes a temporary general license for Huawei and its non-U.S. affiliates and replaces those provisions with a more limited permanent authorization that will further protect U.S. national security and foreign policy interests. This rule also makes conforming changes to all of the entries for Huawei and non-U.S. affiliates that were added to the Entity List effective May 16, 2019, and effective August 19, 2019, as well as for the thirty-eight additional non-U.S. affiliates of Huawei being added to the Entity List with this rule, to reflect the removal of the temporary general license and the more limited permanent authorization which is being implemented in this rule by excluding certain additional specified exports, reexports, and transfers (in-country) from the License Requirement column for entries for Huawei and its non-U.S. affiliates on the Entity List.

Third, this final rule amends General Prohibition Three, also known as the foreign-produced direct product rule, to revise the control over certain foreign-produced items. The control of the following foreign-produced items will now apply when there is knowledge that either the foreign-produced item will be incorporated into, or that the foreign-produced item will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of this supplement; or when any entity with a footnote 1 designation in the license requirement column of this supplement is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.'' These revisions promote U.S. national security by limiting access to, and use of, U.S. technology to design and produce items outside the United States by entities that pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States. In order to assist the public to more easily follow the description of these changes in this rule, BIS describes these changes under three sections in the Background section of this rule: (A) Additional Non-U.S. Affiliates of Huawei Added to the Entity List and Revisions to Current Entries on the Entity List; (B) Removal of Temporary General License (TGL) and Conforming Changes to Entity List for TGL Removal; and (C) Changes to General Prohibition Three—The Foreign–Produced Direct Product Rule.

A. Additional Non-U.S. Affiliates of Huawei Placed on the Entity List and Revisions to Current Entries on the Entity List

1. Additions of Non-U.S. Affiliates of Huawei to the Entity List

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for exports, reexports, and transfers (in-country) involving listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the

Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

Huawei and sixty-eight of its non-U.S. affiliates were added to the Entity List effective May 16, 2019 (84 FR 22961, May 21, 2019), (hereinafter the ''May 21 rule''). Effective August 19, 2019, an additional forty-six non-U.S. affiliates were placed on the Entity List (84 FR 43493, Aug. 21, 2019), (hereinafter the ''August 21 rule''). These actions imposed a licensing requirement for the export, reexport, or transfer (in-country) of any item subject to the EAR to any of these one hundred fifteen listed Huawei entities.

As stated in the May 21 and August 21 rules, the ERC determined that there is reasonable cause to believe that Huawei has been involved in activities determined to be contrary to the national security or foreign policy interests of the United States and that the listed Huawei affiliates pose a significant risk of becoming involved in activities contrary to the national security or foreign policy interests of the United States due to their relationship with Huawei. To illustrate, as set forth in the Superseding Indictment filed in the Eastern District of New York (see the May 21, 2019 rule at page 22961), Huawei is charged with participating, along with certain affiliates, in alleged criminal violations of U.S. laws. The Superseding Indictment also alleges that Huawei and affiliates acting on Huawei's behalf engaged in a series of deceptive and obstructive acts designed to evade U.S. law and to avoid detection by U.S. law enforcement. *See* the May 21 rule for additional information on this determination and the resulting additions to the Entity List.

This rule implements the decision of the ERC to add thirty-eight additional entities to the Entity List that the ERC determined also present a significant risk of acting on Huawei's behalf to engage in activities determined to be contrary to the national security or foreign policy interests of the United States. The additions and modifications impact affiliates of Huawei in twenty-one different destinations: The People's Republic of China (China), Argentina, Brazil, Chile, Egypt, France, Germany, India, Israel, Mexico, Morocco, the Netherlands, Peru, Russia, Singapore, South Africa, Switzerland, Thailand, Turkey, the United Arab Emirates, and the United Kingdom. This rule lists entities that are located in China's Hong Kong Special Administrative Region (HKSAR) under the Entity List heading for China, consistent with the suspended application of Section 201 of the United States-Hong Kong Policy Act of 1992 (Pub. L. 102–393) to ECRA by Executive Order 13936, July 14, 2020. The ERC made the decision to add each of the thirty-eight entities described below under the standard set forth in § 744.11(b) of the EAR. Without the imposition of a license requirement to these affiliated entities, there is reasonable cause to believe that Huawei would seek to use them to evade the restrictions imposed by its addition to the Entity List.

These additional thirty-eight non-U.S. affiliates of Huawei raise sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to these entities will enhance BIS's ability to prevent activities contrary to the national security or foreign policy interests of the United States.

As with the Huawei entities added to the Entity List in the May 21 and August 21 rules, BIS imposes for each of the entities added in this final rule—see list below—a license requirement for all items subject to the EAR, see Section C of the Supplementary Information. As specified in the License Requirement column, a license is not required for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List (CCL) for anti-terrorism reasons only, when released to members of a ''standards organization'' for the purpose of contributing to the revision or development of a ''standard.'' The License Review Policy column indicates a license review policy of a presumption of denial. Similarly, no license exceptions are available for exports, reexports, or transfers (in-country) when that entity is acting as a purchaser, intermediate or ultimate consignee, or end-user as defined in the EAR with respect to the persons being added to the Entity List in this rule.

The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

For the reasons described above, this final rule adds the following thirty-eight entities to the Entity List:

China

- Huawei Cloud Computing Technology;
- Huawei Cloud Beijing;
- Huawei Cloud Dalian;
- Huawei Cloud Guangzhou;
- Huawei Cloud Guiyang;
- Huawei Cloud Shanghai;
- Huawei Cloud Shenzhen;
- Huawei OpenLab Suzhou; *and*
- Wulanchabu Huawei Cloud Computing Technology.

Argentina

- Huawei Cloud Argentina.

Brazil

- Huawei Cloud Brazil.

Chile

- Huawei Cloud Chile.

Egypt

- Huawei OpenLab Cairo.

France

- Huawei Cloud France; *and*
- Huawei OpenLab Paris.

Germany

- Huawei Cloud Berlin;
- Huawei OpenLab Munich; *and*
- Huawei Technologies Dusseldorf GmbH.

Hong Kong

- Huawei Cloud Hong Kong.

India

- Huawei OpenLab Delhi.

Israel

- Toga Networks.

Mexico

- Huawei Cloud Mexico; *and*
- Huawei OpenLab Mexico City.

Morocco

- Huawei Technologies Morocco.

Netherlands

- Huawei Cloud Netherlands.

Peru

- Huawei Cloud Peru.

Russia

- Huawei Cloud Russia; *and*
- Huawei OpenLab Moscow.

Singapore

- Huawei Cloud Singapore; *and*
- Huawei OpenLab Singapore.

South Africa

- Huawei Cloud South Africa; *and*
- Huawei OpenLab Johannesburg.

Switzerland

- Huawei Cloud Switzerland.

Thailand

- Huawei Cloud Thailand; *and*
- Huawei OpenLab Bangkok.

Turkey

- Huawei OpenLab Istanbul.

United Arab Emirates

- Huawei OpenLab Dubai.

United Kingdom

- Huawei Technologies R&D UK.

2. Revisions to Current Entries on the Entity List

This final rule revises four existing entries, three under the destination of China and one under Brazil. Specifically, this final rule revises the Huawei entry and three existing Huawei affiliate entries on the Entity list, two under the destination of China and one under Brazil as follows:

This rule implements a revision to the existing entry for Huawei Device Co., Ltd. (Dongguan), first added to the Entity List under the destination of China in the May 21 rule, by adding two aliases and two additional addresses. This rule additionally implements a revision to the two existing entries—Huawei Device (Shenzhen) Co., Ltd. under the destination of China and Huawei do Brasil Telecomunicacões Ltda under the destination of Brazil—by adding one additional address for each entity. This rule also implements a revision to the May 21 rule for the existing entry for Huawei Technologies Co., Ltd. (Huawei) under the destination of China by adding one additional alias and two additional addresses.

B. Removal of Temporary General License (TGL) and Conforming Changes to Entity List for TGL Removal

As published on May 22, 2019 (84 FR 23468), extended and amended through a final rule published on August 21, 2019 (84 FR 43487), and as extended through a final rule published on May 18, 2020 (85 FR 29610), any exports, reexports, or in-country transfers of items subject to the EAR to any of the listed Huawei entities as of the effective date they were added to the Entity List continue to require a license, with the exception of transactions explicitly authorized by the temporary general license and eligible for export, reexport, or transfer (in-country) prior to May 16, 2019, without a license or under a license exception.

Notice of Inquiry Regarding Future Extensions of TGL

On March 12, 2020, BIS published a notification of inquiry, *Request for Comments on Future Extensions of Temporary General License (TGL)* (85 FR 14428), requesting comments to assist the U.S. Government in evaluating whether the TGL should continue to be extended, to evaluate whether any other changes may be warranted to the TGL, and to identify any alternative authorization or other regulatory provisions that may more effectively address what is being authorized under the TGL.

In announcing an extension of the TGL on May 15, 2020, the Department notified the public that activities authorized in the TGL may be revised and possibly eliminated after August 13, 2020. Companies and persons relying on TGL authorizations were instructed to begin preparations to determine the specific, quantifiable impact of elimination if they had not done so already. Those companies and persons were also informed that they should be prepared to submit license applications to the Department to determine which, if any, activities would be authorized in the event that the TGL authorization was eliminated.

Response to Comments on the Notice of Inquiry Regarding Future Extensions of TGL

The public comment period for this notification of inquiry closed on April 22, 2020. BIS received 25 public comments. Thirteen of the comments were submitted by companies and major trade associations. All of these commenters were supportive of the TGL and highlighted the importance of continuing the TGL in force for these commenters. These commenters also included suggestions for improving the TGL's effectiveness.

BIS agrees with these commenters that the TGL has played an important role in the transition away from using Huawei equipment. BIS does not agree with commenters' view that the TGL is the correct authorization to continue with under the EAR. However, BIS has determined that there is one provision of the TGL that should be continued in some format under the EAR.

Twelve of the public comments were submitted by individuals or anonymous commenters. These comments were highly critical of Huawei and its affiliates, the Chinese government, the TGL, and/or the Commerce Department for allowing the TGL to exist. These critical comments are supportive of the determination BIS made to add Huawei and many of its non-affiliates to the Entity List because of being involved with activities that are contrary to U.S. national security and foreign policy interests. These commenters strongly advocated for the immediate removal of the TGL to protect U.S. national security and foreign policy interests.

BIS agrees with these commenters that Huawei and its non-U.S. affiliates on the Entity List are involved in, or pose a significant risk of becoming involved in, activities that are of concern for U.S. national security or foreign policy interests. Therefore, these entities' inclusion on the Entity List is warranted and any type of authorizations that are available should be limited in scope, so as not to undermine U.S. national security and foreign policy interests involving Huawei and its non-U.S. affiliates on the Entity List. BIS does not agree with these commenters that the creation of the TGL undermined U.S. national security or foreign policy concerns. BIS created the TGL as a temporary authorization that is limited in scope to ensure the criteria only authorized exports, reexports, or transfers (in-country) that are consistent with U.S. national security and foreign policy interests. However, as is implicit in the title of *Temporary* General License, BIS never intended all of the provisions of the TGL to be permanent authorizations. Instead the goal of the TGL was to allow time for companies and persons to shift to other sources of equipment, software and technology (*i.e.,* those not produced by Huawei or one of its listed affiliates).

Commenters submitted potential ways to replace the TGL, including particularly persuasive comments regarding the importance of the cyber security authorization that informed the revisions to the EAR that this rule is implementing.

A commenter noted that the TGL protects consumers and operators from severe disruptions by protecting consumers and operators from cyber risks that would have occurred had the TGL not allowed for the development and provision of security patches and updates and related activities.

Another commenter noted that handsets that lack software patches/updates can expose users to cyber risks and open gaps in wireless ecosystem security. This commenter noted that ''such outcomes are largely preventable with appropriate support and run counter to U.S. policy.''

Another commenter noted that cybersecurity concerns require involvement of parties involved in

telecommunication systems in order to be effective because security is only as strong as its weakest link. This commenter noted that ''participants in the wireless ecosystem—including manufacturers, operating system developers, and wireless network operators—each have a role in addressing security concerns.'' The commenter also noted that the ''identification of vulnerabilities, creation of software updates or patches, compatibility testing, and release of the updates require collaboration among the various participants, including Huawei.'' The commenter further noted that the ''ongoing, limited engagement with Huawei to protect the security of equipment and devices in the market benefits American consumers by reducing the risk that they will be subject to device compromise.''

Another commenter noted that cyber security threats will increase if the TGL expires and this will be counter to U.S. interests. This commenter noted that ''the ability to update devices is critical to help wireless network operators stay ahead of threats in the current rapidly changing environment.'' The commenter also noted that ''limited engagement with Huawei to protect the security of devices in the market will continue to benefit American and global consumers.'' This commenter further noted that ''in contrast, the inability to develop, manage, and supply security updates to the millions of customers who have purchased Huawei devices—both in the United States and around the world—would create an enormous gap in security.''

Companies and trade associations described significant harm that would occur if the TGL is not extended both to them and to their customers, including consumers in the United States, particularly in rural areas.

BIS is mindful of not unduly creating harm with the expiration of the TGL. The conforming changes made to the entries for Huawei and its non-U.S. affiliates on the Entity List regarding cybersecurity will help to mitigate the concerns regarding the removal of the TGL and further protect U.S. national security and foreign policy interests.

Companies detailed what would be required for their organization or industry to cease using Huawei equipment. Time and money were common themes, emphasizing that continued short-term reliance on Huawei for maintaining existing systems in the U.S. will be required. While most commenters supported the goal of removing Huawei equipment from U.S. networks, also they stated that the TGL needs to continue for a longer transition period.

Comments also highlighted the importance of adopting a coordinated U.S. Government approach to address the concern with Huawei and its non-U.S. affiliates, in particular the need for coordination between the Federal Communications Commission (FCC) and BIS. BIS agrees that an all of government approach is needed to address this U.S. national security and foreign policy concern. BIS has been coordinating with the FCC on addressing the concerns with Huawei and its non-U.S. affiliates on the Entity List, as well as other parties that may be of concern for U.S. networks. In November of 2019, the FCC prohibited use of the Universal Service Fund to procure and support Huawei (and ZTE) equipment in the U.S. (January 3, 2020 (85 FR 230). This was formalized by a June 30, 2020 publication identifying those companies as a national security threat. While legislation authorizing $1,000,000,000 to rural carriers to remove and replace Huawei and ZTE equipment was passed in February, the technical process of doing so is challenging. According to some commenters, such as the U.S. Rural Wireless Association, Huawei equipment is in operation in as much as a quarter of U.S. rural carriers. Carriers themselves advocate avoiding potential gaps in service by letting older, slower systems be replaced as part of normal commercial replacement cycles.

Commenters provided suggestions, if the TGL were to be extended, of what potential revisions to enhance its effectiveness for both covered transactions and transactions outside of the scope of the TGL. Many commenters suggested making the TGL permanent or at least effective for a longer period (anywhere from 3–18 months). Commenters who requested the TGL be made permanent emphasized that BIS should specify that the TGL could be revoked at any time. Commenters thought making the TGL permanent would be one of the biggest improvements, from a burden and planning standpoint, that could be made to the TGL.

BIS agrees that continuing with short term extensions of the TGL creates unneeded burdens on industry and the U.S. Government. Because of the time that has passed since the TGL was added to the EAR and BIS's knowledge of its use, as well the public comments received in response to the March 12, 2020 Notice of Inquiry, BIS has determined what types of modifications should be made to the Entity List license requirements for Huawei and its non-U.S. affiliates on the Entity List to continue one provision of the TGL, which will be permanent, to support U.S. national security interests.

Commenters also requested certain changes to the authorizations under paragraph (c). For the existing authorizations under paragraph (c)(1) and (c)(2), some commenters requested moving away from the May 16, 2019 limitation to allow for more recent equipment to also be authorized. However, doing so would counter the TGL's objective of providing time for companies and individuals to identify alternatives to Huawei for future operations. Commenters also suggested other new authorizations that they thought may be warranted to add to the TGL, such as allowing for the use of License Exception TSU. Eliminating the certification statement under paragraph (d) was another suggested change.

BIS does not agree that these new changes should be made to the TGL except as reflected in this rule.

BIS received quite a few comments requesting that BIS add back a TGL authorization for standards organizations. These comments were well supported and highlighted the larger national security and economic objectives stated by the U.S. Government, that industry and others be able to participate in and develop and influence international standards. Commenters on the standards issue included suggestions for ways that the new authorization could be expanded to ensure it achieves the objectives of facilitating such participation.

BIS believes that the comments regarding standards organizations were sufficiently addressed with the publication of the June 18, 2020 interim final rule and request for comments, *Release of ''Technology'' to Certain Entities on the Entity List in the Context of Standards Organizations* (85 FR 36719). This rule is open for public comment until August 17, 2020.

Almost every business and trade association commenter mentioned concerns over COVID–19 and the stresses that is putting on telecommunication networks, as well as the bottom lines of businesses. These commenters requested the Commerce Department to take these COVID–19 considerations into account when looking at the TGL. In particular, commenters urged not creating any additional instability for U.S. companies that are already dealing with significant service and business challenges because of COVID–19.

BIS is mindful of the current economic concerns that business is facing as a result of COVID–19. The

removal of the TGL and replacing with a permanent provision, where warranted, will help to address the uncertainty of relying on short term extensions of the TGL.

Expiration of the TGL

At this time, the U.S. Government has decided to allow the TGL to expire. In order to implement this U.S. Government decision, this final rule removes supplement no. 7 to part 744. The final rule also amends § 762.2 by removing paragraph (b)(55) because it is no longer needed with the removal of the TGL and makes conforming changes to paragraphs (b)(53) and (54) to reflect that this section will no longer have a paragraph (b)(55). Note that the TGL Certification Statements and logs or other records, including any additional support documentation used to substantiate the certification statement related to the use of the TGL are still subject to recordkeeping or other applicable EAR requirements (*see, e.g.,* § 762.1 of the EAR).

This final rule revises the Entity List by adding a new footnote 2 and revising the License Requirement column for the entries for Huawei and non-U.S. affiliates on the Entity List to add a reference to the new footnote 2. This new footnote 2 implements a modification of the Entity List license requirements for Huawei and its non-U.S. affiliates on the Entity List when the criteria of footnote 2 are met for an export, reexport, or transfer (in-country) that is ''subject to the EAR.'' The criteria of new footnote 2 is based on the same criteria from the temporary general license authorization under the paragraph (c)(3) (*Cybersecurity research and vulnerability disclosure)* authorization, which BIS is allowing to expire with the TGL. BIS determined that, after reviewing the comments, this one authorization of the TGL warranted being preserved under another part of the EAR. The addition of new footnote 2 is partially responsive to those commenters that requested the authorizations under the TGL be made permanent. New footnote 2 will further U.S. national security by ensuring that exports, reexports, or transfers (in-country) involving cybersecurity research and vulnerability disclosure are not hindered by the Entity List license requirements for Huawei and its non-U.S. affiliates on the Entity List.

BIS determined after careful review of the comments and consideration of the U.S. national security and foreign policy interests at stake that the remaining two authorizations from the TGL under paragraph (c)(1) (*Continued operation of existing networks and equipment*) and (c)(2) (*Support to existing 'personal consumer electronic devices' and 'Customer Premises Equipment (CPE)'*) no longer warrant being included in the EAR and should be allowed to expire, along with the other provisions from the TGL.

C. Changes to the Foreign Produced Direct Product Rule

On May 19, 2020, BIS published in the **Federal Register** an interim final rule entitled ''Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule) and the Entity List'' (85 FR 29849), which was effective on May 15, 2020, (hereinafter the ''May 15 rule''). Through footnote 1 to the Entity List, the May 15 rule added to General Prohibition Three, § 736.2(b)(3) of the EAR, a foreign-produced direct product rule that is connected to specified entities listed on the Entity List (supplement no. 4 to part 744 of the EAR), *i.e.,* Huawei and its non-U.S. affiliates on the Entity List.

The comment period ended on July 14, 2020. BIS received eleven comments, including one non-responsive comment and one business confidential comment (not posted to *regulations.gov*). BIS posted nine comments to *http://regulations.gov.*

1. Response to Comments Regarding the Foreign-Produced Direct Product Rule Interim Final Rule

BIS received a few comments on the May 15 rule that raised concerns about ways it could allow Huawei to continue to procure certain foreign-produced items that are the direct product of certain U.S. technology or software. In response, BIS revises the Foreign-Produced Direct Product rule to impose a license requirement on any foreign-produced items that are: the direct product of certain U.S. technology or software or produced by any plant or major component of a plant that is located outside the United States, when the plant or major component of a plant itself is a direct product of certain U.S.-origin technology or software; when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by Huawei or its listed non-U.S. affiliates; or Huawei or its listed non-U.S. affiliates is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

BIS received one request to extend the savings clause to six months from the effective date, *i.e.,* November 15, 2020, to accommodate a more realistic production cycle. BIS had worked with many producers to determine the appropriate length of time needed for the savings clause in the May 15 rule. As no other producers have requested an extension of the savings clause, BIS rejects this recommendation.

BIS received a few questions regarding the application of the rule to situations. Since the publication of the May 15 rule, BIS has revised and posted the Direct Product Rule Guidelines on the BIS website at *https://bis.doc.gov/index.php/licensing/reexports-and-offshore-transactions/direct-public-guidelines.* BIS will update these guidelines to reflect the revisions made in this rule which should help the public navigate this rule. If there are additional questions, they may be submitted to BIS at *RPD2@bis.doc.gov* in an advisory opinion request consistent with § 748.3(c) of the EAR.

BIS received some comments stating concerns about complying with the new rule. The commenters pointed out that the production line of these items may be long and complex. They asked, ''How can we possibly delve that deeply into the supply chains and design chains of our customers and suppliers?'' This rule answers that question by imposing a license requirement on certain software or technology that is the direct product of certain software or technology subject to the EAR and certain items that are the direct product of major equipment subject to the EAR when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by Huawei or its listed non-U.S. affiliates; or Huawei or its listed non-U.S. affiliates is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.'' The EAR's definition of ''knowledge'' and BIS's *Know Your Customer* guidance provide direction on the scope of due diligence warranted.

Another commenter stated that, ''In the semiconductor industry, most items are rarely completely produced or developed by one entity. There is a significant amount of joint development and technology intermingling that occurs to produce or develop an item. In applying other aspects of EAR jurisdiction over foreign products, BIS disregards inputs that fall below specified *de minimis* thresholds.''

Two recommendations offered by the commenter for the multi-party design issue were to revise the rule: ''one stating items not wholly or primarily

produced or developed by a designated entity be excluded from the definition''; and ''state items that merely have input as to their requirements or specifications from designated entities are not items 'developed' by such designated entity.''

BIS has resolved the issue about designs not wholly produced or developed by a designated entity by removing paragraph (b)(2) of footnote 1 to supplement no. 4 of part 744 and removing ''produced or developed by any entity with a footnote 1 designation in the license requirement column of this Supplement'' from paragraph (a) of footnote 1. The control is now based on whether the foreign-produced item is the direct product of specified ''technology'' or ''software'' subject to the EAR and is either a specified ECCN or produced by any plant or major component of a plant that is located outside the United States, when the plant or major component of a plant itself is a direct product of U.S.-origin ''technology'' or ''software,'' and when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by Huawei or its listed non-U.S. affiliates; or when Huawei or its listed non-U.S. affiliates is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

One commenter noted that General Prohibition Three is dependent on the ''traditional'' foreign-produced direct product rule, specifically the letter of assurance criteria. BIS agrees the ''traditional'' foreign-produced direct product rule contains a letter of assurance criterion and is reviewing this issue. The commenter also posed the question, ''does it matter whether the plant was made in the U.S. or a foreign country . . .?'' The May 15 rule amended § 732.3(f) to specifically state that the foreign-produced direct product rule applies if the plant or major component of a plant is a direct product of U.S.-origin ''technology'' or ''software'' subject to the EAR, whether produced in the United States (U.S.-origin) or a foreign country.

One association recommended that BIS modify the scope of the May 15 rule to exclude items of older technologies, such as equipment that relies on technology several generations behind the current state-of-the-art that have been available in the market since 2011 or before. The association recommended a technological cut-off for ''analog and mixed-signal products used in applications such as radio frequency (RF) (*e.g.,* power amplifiers and switches) and signal conversion products using older and much less dense nodes such as 28nm, 65nm and 130nm, which are much less critical from a security point of view.'' The U.S. Government had considered establishing a technology parameter prior to implementation of the May 15 rule and determined it necessary that the U.S. Government review all transactions to determine whether they present a national security or foreign policy concern, consistent with controls on U.S.-origin items pursuant to the Entity List action. To maintain a consistent scope of controls for all items subject to the EAR, BIS rejects this comment.

One commenter suggested that the term ''essential'' in paragraph (b) requires a definition. Because the definition of production applies to ''all production stages, such as: Product engineering, manufacture, integration, assembly (mounting), inspection, testing, [and] quality assurance'', any equipment subject to the Export Control Classification Numbers specified in footnote 1 of supplement no. 4 to part 744 of the EAR that is involved in any of the production stages is considered *essential.*

One commenter stated, ''If the goal of the new rule is to inhibit a designated entity from designing its own semiconductors for use in the global telecommunications infrastructure or other contexts, then BIS should support the substitution of U.S.-origin items, based on trusted designs, in their place. In light of this, we respectfully request BIS to confirm it will grant licenses to companies in the U.S. to export otherwise nonsensitive items (such as 3x991, 5x992, and EAR99 items) for which there is clear foreign availability.'' The license review policy for the export, reexport, or transfer (in-country) of all items subject to the EAR involving footnote 1 designated entities is a presumption of denial. By amending paragraph (a) of footnote 1 to supplement no. 4 of part 744 to apply controls to only specified U.S. ''technology'' or ''software,'' and removing paragraph (b)(2) of this same footnote, these foreign-produced items are subject to the same license review policy as U.S.-origin items, and the U.S. Government intends to insure comparable regulatory treatment for U.S.-origin items and foreign-produced items in the context of the Entity List.

2. General Prohibition Three—Foreign-Produced Direct Product Rule—Applicability of General Prohibition Three to Huawei and Its Non-U.S. Affiliates on the Entity List

In response to public comments received on the May 15 rule, in this rule, BIS is amending the Foreign-Produced Direct Product Rule to expand and clarify what foreign-produced items are subject to the EAR and require a license for reexport, export from abroad, or transfer (in-country).

Specifically, this rule amends § 736.2(b)(3)(vi) of General Prohibition Three (Foreign-Produced Direct Product Rule) to prohibit the reexport, export from abroad, or transfer (in-country) without a license, of certain foreign-produced items when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by an entity listed on the Entity List (supplement no. 4 to part 744 of the EAR) that is designated by a footnote 1; or if the footnote 1 designated entity is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.'' This revision promotes U.S. national security by further controlling the design and production of items outside the United States using items subject to the EAR for entities that pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States.

This rule modifies footnote 1 to supplement no. 4 to part 744 of the EAR (Entity List) by replacing the phrase ''when there is ''knowledge'' that the foreign-produced item is destined to any entity with a footnote 1 designation in the license requirement column of this supplement'' with the phrase ''when there is ''knowledge'' that the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of this supplement; or any entity with a footnote 1 designation in the license requirement column of this supplement is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user,'''' which is consistent with revisions to § 744.11 published on August 17, 2020. This replacement is in response to

public comments identifying ways Huawei and its non-U.S. affiliates on the Entity List may be procuring items not subject to the EAR that are the direct product of specified U.S. technology or software and, in so doing, creating an uneven playing field for persons whose comparable items are subject to the EAR.

This rule also adds a note to the introductory paragraph of footnote 1, which provides an additional license review policy than that set forth in the license requirement column of the Entity List to align with U.S. Government policy. The license review policy set forth in the note is ''[s]ophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items controlled by this footnote that are capable of supporting the ''development'' or ''production'' of telecom systems, equipment and devices at only below the 5G level (*e.g.,* 4G, 3G, etc.) will be reviewed on a case-by-case basis.'' All other license applications will be reviewed using the license review policy in the license requirement column of the Entity List for each designated entity, which is presumption of denial.

This rule also amends paragraph (a) of footnote 1 to the Entity List by removing ''produced or developed by or for any entity with a footnote 1 designation in the license requirement column of this supplement and is''. The effect of removing this phrase is that the control applies to any foreign-produced item when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by Huawei or its listed non-U.S. affiliates; or Huawei or its listed non-U.S. affiliates is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user'' and the foreign item is a direct product of ''technology'' or ''software'' subject to the EAR in one of the specified ECCNs. This revision addresses, for example, efforts by entities with a footnote 1 designation in the license requirement column of the Entity List to leverage a foundry's semiconductor design rules produced from U.S. ''technology'' or ''software'' to support the manufacture of indigenous chipsets previously not subject to the EAR.

In addition, this rule removes paragraph (b)(2) from footnote 1 to the Entity List, *i.e.,* as a ''a direct product of 'software' or 'technology' produced or developed by an entity with a footnote 1 designation in the license requirement column of the Entity List.'' The effect of removing this paragraph is that paragraph (b) now applies when the foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by Huawei or its listed non-U.S. affiliates; or Huawei or its listed non-U.S. affiliates is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user'' and the foreign-produced item is being produced, no matter from whose design, by a plant or major component of a plant that is a direct product of specified U.S.-origin ''technology'' or ''software'' subject to the EAR. This revision addresses the public comments regarding the difficulty in determining if the product was the result of a design of a designated entity, as many products have multiple design inputs at various stages.

This rule also adds to paragraph (b), ''whether made in the U.S. or a foreign country'' to modify the plant or major component of a plant and ''subject to the EAR'' to modify U.S-origin technology or software, which makes this paragraph consistent with § 732.3(f) of the EAR. This is to clarify that paragraph (b) applies whether the plant or major component is made in a foreign country or the United States and made from specified U.S.-origin ''technology'' or ''software'' that is subject to the EAR.

Lastly, this rule adds a second Note to paragraph (b) that clarifies that any foreign-produced wafer, is controlled by this rule, whether finished or unfinished.

Savings Clause

For the Entity List and TGL changes described in this rule, shipments of items removed from eligibility for a license exception or export, reexport or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on August 17, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a license exception or export, reexport or transfer (in-country) without a license (NLR).

For the Foreign-Produced Direct Product Rule changes described in this rule, shipments of foreign-produced items identified in paragraph (a) to footnote 1 in supplement no. 4 of part 744 of the EAR that are subject to § 736.2(b)(3)(vi) and now require a license pursuant to this rule that were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or to the consignee/end-user, on August 17, 2020, pursuant to actual orders for exports, reexports, and transfers (in-country) to a foreign destination or to the consignee/end-user, may proceed to that destination under the previous license exception eligibility or without a license. Shipments of foreign-produced items identified in paragraph (b) to footnote 1 in supplement no. 4 of part 744 of the EAR that are subject to § 736.2(b)(3)(vi) and started ''production'' prior to August 17, 2020, are not subject to § 736.2(b)(3)(vi) of the EAR and may proceed as not being subject to the EAR, if applicable, or under the previous license exception eligibility or without a license so long as they have been exported, reexported, or transferred (in-country) on or before September 14, 2020. Any such items not exported from abroad, reexported, or transferred (in-country) before midnight (local time) on September 14, 2020, will be subject to § 736.2(b)(3)(vi) of the EAR and require a license in accordance with this interim final rule and other provisions of the EAR.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

action, it is a regulation where the analysis demonstrates that the primary, direct benefit is national security and is, thus, exempt from the provisions of Executive Order 13771.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This final regulation involves a collection currently approved by OMB under BIS control number 0694–0088, Simplified Network Application Processing System which includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to minimally increase and have a limited impact on the existing estimates as a result of this rule. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or online at *https://www.reginfo.gov/public/do/PRAMain.*

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

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements, including prior notice and the opportunity for public comment.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 736

General Prohibitions.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 736, 744 and 762 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 12, 2019, 84 FR 61817; Notice of May 7, 2020, 85 FR 27639.

■ 2. Section 736.2 is amended by revising paragraph (b)(3)(vi), to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(vi) *Criteria for prohibition relating to parties on Entity List.* You may not reexport, export from abroad, or transfer (in-country) without a license or license exception any foreign-produced item controlled under footnote 1 of supplement no. 4 to part 744 (''Entity List'') when there is ''knowledge'' that:

(A) The foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of this supplement; or

(B) Any entity with a footnote 1 designation in the license requirement column of this supplement is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

* * * * *

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 84 FR 49633; Notice of November 12, 2019, 84 FR 61817.

■ 4. Supplement No. 4 to part 744 is amended:

■ a. Under ARGENTINA,

■ i. By adding, in alphabetical order the entity ''Huawei Cloud Argentina,'' and

■ ii. By revising the entity ''Huawei Tech Investment Co., Ltd. Argentina'';

■ b. By revising the Australia entity ''Huawei Technologies (Australia) Pty Ltd.'';

■ c. By revising the Bahrain entity ''Huawei Technologies Bahrain'';

■ d. By revising the Belarus entity ''Bel Huawei Technologies LLC'';

■ e. By revising the Belgium entity ''Huawei Technologies Research & Development Belgium NV'';

■ f. By revising the Bolivia entity ''Huawei Technologies (Bolivia) S.R.L.'';

■ g. Under BRAZIL,

■ i. By adding, in alphabetical order the entity ''Huawei Cloud Brazil,'' and

■ ii. By revising the entity ''Huawei do Brasil Telecomunicacões Ltda'';

■ h. By revising the Burma entity ''Huawei Technologies (Yangon) Co., Ltd.'';

■ i. By revising the Canada entity ''Huawei Technologies Canada Co., Ltd'';

■ j. Under CHILE,

■ i. By revising the entity ''Huawei Chile S.A.''; and

■ ii. By adding, in alphabetical order the entity ''Huawei Cloud Chile'';

■ k. Under CHINA, PEOPLE'S REPUBLIC OF,

■ i. By revising the entities ''Beijing Huawei Digital Technologies Co., Ltd.,'' ''Chengdu Huawei High-Tech Investment Co., Ltd.,'' ''Chengdu Huawei Technologies Co., Ltd.,'' ''Dongguan Huawei Service Co., Ltd.,'' ''Dongguan Lvyuan Industry Investment Co., Ltd.,'' ''Gui'an New District Huawei Investment Co., Ltd.,'' ''Hangzhou Huawei Digital Technology Co., Ltd.,'' ''HiSilicon Optoelectronics Co., Ltd.,'' ''HiSilicon Technologies Co., Ltd (HiSilicon),'' ''HiSilicon Tech (Suzhou) Co., Ltd.,'' ''Huawei Device Co., Ltd.,'' ''Huawei Device (Dongguan) Co., Ltd.,'' ''Huawei Device (Shenzhen) Co., Ltd.,'' ''Huawei Machine Co., Ltd.,'' ''Huawei Software Technologies Co., Ltd.,'' ''Huawei Technical Service Co., Ltd.,'' ''Huawei Technologies Co., Ltd.,'' ''Huawei Technologies Service Co., Ltd.,'' ''Huawei Training (Dongguan) Co., Ltd.,'' ''Huayi internet Information

Service Co., Ltd.,'' ''Hui Tong Business Ltd.,'' ''North Huawei Communication Technology Co., Ltd.,'' ''Shanghai Haisi Technology Co., Ltd.,'' ''Shanghai HiSilicon Technologies Co., Ltd.,'' ''Shanghai Mossel Trade Co., Ltd.,'' ''Shenzhen HiSilicon Technologies Co., Electrical Research Center,'' ''Shenzhen Huawei Technical Services Co., Ltd.,'' ''Shenzhen Huawei Terminal Commercial Co., Ltd.,'' ''Shenzhen Huawei Training School Co., Ltd.,'' ''Shenzhen Huayi Loan Small Loan Co., Ltd.,'' ''Shenzhen Legrit Technology Co., Ltd.,'' ''Shenzhen Smartcom Business Co., Ltd.,'' ''Suzhou Huawei Investment Co., Ltd.,'' ''Wuhan Huawei Investment Co., Ltd.,'' ''Xi'an Huawei Technologies Co., Ltd.,'' and ''Xi'an Ruixin Investment Co., Ltd.,'' and

■ ii. By adding, in alphabetical order, the entities ''Huawei Cloud Computing Technology,'' ''Huawei Cloud Beijing,'' ''Huawei Cloud Dalian,'' ''Huawei Cloud Guangzhou,'' ''Huawei Cloud Guiyang,'' ''Huawei Cloud Hong Kong,'' ''Huawei Cloud Shanghai,'' ''Huawei Cloud Shenzhen,'' ''Huawei OpenLab Suzhou,'' and ''Wulanchabu Huawei Cloud Computing Technology'';

■ l. By revising the Costa Rica entity ''Huawei Technologies Costa Rica SA'';

■ m. By revising the Cuba entity ''Huawei Cuba'';

■ n. By revising the Denmark entity ''Huawei Denmark'';

■ o. Under EGYPT,

■ i. By adding, in alphabetical order, the entity ''Huawei OpenLab Cairo,'' and

■ ii. By revising the entity ''Huawei Technology'';

■ p. Under FRANCE,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud France,'' and ''Huawei OpenLab Paris,'' and

■ ii. By revising the entity ''Huawei France'';

■ q. Under GERMANY,

■ i. By adding in alphabetical order, the entities ''Huawei Cloud Berlin,'' ''Huawei OpenLab Munich,'' and ''Huawei Technologies Dusseldorf GmbH,'' and

■ ii. By revising the entity ''Huawei Technologies Deutschland GmbH'';

■ r. Under HONG KONG,

■ i. By adding, in alphabetical order, the entity ''Huawei Cloud Hong Kong,'' and

■ ii. By revising the entities ''Huawei Device (Hong Kong) Co., Limited,'' ''Huawei International Co., Limited,'' ''Huawei Tech. Investment Co., Limited,'' ''Huawei Technologies Co. Ltd.'' ''Hua Ying Management Co. Limited,'' and ''Smartcom (Hong Kong) Co., Limited'';

■ s. Under INDIA,

■ i. By adding, in alphabetical order, the entity ''Huawei OpenLab Delhi,'' and

■ ii. By revising the entity ''Huawei Technologies India Private Limited'';

■ t. By revising the Indonesia entity ''Huawei Tech Investment, PT'';

■ u. By adding, in alphabetical order, the Israel entity ''Toga Networks'';

■ v. By revising the Italy entities ''Huawei Italia,'' and ''Huawei Milan Research Institute'';

■ w. By revising the Jamaica entity ''Huawei Technologies Jamaica Company Limited'';

■ x. By revising the Japan entity ''Huawei Technologies Japan K.K.'';

■ y. By revising the Jordan entity ''Huawei Technologies Investment Co. Ltd.'';

■ z. By revising the Kazakhstan entity ''Huawei Technologies LLC Kazakhstan'';

■ aa. By revising the Lebanon entity ''Huawei Technologies Lebanon'';

■ bb. By revising the Madagascar entity ''Huawei Technologies Madagascar Sarl'';

■ cc. Under MEXICO,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud Mexico,'' and ''Huawei OpenLab Mexico City,'' and

■ ii. By revising the entity ''Huawei Technologies De Mexico S.A.'';

■ dd. By adding, in alphabetical order, an entry for MOROCCO;

■ ee. Under the NETHERLANDS,

■ i. By adding, in alphabetical order, the entity ''Huawei Cloud Netherlands,'' and

■ ii. By revising the entity ''Huawei Technologies Coöperatief U.A.'';

■ ff. By revising the New Zealand entity ''Huawei Technologies (New Zealand) Company Limited'';

■ gg. By revising the Oman entity ''Huawei Tech Investment Oman LLC'';

■ hh. By revising the Pakistan entity ''Huawei Technologies Pakistan (Private) Limited'';

■ ii. By revising the Panama entity ''Huawei Technologies Cr Panama S.A'';

■ jj. By revising the Paraguay entity ''Huawei Technologies Paraguay S.A.'';

■ kk. By adding, in alphabetical order, an entry for PERU;

■ ll. By revising the Portugal entity ''Huawei Technology Portugal'';

■ mm. By revising the Qatar entity ''Huawei Tech Investment Limited'';

■ nn. By revising the Romania entity ''Huawei Technologies Romania Co., Ltd.'';

■ oo. Under RUSSIA,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud Russia,'' and ''Huawei OpenLab Moscow,'' and

■ ii. By revising the entity ''Huawei Russia'';

■ pp. Under SINGAPORE,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud Singapore,'' and ''Huawei OpenLab Singapore,'' and

■ ii. By revising the entity ''Huawei International Pte. Ltd.'';

■ qq. Under SOUTH AFRICA,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud South Africa,'' and ''Huawei OpenLab Johannesburg,'' and

■ ii. By revising the entity ''Huawei Technologies South Africa Pty Ltd.'';

■ rr. By revising the Sri Lanka entity ''Huawei Technologies Lanka Company (Private) Limited'';

■ ss. By revising the Sweden entity ''Huawei Sweden'';

■ tt. Under SWITZERLAND,

■ i. By adding in alphabetical order, the entity ''Huawei Cloud Switzerland,'' and

■ ii. By revising the entity ''Huawei Technologies Switzerland AG'';

■ uu. By revising the Taiwan entity ''Xunwei Technologies Co., Ltd.'';

■ vv. Under THAILAND,

■ i. By adding, in alphabetical order, the entities ''Huawei Cloud Thailand,'' and ''Huawei OpenLab Bangkok;'' and

■ ii. By revising the entity ''Huawei Technologies (Thailand) Co.'';

■ ww. By adding in alphabetical order, the Turkey entity, ''Huawei OpenLab Istanbul'';

■ xx. By adding in alphabetical order, the United Arab Emirates entity ''Huawei OpenLab Dubai'';

■ yy. Under UNITED KINGDOM,

■ i. By revising the entities ''Centre for Integrated Photonics Ltd.,'' ''Huawei Global Finance (UK) Limited,'' ''Huawei Technologies (UK) Co., Ltd.,'' ''Proven Glory,'' and ''Proven Honour,'' and

■ ii. By adding, in alphabetical order, the entity ''Huawei Technologies R&D UK'';

■ zz. By revising the Vietnam entities ''Huawei Technologies (Vietnam) Company Limited'' and ''Huawei Technology Co. Ltd.'';

■ aaa. By revising footnote 1; and

■ bbb. By adding footnote 2.

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register Citation
*	*	*	*	*
ARGENTINA	Huawei Cloud Argentina, Buenos Aires, Argentina.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Tech Investment Co., Ltd. Argentina, Av. Leandro N. Alem 815, C1054 CABA, Argentina.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
*	*	*	*	*
AUSTRALIA	Huawei Technologies (Australia) Pty Ltd., L6 799 Pacific Hwy, Chatswood, New South Wales, 2067, Australia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
*	*	*	*	*
BAHRAIN	Huawei Technologies Bahrain, Building 647 2811 Road 2811, Block 428, Muharraq, Bahrain.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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BELARUS	Bel Huawei Technologies LLC, a.k.a., the following one alias: —BellHuawei Technologies LLC. 5 Dzerzhinsky Ave., Minsk, 220036, Belarus.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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Country	Entity	License requirement	License review policy	**Federal Register** Citation
BELGIUM	Huawei Technologies Research & Development Belgium NV, Technologiepark 19, 9052 Zwijnaarde Belgium.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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BOLIVIA	Huawei Technologies (Bolivia) S.R.L., La Paz, Bolivia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
BRAZIL	Huawei Cloud Brazil, Sau Paulo, Brazil.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei do Brasil Telecomunicacões Ltda, Sao Paulo, Brazil; *and* Av. Jerome Case, 2600, Sorocaba—SP, 18087–220, Brazil.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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BURMA	Huawei Technologies (Yangon) Co., Ltd., Yangon, Burma.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
CANADA	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register Citation
	Huawei Technologies Canada Co., Ltd., Markham, ON, Canada.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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CHILE	Huawei Chile S.A., Santiago, Chile.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Chile, Santiago, Chile.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	Beijing Huawei Digital Technologies Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Chengdu Huawei High-Tech Investment Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Chengdu Huawei Technologies Co., Ltd., Chengdu, Sichuan, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29852, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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Country	Entity	License requirement	License review policy	Federal Register Citation
	Dongguan Huawei Service Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Dongguan Lvyuan Industry Investment Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Gui'an New District Huawei Investment Co., Ltd., Guiyang, Guizhou, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Hangzhou Huawei Digital Technology Co., Ltd., Hangzhou, Zhejiang, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	HiSilicon Optoelectronics Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	HiSilicon Technologies Co., Ltd (HiSilicon), Bantian Longgang District, Shenzhen, 518129, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	Federal Register Citation
	HiSilicon Tech (Suzhou) Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Computing Technology, Huawei Cloud Data Center, Xinggong Road, Qianzhong Avenue, Gui'an New District, Guizhou Province, China; *and* Huawei Cloud Data Center, Jiaotianfu Road, Jinma Avenue, Gui'an New District, Guizhou Province, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Beijing, Beijing, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Dalian, Dalian, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Guangzhou, Guangzhou, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Guiyang, Guiyang, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Huawei Cloud Shanghai, Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Shenzhen, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Device Co., Ltd., a.k.a., the following two aliases: —Huawei Device; *and* —Songshan Lake Southern Factory Dongguan, Guangdong, China *and* No. 2 Xincheng Avenue, Songshan Lake Road, Dongguan City, Guangdong, China; *and* Songshan Lake Base, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Device (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Device (Shenzhen) Co., Ltd., Shenzhen, Guangdong Shenzhen, China; *and* Building 2, Zone B, Huawei Base, Bantian, Longgang District, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Machine Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

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	Huawei OpenLab Suzhou, a.k.a., the following one alias: —Huawei Suzhou OpenLab. Suzhou, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Software Technologies Co., Ltd., Nanjing, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technical Service Co., Ltd., China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Co., Ltd., a.k.a., the following two aliases: —Shenzhen Huawei Technologies; *and* —Huawei Technology, and to include the following addresses and the following 22 affiliated entities:	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Addresses for Huawei Technologies Co., Ltd.: Bantian Huawei Base, Longgang District, Shenzhen, 518129, China; *and* No. 1899 Xi Yuan Road, High-Tech West District, Chengdu, 611731; *and* C1, Wuhan Future City, No. 999 Gaoxin Ave., Wuhan, Hebei Province; *and* Banxuegang Industrial Park, Buji Longgang, Shenzhen, Guangdong, 518129, China; *and* R&D Center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, China; *and* Zone G, Huawei Base, Bantian, Longgang District, Shenzhen, China. Affiliated entities: *Beijing Huawei Longshine Information Technology Co., Ltd.,* a.k.a., the following one alias: —Beijing Huawei Longshine, to include the following subordinate. Q80–3–25R, 3rd Floor, No. 3, Shangdi Information Road, Haidian District, Beijing, China. *Hangzhou New Longshine Information Technology Co., Ltd.,* Room 605, No. 21, Xinba, Xiachang District, Hangzhou, China.			

Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Hangzhou Huawei Communication Technology Co., Ltd., Building 1, No. 410, Jianghong Road, Changhe Street, Binjiang District, Hangzhou, Zhejiang, China.			
	Hangzhou Huawei Enterprises, No. 410 Jianghong Road, Building 1, Hangzhou, China.			
	Huawei Digital Technologies (Suzhou) Co., Ltd., No. 328 XINHU STREET, Building A3, Suzhou (Huawei R&D Center, Building A3, Creative Industrial Park, No. 328, Xinghu Street, Suzhou), Suzhou, Jiangsu, China.			
	Huawei Marine Networks Co., Ltd., a.k.a., the following one alias:			
	—Huawei Marine. Building R4, No. 2 City Avenue, Songshan Lake Science & Tech Industry Park, Dongguan, 523808, *and* No. 62, Second Ave., 5/F–6/F, TEDA, MSD–B2 Area, Tianjin Economic and Technological Development Zone, Tianjin, 300457, China.			
	Huawei Mobile Technology Ltd., Huawei Base, Building 2, District B, Shenzhen, China.			
	Huawei Tech. Investment Co., U1 Building, No. 1899 Xiyuan Avenue, West Gaoxin District, Chengdu City, 611731, China.			
	Huawei Technology Co., Ltd. Chengdu Research Institute, No. 1899, Xiyuan Ave., Hi-Tech Western District, Chengdu, Sichuan Province, 610041, China.			
	Huawei Technology Co., Ltd. Hangzhou Research Institute, No. 410, Jianghong Rd., Building 4, Changhe St., Binjiang District, Hangzhou, Zhejiang Province, 310007, China.			
	Huawei Technologies Co., Ltd. Beijing Research Institute, No. 3, Xinxi Rd., Huawei Building, ShangDi Information Industrial Base, Haidian District, Beijing, 100095, China; *and* No. 18, Muhe Rd., Building 1–4, Haidian District, Beijing, China.			
	Huawei Technologies Co., Ltd. Material Characterization Lab, Huawei Base, Bantian, Shenzhen 518129, China.			
	Huawei Technologies Co., Ltd. Xi'an Research Institute, National Development Bank Building (Zhicheng Building), No. 2, Gaoxin 1st Road, Xi'an High-tech Zone, Xi'an, China.			
	Huawei Terminal (Shenzhen) Co., Ltd., Huawei Base, B1, Shenzhen, China.			
	Nanchang Huawei Communication Technology, No. 188 Huoju Street, F10–11, Nanchang, China.			
	Ningbo Huawei Computer & Net Co., Ltd., No. 48 Daliang Street, Ningbo, China.			
	Shanghai Huawei Technologies Co., Ltd., R&D center, No. 2222, Golden Bridge Road, Pu Dong District, Shanghai, 286305 Shanghai, China, China.			
	Shenzhen Huawei Anjiexin Electricity Co., Ltd., a.k.a., the following one alias:			

Country	Entity	License requirement	License review policy	Federal Register Citation
	—Shenzhen Huawei Agisson Electric Co., Ltd. Building 2, Area B, Putian Huawei Base, Longgang District, Shenzhen, China; *and* Huawei Base, Building 2, District B, Shenzhen, China. *Shenzhen Huawei New Technology Co., Ltd.,* Huawei Production Center, Gangtou Village, Buji Town, Longgang District, Shenzhen, China. *Shenzhen Huawei Technology Service,* Hauwei Base, Building 2, District B, Shenzhen, China. *Shenzhen Huawei Technologies Software,* Huawei Base, Building 2, District B, Shenzhen, China. *Zhejiang Huawei Communications Technology Co., Ltd.,* No. 360 Jiangshu Road, Building 5, Hangzhou, Zhejiang, China.			
	Huawei Technologies Service Co., Ltd., Langfang, Hebei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Training (Dongguan) Co., Ltd., Dongguan, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huayi Internet Information Service Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Hui Tong Business Ltd., Huawei Base, Electrical Research Center, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	North Huawei Communication Technology Co., Ltd., Beijing, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	Federal Register Citation
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	Shanghai Haisi Technology Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shanghai HiSilicon Technologies Co., Ltd., Room 101, No. 318, Shuixiu Road, Jinze Town (Xiqi), Qingpu District, Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shanghai Mossel Trade Co., Ltd., Shanghai, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Shenzhen HiSilicon Technologies Co., Electrical Research Center, Huawei Base, Shenzhen, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shenzhen Huawei Technical Services Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shenzhen Huawei Terminal Commercial Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	Federal Register Citation
	Shenzhen Huawei Training School Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shenzhen Huayi Loan Small Loan Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shenzhen Legrit Technology Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Shenzhen Smartcom Business Co., Ltd., Shenzhen, Guangdong, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Suzhou Huawei Investment Co., Ltd., Suzhou, Jiangsu, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Wuhan Huawei Investment Co., Ltd., Wuhan, Hubei, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Wulanchabu Huawei Cloud Computing Technology, a.k.a., the following one alias: —Ulan Qab Huawei Cloud Computing Technology. Huawei Cloud Data Center at the Intersection of Manda Road and Jingqi Road, Jining District, Wulanchabu City, Inner Mongolia Autonomous Region, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Xi'an Huawei Technologies Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Xi'an Ruixin Investment Co., Ltd., Xi'an, Shaanxi, China.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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COSTA RICA	Huawei Technologies Costa Rica SA, a.k.a., the following one alias: —Huawei Technologies Costa Rica Sociedad Anonima. S.J, Sabana Norte, Detras De Burger King, Edif Gru, Po Nueva, San Jose, Costa Rica.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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CUBA	Huawei Cuba, Cuba.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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DENMARK	Huawei Denmark, Vestre Teglgade 9, Kobenhavn Sv, Hovedstaden, 2450, Denmark.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
EGYPT	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register Citation
	Huawei OpenLab Cairo, a.k.a., the following one alias: —Huawei Cairo OpenLab. Cairo-Alex Desert Rd, Al Giza Desert, Giza Governorate, Egypt.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technology, Cairo, Egypt.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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FRANCE	*	*	*	*
	Huawei Cloud France, Paris, France.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei France, a.k.a., the following one alias: —Huawei Technologies France SASU. 36–38, quai du Point du Jour, 92659 Boulogne-Billancourt cedex, France.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Paris, a.k.a., the following one alias: —Huawei Paris OpenLab. 101 Boulevard Murat, 75016 Paris, France.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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GERMANY	*	*	*	*

Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Huawei Cloud Berlin, Berlin Germany.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Munich, a.k.a., the following one alias: —Huawei Munich OpenLab. Huawei Germany Region R&D Centre Riesstr. 22 80992 Munich, Germany; *and* Huawei Germany Region R&D Centre Riesstr. 12 80992 Munich, Germany.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Case-by-case review	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Deutschland GmbH, Germany.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Dusseldorf GmbH, Huawei Germany Region R&D Centre Riesstr. 25, 80992 Munich, Germany, *and* Am Seestern 24 Duesseldorf, D–40547 Germany.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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HONG KONG	*	*	*	*
	Hua Ying Management Co. Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Cloud Hong Kong, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	See § 744.2(d) of the EAR.	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	Federal Register Citation
	Huawei Device (Hong Kong) Co., Limited, Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei International Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Tech. Investment Co., Limited, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Co. Ltd., Tsim Sha Tsui, Kowloon, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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	Smartcom (Hong Kong) Co., Limited, Sheung Wan, Hong Kong.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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INDIA	*	* *	* *	*
	Huawei OpenLab Delhi, a.k.a., the following one alias: —Huawei Delhi OpenLab. Delhi, India.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Huawei Technologies India Private Limited, a.k.a., the following one alias: —Huawei Technologies India Pvt., Ltd. Level-3/4, Leela Galleria, The Leela Palace, No. 23, Airport Road, Bengaluru, 560008, India; *and* SYNO 37, 46,45/3,45/4 ETC KNO 1540, Kundalahalli Village Bengaluru Bangalore KA 560037 India.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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INDONESIA	Huawei Tech Investment, PT, Bri Ii Building 20Th Floor, Suite 2005 , Jl. Jend., Sudirman Kav. 44–46, Jakarta, 10210, Indonesia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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ISRAEL	*	*	*	*
	Toga Networks, 4 Haharash St., Hod Hasharon, Israel.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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ITALY	Huawei Italia, Via Lorenteggio, 240, Tower A, 20147 Milan, Italy.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Milan Research Institute, Milan, Italy.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
JAMAICA	Huawei Technologies Jamaica Company Limited, Kingston, Jamaica.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	Federal Register Citation
JAPAN	Huawei Technologies Japan K.K., Japan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
JORDAN	Huawei Technologies Investment Co. Ltd., Amman, Jordan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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KAZAKHSTAN	*	*	*	*
	Huawei Technologies LLC Kazakhstan, 191 Zheltoksan St., 5th floor, 050013, Bostandyk, District of Almaty, Republic of Kazakhstan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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LEBANON	*	*	*	*
	Huawei Technologies Lebanon, Beirut, Lebanon.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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MADAGASCAR	Huawei Technologies Madagascar Sarl, Antananarivo, Madagascar.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	**Federal Register** Citation
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MEXICO	Huawei Cloud Mexico, Mexico City, Mexico.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Mexico City, a.k.a., the following one alias: —Huawei Mexico City OpenLab. Mexico City, Mexico.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies De Mexico S.A., Avenida Santa Fé No. 440, Torre Century Plaza Piso 15, Colonia Santa Fe, Delegación Cuajimalpa de Morelos, C.P. 05348, Distrito Federal, CDMX, Mexico; *and* Laza Carso, Torre Falcón, Lago Zurich No. 245, Piso 18, Colonia Ampliacion Granda, Delegación Miguel Hidalgo, CDMX, Mexico.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
MOROCCO	Huawei Technologies Morocco, Immeuble High Tech, 4eme Etage, Plateaux N 11, 12 Et 13, Hay Riad—Rabat, Morocco.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
NETHERLANDS	*	*	*	*
	Huawei Cloud Netherlands, Amsterdam, Netherlands.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Coöperatief U.A., Netherlands.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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Country	Entity	License requirement	License review policy	Federal Register Citation
NEW ZEALAND	Huawei Technologies (New Zealand) Company Limited, 80 Queen Street, Auckland Central, Auckland, 1010, New Zealand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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OMAN	Huawei Tech Investment Oman LLC, Muscat, Oman.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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PAKISTAN	Huawei Technologies Pakistan (Private) Limited, Islamabad, Pakistan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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PANAMA	Huawei Technologies Cr Panama S.A, Ave. Paseo del Mar, Costa del Este Torre MMG, Piso 17 Ciudad de Panamá, Panama.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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PARAGUAY	Huawei Technologies Paraguay S.A., Asuncion, Paraguay.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
PERU	Huawei Cloud Peru, Lima, Peru.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

Country	Entity	License requirement	License review policy	**Federal Register** Citation
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PORTUGAL	Huawei Technology Portugal, Avenida Dom João II, 51B—11°.A 1990–085 Lisboa, Portugal.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
QATAR	Huawei Tech Investment Limited, Doha, Qatar.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
ROMANIA	Huawei Technologies Romania Co., Ltd., Ion Mihalache Blvd., No. 15–17,1st District, 9th Floor of Bucharest Tower center, Bucharest, Romania.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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RUSSIA	*	*	*	*
	Huawei Cloud Russia, Moscow, Russia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Moscow, a.k.a., the following one alias: —Huawei Moscow OpenLab. Moscow, Russia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Russia, Business-Park ''Krylatsky Hills'', 17 bldg. 2, Krylatskaya Str., Moscow 121614, Russia.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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SINGAPORE	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register Citation
	Huawei Cloud Singapore, Singapore, Singapore.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei International Pte. Ltd., Singapore.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Singapore, a.k.a., the following one alias: —Huawei Singapore OpenLab. Singapore, Singapore.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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SOUTH AFRICA	*	*	*	*
	Huawei Cloud South Africa, Johannesburg, South Africa.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Johannesburg, a.k.a., the following one alias: —Huawei Johannesburg OpenLab. Johannesburg, South Africa.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies South Africa Pty Ltd., 128 Peter St Block 7 Grayston Office Park, Sandton, Gauteng, 1682, South Africa.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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Country	Entity	License requirement	License review policy	**Federal Register** Citation
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SRI LANKA	Huawei Technologies Lanka Company (Private) Limited, Colombo, Sri Lanka.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
SWEDEN	*	*	*	*
	Huawei Sweden, Skalholtsgatan 9–11 Kista, 164 40 Stockholm, Sweden.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
SWITZERLAND	*	*	*	*
	Huawei Cloud Switzerland, Bern, Switzerland.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies Switzerland AG, Liebefeld, Bern, Switzerland.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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TAIWAN	*	*	*	*
	Xunwei Technologies Co., Ltd., Taipei, Taiwan.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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THAILAND	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register Citation
	Huawei Cloud Thailand, Bangkok, Thailand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei OpenLab Bangkok, a.k.a., the following one alias: —Huawei Bangkok OpenLab. Bangkok, Thailand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies (Thailand) Co., 87/1 Wireless Road, 19th Floor, Capital Tower, All Seasons Place, Pathumwan, Bangkok, 10330, Thailand.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	*	*	*	*
TURKEY	*	*	*	*
	Huawei OpenLab Istanbul, a.k.a., the following one alias: —Huawei Istanbul OpenLab. Istanbul, Turkey.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
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UNITED ARAB EMIRATES.	*	*	*	*
	Huawei OpenLab Dubai, a.k.a., the following one alias: —Huawei Dubai OpenLab. Dubai, United Arab Emirates.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	*	*	*	*
UNITED KINGDOM	*	*	*	*

Country	Entity	License requirement	License review policy	**Federal Register** Citation
	Centre for Integrated Photonics Ltd., B55 Adastral Park, Pheonix House, Martlesham Heath, Ipswich, IP5 3RE United Kingdom.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	*	* *	* *	*
	Huawei Global Finance (UK) Limited, Great Britain.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies R&D UK, a.k.a., the following two aliases: —Huawei Research & Development (UK) Ltd; *and* —Huawei Technologies Research & Development (UK)). Former Spicers Site Sawston Bypass Sawston Cambridge Cambridgeshire CB22 3JG, England; *and* 302 Cambridge Science Park, Milton Road, Cambridge, CB4 0WG, England; *and* Phoenix House (B55) Adastral Park, Martlesham Heath, Ipswich, Suffolk. IP5 3RE.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technologies (UK) Co., Ltd., a.k.a., the following one alias: —Huawei Software Technologies Co. Ltd. 300 South Oak Way, Green Park, Reading, RG2 6UF; *and* 6 Mitre Passage, SE 10 0ER, United Kingdom.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 43495, 8/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	*	* *	* *	*
	Proven Glory, British Virgin Islands	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Proven Honour, British Virgin Islands.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	*	* *	* *	*

Country	Entity	License requirement	License review policy	Federal Register Citation
VIETNAM	Huawei Technologies (Vietnam) Company Limited, Hanoi, Vietnam.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.
	Huawei Technology Co. Ltd., Hanoi, Vietnam.	For all items subject to the EAR, see §§ 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a ''standards organization'' (see § 772.1) for the purpose of contributing to the revision or development of a ''standard'' (see § 772.1).	Presumption of denial	84 FR 22963, 5/21/19. 85 FR 29853, 5/19/20. 85 FR 36720, 6/18/20. 85 FR [INSERT FR PAGE NUMBER]; 8/20/20.

[1] *Foreign-produced direct product items involving footnote 1 designated entities.* You may not reexport, export from abroad, or transfer (in-country) without a license or license exception any foreign-produced item specified in paragraph (a) or (b) of this footnote when there is ''knowledge'' that:

(1) The foreign-produced item will be incorporated into, or will be used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of this supplement; or

(2) Any entity with a footnote 1 designation in the license requirement column of this supplement is a party to any transaction involving the foreign-produced item, *e.g.,* as a ''purchaser,'' ''intermediate consignee,'' ''ultimate consignee,'' or ''end-user.''

Note to introductory paragraph of footnote 1: Sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items controlled by this footnote that are capable of supporting the ''development'' or ''production'' of telecom systems, equipment and devices at only below the 5G level (*e.g.,* 4G, 3G, etc.) will be reviewed on a case-by-case basis.

(a) *Direct product of ''technology'' or ''software'' subject to the EAR and specified in certain Category 3, 4 or 5 ECCNs.* The foreign-produced item is a direct product of ''technology'' or ''software'' subject to the EAR and specified in Export Control Classification Number (ECCN) 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR.

(b) *Direct product of a plant or major component of a plant.* The foreign-produced item is produced by any plant or major component of a plant that is located outside the United States, when the plant or major component of a plant, whether made in the U.S. or a foreign country, itself is a direct product of U.S.-origin ''technology'' or ''software'' subject to the EAR that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL.

Notes to paragraph (b) of footnote 1:

(1) A major component of a plant located outside the United States means equipment that is essential to the ''production'' of an item, including testing equipment.

(2) A foreign-produced item includes any foreign-produced wafer whether finished or unfinished.

[2] *Cybersecurity research and vulnerability disclosure.* The following exports, reexports, and transfers (in-country) to Huawei Technologies Co., Ltd. (Huawei) and its non-U.S. affiliates on the Entity List for cybersecurity research and vulnerability disclosure subject to other provisions of the EAR are excluded from the Entity List license requirements: when the disclosure to Huawei and/or to its listed non-U.S. affiliates is limited to information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei or any of its non-U.S. affiliates when related to the process of providing ongoing security research critical to maintaining the integrity and reliability of existing and currently 'fully operational network' and equipment. A 'fully operational network' refers to a 'third party' network providing services to the 'third party's' customers. The term 'third party' refers to a party that is not Huawei, one of its listed non-U.S. affiliates, or the exporter, reexporter, or transferor, but rather an organization such as a telecommunications service provider.

PART 762—[AMENDED]

■ 5. The authority citation for part 762 is continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

§ 762.2 [AMENDED]

■ 6. Section 762.2 is amended:

■ a. By adding the word ''and'' at the end of paragraph (b)(53); and

■ b. By removing the semi-colon at the end of paragraph (b)(54) and adding a period in its place.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–18213 Filed 8–17–20; 2:30 pm]

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